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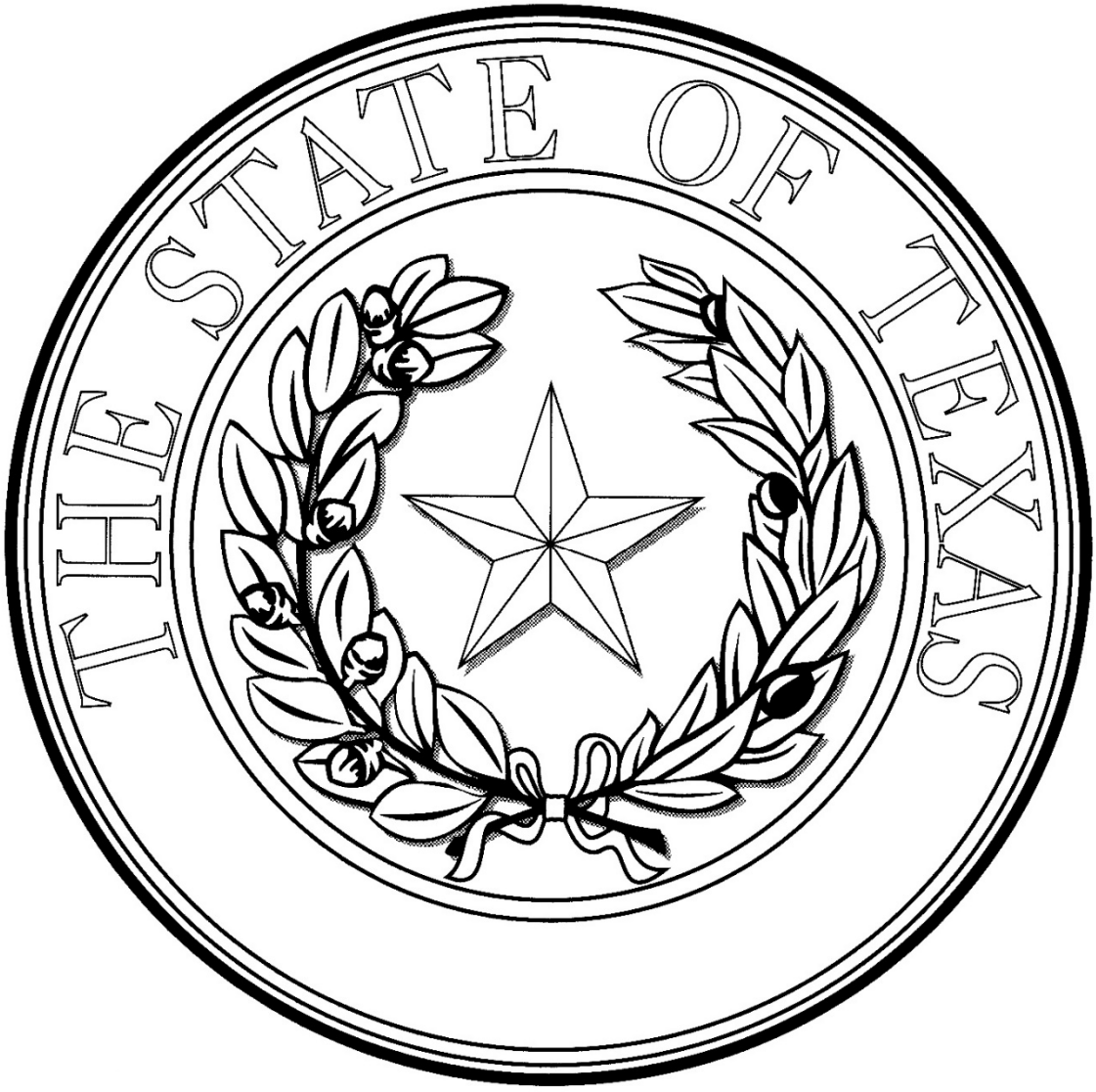

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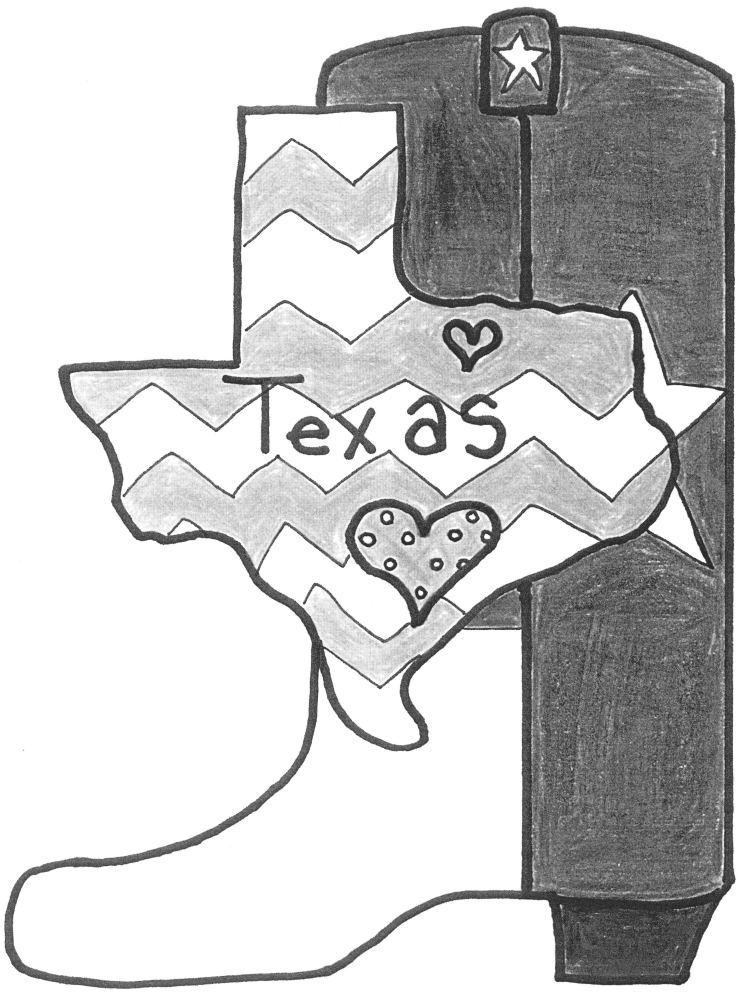
Texas

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for August 1, 2024

Appointed to the Governor's Committee to Support the Military for a term to expire at the pleasure of the Governor, Fernando Fernandez of Nolanville, Texas (replacing Todd M. Fox of Belton).

Appointments for August 2, 2024

Appointed to the Private Sector Advisory Council for a term to expire at the pleasure of the Governor, Christopher A. "Chris" Hogan of Angleton, Texas (replacing Marcus E. "Woody" Woodring of League City, who resigned).

Appointed to the Private Sector Advisory Council for a term to expire at the pleasure of the Governor, Gary A. Scheibe of Cypress, Texas (replacing Al A. Philippus of Boerne, who resigned).

Appointments for August 5, 2024

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Joel B. "Brandon" Brock, D.N.P. of Sunnyvale, Texas (Dr. Brock is being reappointed).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Kara S. Chasteen of Bertram, Texas (Ms. Chasteen is being reappointed).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Sarah Rosen Garrett of Spicewood, Texas (Ms. Garrett is being reappointed).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Suzanne K. Gazda, M.D. of San Antonio, Texas (Dr. Gazda is being reappointed).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Qazi U. Javed, M.D. of Cedar Park, Texas (Dr. Javed is being reappointed).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Paula J. Kruppstadt, M.D. of Shenandoah, Texas (Dr. Kruppstadt is being reappointed).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Elizabeth R. Miller, Ph.D. of Houston, Texas (replacing Anne M. Esquivel, Ph.D. of New Braunfels, whose term expired).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Amy L. Offutt, M.D. of Meadowlakes, Texas (Dr. Offutt is being reappointed).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Nathan A. Pullen of Cedar Creek, Texas (Mr. Pullen is being reappointed).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Martha J. Shoultz of Dallas, Texas (replacing Lisa C. Hardy of Argyle, whose term expired).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Barry Smeltzer of Boerne, Texas (pursuant to HB 3808, 88th Legislature, Regular Session).

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council for a term to expire August 31, 2025, Melissa A. Smith of Bushland, Texas (replacing Lisa M. Formby of Hereford, whose term expired).

Appointed to the Texas State Board of Examiners of Professional Counselors for a term to expire February 1, 2029, Sean Shahkarami of Haslet, Texas (replacing Roy L. Smith of Midland, who resigned).

Appointments for August 6, 2024

Appointed to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2025, Sonja L. Clark of Amarillo, Texas (replacing Jennifer Kurth Williamson of Southlake, who resigned).

Appointed to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2025, Summer R. Webb of Valentine, Texas (pursuant to Government Code Sec. 481.0066(e)).

Appointed to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2027, Kevin E. Cox of Southlake, Texas (replacing John A. "Tony" Curry of Dallas, whose term expired).

Appointed to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2027, Robert R. "Robin" Donnelly of Midland, Texas (pursuant to Government Code Sec. 481.0066(e)).

Appointed to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2027, Arturo Manchuca of Friendswood, Texas (Mr. Machuca is being reappointed).

Appointed to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2027, George S. Moussa of Dallas, Texas (Mr. Moussa is being reappointed).

Appointed to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2027, John P. Mulholland of Missouri City, Texas (Mr. Mulholland is being reappointed).

Designating Shelly Lesikar deZevallos, Ed.D. of Houston as presiding officer of the Aerospace and Aviation Advisory Committee for a term to expire at the pleasure of the Governor. Dr. deZevallos is replacing Aimee P. Burnett of Southlake as presiding officer.

Greg Abbott, Governor

TRD-202403615

♦ ♦ ♦

Proclamation 41-4132

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the death of the Honorable Sheila Jackson Lee has created a vacancy in the U.S. House of Representatives for the 18th Congressional District of Texas, which is wholly contained within Harris County; and

WHEREAS, Article I, Section 2, Clause 4 of the U.S. Constitution and Section 204.021 of the Texas Election Code require that a special election be ordered upon such a vacancy, and Title 2, Section 8 of the U.S. Code provides that the date of such election may be prescribed by state law; and

WHEREAS, Section 3.003(a)(3) and (b) of the Texas Election Code requires the special election to be ordered by proclamation of the governor; and

WHEREAS, Section 203.004(a) of the Texas Election Code provides that the special election generally must be held on the first uniform date occurring on or after the 36th day after the date the election is ordered; and

WHEREAS, pursuant to Section 41.001(a)(3) of the Texas Election Code, the first uniform election date occurring on or after the 36th day after the date that the special election is ordered is Tuesday, November 5, 2024;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in Congressional District 18 on Tuesday, November 5, 2024, for the purpose of electing a U.S. Representative for Congressional District 18 to serve out the unexpired term of the Honorable Sheila Jackson Lee.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 6:00 p.m. on Thursday, August 22, 2024, in accordance with Section 201.054(f) of the Texas Election Code.

Early voting by personal appearance shall begin on Monday, October 21, 2024, and end on Friday, November 1, 2024, in accordance with Section 85.00l(a) and (c) of the Texas Election Code.

A copy of this order shall be mailed immediately to the Harris County Judge, who presides over the county within which Congressional District 18 is wholly contained, and all appropriate writs shall be issued, and all proper proceedings shall be followed to the end so that said special election may be held to fill the vacancy in Congressional District 18 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 2nd day of August, 2024.

Greg Abbott, Governor

TRD-202403616

♦ ♦ ♦

Proclamation 41-4133

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a disaster proclamation was issued on Friday, July 5, 2024, as amended later the same day and again on Saturday, July 6, 2024, certifying that Hurricane Beryl posed a threat of imminent disaster, including widespread and severe property damage, injury, and loss of life due to widespread flooding, life-threatening storm surge, damaging wind, and heavy rainfall in Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bowie, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Dallas, DeWitt, Delta, Dimmit, Duval, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hidalgo, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kaufman, Kenedy, Kinney, Kleberg, La Salle, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Madison, Marion, Matagorda, Maverick, McLennan, McMullen, Medina, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Starr, Titus, Travis, Trinity, Tyler, Upshur, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Wood, Zapata, and Zavala Counties;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, do hereby renew the aforementioned proclamation.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 5th day of August, 2024.

Greg Abbott, Governor

TRD-202403617

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8058

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement.

BACKGROUND AND PURPOSE

The purpose of the proposal is to make clarifying and corrective updates to this rule. In accordance with the existing rule regarding state-owned or state-operated teaching hospitals, HHSC uses the Centers for Medicare & Medicaid Services (CMS) final audited cost report (ACR) from state fiscal year (SFY) 2007 to calculate the base year average per resident amount for state-owned or state-operated teaching hospitals. The proposed rule will instruct HHSC to use the most recent final audited cost report to make this calculation. In addition, Medicare cost report line references will be updated to align with the calculation methodology for the GME programs.

SECTION-BY-SECTION SUMMARY

Formatting, punctuation, and grammar edits are made throughout the rule for clarity and consistency.

The proposed amendment to §355.8058(a)(2)(B)(i) updates the definition of "Base year average per resident amount" to be based on the most recent CMS final ACR instead of the final ACR ending in state fiscal year 2007. The proposed amendment also corrects the cost report line references for Medicaid allowable inpatient direct GME cost and unweighted full time equivalent (FTE) residents. This section of the rule applies to state-owned or state-operated teaching hospitals.

The proposed amendment to §355.8058(a)(2)(B)(ii) updates the definition of "Current FTE residents" by correcting the cost report form and line references for unweighted FTE residents. This section of the rule applies to state-owned or state-operated teaching hospitals.

The proposed amendment to §355.8058(a)(2)(B)(iii) updates the definition of "GME Medicaid inpatient utilization percentage" by correcting the cost report form and line references for inpatient days and clarifying the numerator and denominator used in the calculation. This section of the rule applies to state-owned or state-operated teaching hospitals.

The proposed amendment to §355.8058(a)(2)(E) clarifies the description of "quarterly FTE data" used to calculate the quarterly interim GME payments made to state-owned or state-operated teaching hospitals.

The proposed amendment to §355.8058(b)(2)(B) corrects the cost report line references for FTE residents. This section of the rule applies to non-state government-owned and operated teaching hospitals.

The proposed amendment to §355.8058(b)(2)(C) clarifies which value is used for Medicare per resident amount (PRA). This section of the rule applies to non-state government-owned and operated teaching hospitals.

The proposed amendment to §355.8058(b)(2)(D) more specifically cites the cost report line references for Medicaid and total inpatient days used to calculate the GME Medicaid inpatient utilization percentage. This section of the rule applies to non-state government-owned and operated teaching hospitals.

The proposed amendment to §355.8058(c)(2)(B)(i) corrects the cost report line references for FTE residents. This section of the rule applies to privately-owned hospitals.

The proposed amendment to §355.8058(c)(2)(C) clarifies the cost report line references for Medicare per resident amount (PRA). This section of the rule applies to privately-owned hospitals.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program:

(2) implementation of the proposed rule will not affect the number of HHSC employee positions:

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because this rule does not impose cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule due to increased accuracy in the description of the Inpatient Direct GME program methodology.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not impose any additional fees or costs on those who are required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held by HHSC through a webinar. The meeting date and time will be posted on the HHSC Communications and Events Website at https://hhs.texas.gov/about-hhs/communications-events and the HHSC Provider Finance communications website at https://pfd.hhs.texas.gov/provider-finance-communications.

Please contact the Provider Finance Department Hospital Finance section at pfd_hospitals@hhsc.state.tx.us if you have questions.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin Texas 78714-9030, in person at 4601 West Guadalupe Street, Austin, TX 78751, or by email to pfd_hospitals@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule §355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement." in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.8058. Inpatient Direct Graduate Medical Education (GME) Reimbursement.

(a) The Texas Health and Human Services Commission (HHSC) uses the methodology in this subsection to calculate Inpatient Direct Graduate Medical Education (GME) cost reimbursement for state-owned or state-operated teaching hospitals.

(1) Effective September 1, 2008, HHSC or its designee may reimburse a state-owned or state-operated teaching hospital with an approved medical residency program the hospital's inpatient direct GME cost for hospital cost reports beginning with state fiscal year 2009.

(2) Reimbursement of inpatient direct GME cost for state-owned or state- operated teaching hospitals.[:]

(A) Inpatient direct GME cost, as specified under methods and procedures set out in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248 is calculated under similar methods for each hospital having inpatient direct GME costs on its tentative or final audited cost report.

(B) Definitions.

(i) Base year average per resident amount--The [~~the~~] hospital's Medicaid allowable inpatient direct GME cost as reported on CMS Form 2552-10, [~~2552-96,~~] Hospital Cost Report of the most recent Centers for Medicare & Medicaid Services (CMS) final audited cost report (ACR) [~~ending in state fiscal year 2007~~]; Worksheet B; Part I; Column 25[~~26~~]; Line 118[~~95~~], divided by the unweighted full time equivalent (FTE) [~~FTE~~] residents from Worksheet S-3; Part I; Column 9; the sum of Lines 14, 16, 17, and 18[~~Line 25~~].

(ii) Current FTE residents--The [~~the~~] hospital's number of FTE [~~full time equivalent (FTE)~~] interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on CMS Form 2552-10 [~~2552-96~~], Hospital Cost Report; Worksheet S-3; Part I; Column 9; the sum of Lines 14, 16, 17, and 18 [~~Line 25~~].

(iii) GME Medicaid inpatient utilization percentage--The [~~the~~] hospital's proportion of paid Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on CMS Form 2552-10; Worksheet S-3; Part 1;

columns 7 and 8. [2552-96, Hospital Cost Report adjusted to Medicaid Claim Summary Report; Worksheet S-3; Part 1; Line 12; Column 5, divided by the hospital's total inpatient days, as reported on Worksheet S-3; Part 1; Column 6, Lines 12, 14 (subprovider days), and 26 (observation days). Medicaid inpatient days and total inpatient days will include inpatient nursery days.]

(I) The numerator (total Medicaid inpatient days including managed care days) is the sum of Worksheet S-3, Part I, column 7, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(II) The denominator (total inpatient days) is the sum of Worksheet S-3, Part I, column 8, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(C) HHSC calculates the total GME payments for each hospital as follows:

(i) multiplies the base year average per resident amount by the applicable CMS [Centers for Medicare and Medicaid Services (CMS)] Prospective Payment System Hospital Market Basket index;

(ii) multiplies the results in clause (i) of this subparagraph by the number of current FTE [full-time equivalent (FTE)] residents; and

(iii) multiplies the results in clause (ii) of this subparagraph by the GME Medicaid inpatient utilization percentage, which results in the total GME payments.

(D) Inpatient direct GME costs are removed from the reimbursement methodology and not used in the calculation of the provider's inpatient cost settlement.

(E) The GME interim payments will be reimbursed on a quarterly basis only after hospital services have been rendered. The interim payments are payable within 90 days of the receipt of the hospital's quarterly resident FTE data. Each hospital's annualized [quarterly] resident FTEs based on quarterly [FTE] data will be divided by 4 to determine the average resident FTEs for each quarter. The interim payments will be reconciled and settled based on audited final cost report data.

(F) To receive GME payments from HHSC, a state-owned or state-operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal portion of reimbursement for GME costs.

(b) HHSC uses the methodology in this subsection to calculate [reimbursement for] GME cost reimbursement for non-state government-owned and operated teaching hospitals.

(1) Effective October 1, 2018, HHSC or its designee may reimburse a non-state government-owned and operated teaching hospital with an approved medical residency program the hospital's estimated Medicaid inpatient direct GME cost.

(2) Definitions.

(A) Non-state government-owned and operated teaching hospital--A [a] hospital with a properly approved medical residency program that is owned and operated by a local government entity, including but not limited to, a city, county, or hospital district.

(B) FTE residents--The [the] hospital's number of unweighted FTE [full time equivalent (FTE)] interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program, including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; Column 9; the sum of Lines 14, 16, 17, and 18 [Line 27].

(C) Medicare per resident amount (PRA)--Average [average] direct cost per medical resident, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18; the greater of Column 1 or Column 2.

(D) GME Medicaid inpatient utilization percentage--The [the] hospital's proportion of Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; columns 7 and 8.

(i) The numerator (total Medicaid inpatient days including managed care days) is the sum of Worksheet S-3, Part I, column 7, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(ii) The denominator (total inpatient days) is the sum of Worksheet S-3, Part I, column 8, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(3) HHSC calculates the total annual GME payment for each hospital as follows:

(A) multiplies the FTE residents by the Medicare per resident amount; and

(B) multiplies the results in subparagraph (A) of this paragraph by the GME Medicaid inpatient utilization percentage.

(4) On October 1 of each year, the cost report most recently submitted to HHSC or its designee, will be used for the annual GME payment calculation.

(5) To receive GME payments from HHSC, a non-state government-owned and operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the non-federal portion of reimbursement for GME costs.

(6) Payments under this subsection [subchapter] will be made on a semi-annual basis.

(c) HHSC uses the methodology in this subsection to calculate [reimbursement for] GME cost reimbursement for teaching hospitals not described in subsections (a) or (b) of this section.

(1) Effective April 1, 2019, HHSC or its designee may reimburse a non-government owned or operated teaching hospital with an approved medical residency program the hospital's estimated Medicaid inpatient direct GME cost.

(2) Definitions.

(A) Teaching hospital--A [a] hospital with a properly approved medical residency program.

(B) FTE residents--The [the] hospital's number of unweighted FTE [full time equivalent (FTE)] interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board:

(i) as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; Column 9; the sum of Lines 14, 16, 17, and 18; [Line 27,] or

(ii) for hospitals excluded from the Prospective Payment System (PPS) for Medicare, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; the sum of Column 1, Line 6 and Column 2, Line 10.01.

(C) Interim Medicare per resident amount (PRA)--If a hospital does not have a Medicare PRA reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18; the greater of Column 1 or Column 2, then HHSC shall establish an interim Medicare PRA as follows.[:]

(i) The annual estimated cost of FTE residents will be the amount on Hospital Cost Report; CMS Form 2552-10; Worksheet B, Part I, Column 25, Line 118.

(ii) Divided by the FTE residents as determined in subparagraph (B) of this paragraph.

(D) Medicare per resident amount (PRA)--Average [~~average~~] direct cost per medical resident, as reported on the Hospital Cost Report; CMS Form 2552-10; Worksheet E-4; Line 18.

(E) GME Medicaid inpatient utilization percentage--The [~~the~~] hospital's proportion of Medicaid inpatient days, including managed care days, divided by the hospital's total inpatient days, as reported on Hospital Cost Report; CMS Form 2552-10; Worksheet S-3; Part 1; columns 7 and 8.

(i) The numerator (total Medicaid inpatient days including managed care days) is the sum of Worksheet S-3, Part I, column 7, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(ii) The denominator (total inpatient days) is the sum of Worksheet S-3, Part I, column 8, Lines 1 through 4, 8 through 13, 16 through 18, 28, and 30 through 32 and all subscripts of these lines.

(3) HHSC calculates the total annual GME payment for each hospital as follows:

(A) multiplies the FTE residents by the Medicare PRA or the interim Medicare PRA; and

(B) multiplies the results in subparagraph (A) of this paragraph by the GME Medicaid inpatient utilization percentage.

(4) On October 1 of each year, the cost report most recently submitted to HHSC or its designee[,] will be used for the annual GME payment calculation.

(5) To receive GME payments from HHSC:

(A) a hospital under this subsection must be enrolled as a Medicaid provider with HHSC;

(B) HHSC must receive the non-federal portion of reimbursement for GME costs through a method approved by HHSC and CMS for reimbursement through this program; and

(C) a hospital under this subsection must designate a single local governmental entity to provide the non-federal share of the payment through a method determined by HHSC. If the single local governmental entity transfers less than the full non-federal share of a hospital's payment amount calculated in paragraph (3) of this subsection, HHSC will recalculate that specific hospital's payment based on the amount of the non-federal share actually transferred.

(6) Payments under this subsection [~~subchapter~~] will be made on a semi-annual basis.

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

Filed with the Office of the Secretary of State on July 31, 2024.

TRD-202403531
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 487-3480

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.2 and §84.3; Subchapter C, §§84.40, 84.43, 84.44, 84.46; Subchapter D, §84.50; Subchapter E, §84.60 and §84.63; Subchapter G, §84.80; and Subchapter N, §84.600 and §84.601; new rules at Subchapter D, §84.51 and §84.52; Subchapter M, §§84.500 - 84.505; and the repeal of existing rules at Subchapter D, §84.51 and §84.52; and Subchapter M, §§84.500 - 84.502 and §84.504 regarding the Driver Education and Traffic Safety (DES) program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under 16 TAC, Chapter 84, implement House Bill (HB) 1560, Article 5, Regular Session (2021) and Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The proposed rules are necessary to complete the Department's administrative rulemaking effort for the implementation of HB 1560, Article 5 for the DES program, which addresses rule amendments relating to: (1) driver training curriculum, driver education certificate prerequisites, and enforcement; and (2) implementing the recommendations of the DES Curriculum Workgroup (Workgroup).

House Bill 1560, Article 5, Driver Education (Phase 2)

House Bill 1560, Article 5, Regular Session (2021) represented a significant reorganization and modification in the Driver Education and Traffic Safety program, which the Department is implementing in two phases. The first phase of the DES bill implementation project included: (1) repealing specific driver training license types, program courses, endorsements, and administrative functions to promote simplicity and transparency for stakeholders; and (2) amending program fees and requirements related to the revised license types. The Department accomplished these objectives in its first rulemaking to implement the bill, through the adoption of rules that became effective June 1, 2023.

This second phase of rulemaking will address additional amendments that will impact issues such as: (1) driver education course curriculum, classroom and behind-the-wheel instruction hours, and course creation; (2) provider administration of driver education certificates after course auditing; and (3) authorizing

the Commission to change minimum hours for driver education course instruction.

The Workgroup conducted three meetings in this second phase to address the proposed changes to the DES program brought about by HB 1560, Article 5. The Workgroup review was limited to 16 TAC Chapter 84, Subchapters A, C-E, G, M and N, and the proposed rules reflect their recommendations.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Driver Education and Traffic Safety Advisory Committee (Committee) at its meeting on April 25, 2024. The Advisory Board approved changes to the proposed rules at 16 TAC §§84.500, 84.502, 84.505 and 84.601. The Advisory Board voted and recommended that the proposed rules with changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

Subchapter A, General Provisions.

The proposed rules amend §84.2, Definitions, by: (1) adding new definitions for "behind-the-wheel instruction", "in-car instruction", "registered agent", and "supervised practice"; and (2) renumbering the provisions as needed.

The proposed rules amend §84.3, Materials Adopted by Reference, by updating the DES Program Guides adopted by reference to their new 2024 editions, which include updates to reflect current laws, rules, and Department policies and to improve organization and clarity. The DES Program Guides will be published separately in the *Texas Register* in the "In-Addition" section of the publication with the proposed rules.

Subchapter C, Driver Education Schools and Instructors.

The proposed rules amend §84.40, Driver Education Provider Licensure Requirements, by: (1) repealing the requirement that a school provide a current list of inventoried motor vehicles used for instruction as a part of the license renewal application; and (2) correcting rule language.

The proposed rules amend §84.43, Driver Education Certificates, by: (1) adding a provision that a school's failure to update curriculum following an audit recommendation could result in the Department's suspension of the school's right to receive driver education certificates; (2) expanding suspension or revocation penalties to a school's credentials in the event of any misrepresentation made by a school or instructor in issuing a driver education certificate; and (3) clarifying rule language and grammar.

The proposed rules amend §84.44, Driver Education Instructor License, by correcting rule language.

The proposed rules amend §84.46, Attendance and Makeup, by correcting rule language.

Subchapter D, Parent-Taught Driver Education.

The proposed rules amend §84.50, Parent-Taught Driver Education Program Requirements, by (1) adding language clarifying the minimum amount of behind-the-wheel instruction and supervised practice a student must complete after receiving a learner license upon completion of Module One; and (2) repealing language requiring that behind-the-wheel parent taught driver education be conducted solely on Texas highways.

The proposed rules add new §84.51, Submission of Parent-Taught Course for Department Approval. The new rule replaces existing §84.51 to repeal the department's practice of pre-approval of course material at initial application, and course review upon renewal, consistent with HB 1560 directives.

The proposed rules add new §84.52, Revocation of Department Approval (formerly entitled "Cancellation of Department Approval"). The new rule replaces existing §84.52 to: (1) expand the Department's authority to revoke a parent-taught driver education (PTDE) provider license in the event the course material is inconsistent with applicable state law; (2) provide a 90-day window for a PTDE provider to correct any deficiencies in the course material noticed by the Department before possible revocation; (3) establish a 30-day waiting period for a PTDE provider to reapply for a new parent-taught driver education provider license after revocation; and (4) clarified rule language.

The proposed rules repeal existing §84.51, Submission of Parent-Taught Course for Department Approval.

The proposed rules repeal existing §84.52, Cancellation of Department Approval.

Subchapter E, Providers.

The proposed rules amend §84.60, Driving Safety Provider License Requirements, by correcting rule language.

The proposed rules amend §84.63, Uniform Certificate of Course Completion for Driving Safety Course, by correcting rule language.

Subchapter G, General Business Practices.

The proposed rules amend §84.80, Names and Advertising, by correcting rule language.

Subchapter M, Curriculum and Alternative Methods of Instruction.

The proposed rules add new §84.500, Courses of Instruction for Driver Education Providers. The new rule replaces existing §84.500 to: (1) update the educational objectives of driver training courses consistent with current state law; (2) reduce the minimum of classroom instruction hours in driver education courses from 32 to 24 hours; (3) govern the administration and teaching of driver education materials to maximize student mastery of educational content; (4) clarify driver education requirements related to behind-the-wheel and in-car instruction; (5) transfer the rule requirements for in-person and online adult six-hour driver education courses to new §§84.502 and 84.503, respectively; (6) restrict students from enrolling in a driver education course after commencement of the fifth hour (instead of the seventh hour) of classroom instruction; (7) allow DE providers more flexibility in the presentation of driver education instruction to students, consistent with the provisions of HB 1560; and (8) reorganize subsections as needed.

The proposed rules add new §84.501, Driver Education Course Alternative Method of Instruction. The new rule replaces existing §84.501 to: (1) clarify minimum Department standards for AMI approval to ensure secure testing and security measures for content and personal validation, and integrity and consistency in presentation of driver education course curriculum with in-person and online instruction; (2) reduce the total duration of student break intervals, and the minimum hours of driver education instructional content presented in an AMI format from 32 hours to 24 hours; (3) increase the minimum amount of minutes allocated to an AMI for multimedia presentations from 640 minutes to 720 minutes; (4) simplify the academic integrity standards and instructional design concepts for an AMI driver education course;

(5) add multifactor authentication requirements for personal validation of students for an AMI driver education course; (6) clarify the process by which a DE provider may modify AMI instructional methods and ensure that such changes are consistent with applicable law, rules and DE Program Guides; and (7) reorganize subsections as needed.

The proposed rules add new §84.502, In-Person Driver Education Course Exclusively for Adults. The new rule replaces existing §84.502 to: (1) move the Department rules related to the Adult In-Person Six Hour Driver Education Course from §84.500(b)(2) and place them in a separate section for greater ease in location and clarity for the public; and (2) reorganize the subsections as needed.

The proposed rules add new §84.503, Online Driver Education Course Exclusively for Adults, to: (1) move the Department rules related to the Adult Online Six Hour Driver Education Course from §84.500(b)(2)(B) and place them in a separate section for greater ease in location and clarity for the public; (2) add multifactor authentication requirements for personal validation of students for an online adult six-hour driver education course; and (3) reorganize the subsections as needed.

The proposed rules add new §84.504, Driving Safety Courses of Instruction. The new rule replaces existing §84.504 to: (1) relocate the Driving Safety rules from §84.502 to this new rule location; (2) update the educational objectives of driver training courses consistent with current state law; (3) remove authorship requirements for those providers that compose customized driving safety curriculum; (4) simplify rule language; and (5) reorganize the subsections as needed.

The proposed rules add new §84.505, Driving Safety Course Alternative Delivery Method, to: (1) relocate existing §84.504 to this new rule location; (2) add multifactor authentication requirements for personal validation of students for an ADM six-hour driving safety education course; (3) simplify rule language; and (4) reorganize the subsections as needed.

The proposed rules repeal existing §84.500, Courses of Instruction for Driver Education Schools.

The proposed rules repeal existing §84.501, Driver Education Course Alternative Method of Instruction.

The proposed rules repeal existing §84.502, Driving Safety Courses of Instruction.

The proposed rules repeal existing §84.504, Driving Safety Course Alternative Delivery Method.

Subchapter N, Program Instruction for Public Schools, Education Service Centers, and Colleges or Universities Course Requirements.

The proposed rules amend §84.600, Program of Organized Instruction, by: (1) reducing the minimum of classroom instruction hours in a driver education course from 32 to 24 hours; (2) restricting students from enrolling in a driver education course after commencement of the fifth hour (instead of the seventh hour) of classroom instruction in a 24-hour program; (3) limiting driver education training (including in-car instruction) to a maximum of six hours each day; and (4) clarifying rule language.

The proposed rules amend §84.601, Additional Procedures for Student Certification and Transfers, by reducing the record retention period for Texas schools of driver education course completion certificates from seven years to three years, or as mandated by the school district.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the proposed rules become clearer and easier to understand, and aids license holders to comply with the rules more fully.

Adoption of the limited changes contained in the proposed rules by the Texas Commission of Licensing and Regulation will: (1) clarify and update the curriculum requirements to reflect the current roles and responsibilities for the driver education provider types; (2) align the standards for parent-taught course approvals to conform with current department practices; (3) reduce the minimum number of classroom hours for a driver education course from 32 hours to 24 hours, allowing providers to streamline educational materials delivered to students and increase content mastery; and (4) increase the maximum hours of daily driver education for prospective students by providers from four to six hours, allowing providers to more efficiently offer classroom and in-car instruction.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

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

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

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

Many holders of driver education provider licenses are small or micro-businesses. However, the agency does not track employee numbers or gross receipt amounts for its license holders, so the number of such businesses cannot be estimated. The proposed rules do not impose any adverse costs on small or micro-businesses. All driver education courses currently exceed the minimum number of hours, and no provider is required

to reduce the hours in their driver education course curriculum, therefore no cost is required to comply. Any costs that might be entailed in complying with the minor changes to the curriculum language will be minimal.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

5. The proposed rules do not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation.

The proposed rules require a decrease in the classroom hours for the teen course from 32 to 24.

The proposed rules expand an existing regulation by adding failure to update curriculum post-audit as required as an additional reason for the suspension of the provider's right to receive driver education certificates; and by authorizing a public school to determine a combination of methods of instruction that can be provided in the six hours of driver education training allowed.

The proposed rules limit a regulation by removing the requirement for a renewing driver education provider to submit a current list of all motor vehicles used for instruction, and by removing the signature requirement for a driving training entity ordering driver education certificates.

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

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

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at *https://ga.tdlr.texas.gov:1443/form/gcerules;* by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.2, §84.3

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.2. Definitions.

Words and terms defined in the Code have the same meaning when used in this chapter. The following words and terms have the following meanings when used in this chapter, unless the context clearly indicates otherwise.

(1) ADE-1317--The driver education certificate of completion confirming student completion of a department-approved driver education course exclusively for adults.

(2) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a driver training provider or course [~~in order~~] to evoke a desire to patronize that driver training provider or course. This includes meta tags and search engines.

(3) Behind-the-wheel instruction - Driving instruction of a licensed student driver conducted with a TDLR licensed instructor, or authorized parent or individual pursuant to Texas Education Code §1001.112.

(4) [~~(3)~~] Branch location--A licensed in-person driver education provider that has the same ownership and name as a licensed primary in-person driver education provider but has a different physical address from the primary provider.

(5) [~~(4)~~] Code--Refers to Texas Education Code, Chapter 1001.

(6) [~~(5)~~] Contract site--An accredited public or private secondary, or postsecondary school approved as a location for a driver education course of a licensed driver education provider.

(7) [~~(6)~~] DE-964--The driver education certificate of completion confirming completion of an approved minor and adult driver education course.

(8) [~~(7)~~] Education Service Center (ESC)--A public school district service organization of the Texas Education Agency governed by Texas Education Code, Chapter Eight.

(9) [~~(8)~~] Endorsement - The method by which a driver education course is delivered to the student, whether in-person, online or parent-taught.

(10) In-car instruction - Refers to observation instruction and behind-the-wheel instruction.

(11) [~~(9)~~] Instructional Hour (also known as "Clock Hour"):

(A) Driver Education Provider Instructional Hour--55 minutes of instruction time in a 60-minute period for a driver education course. This includes classroom and in-car instruction time.

(B) Driving Safety Provider Instructional Hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(12) [~~(10)~~] Personal validation question--A question designed to establish the identity of the student by requiring an answer related to personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(13) [~~(11)~~] Primary driver education provider--The main business location for a licensed in-person driver education provider.

(14) [~~(12)~~] Public or private school--A public or private secondary school accredited by the Texas Education Agency.

(15) Registered agent - An individual Texas resident or an organization on whom may be served process, notice, or demand required or permitted by law to be served on a filing entity, domestic or foreign. Registered agents must be designated and maintained in accordance with Texas Business Organizations Code, Chapter Five.

(16) [~~(13)~~] Relevant driver training entity--Refers to a licensed driver education provider, exempt driver education school, public or private school, education service center, college, or university.

(17) Supervised practice - Driving instruction of a licensed student driver conducted with a TDLR licensed instructor, or in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2), or authorized parent or individual pursuant to Texas Education Code §1001.112.

(18) [~~(14)~~] Uniform certificate of course completion--A document with a serial number purchased from the department that is printed, administered, and supplied by driving safety providers for issuance to students confirming completion of an approved driving safety course, and that meets the requirements of Texas Transportation Code, Chapter 543, and Texas Code of Criminal Procedure, Article 45.051 or 45.0511. This term encompasses all parts of an original or duplicate uniform certificate of course completion.

(19) [~~(15)~~] Validation question--A question designed to establish the student's participation in a course or program and comprehension of the materials by requiring the student to answer a question regarding a fact or concept taught in the course or program.

§84.3. Materials Adopted by Reference.

(a) The minimum requirements for course content, classroom instruction, in-car, simulation, and range training required by this chapter for a minor and adult driver education course are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety (POI-DE), December 2024 [~~May 2022~~] Edition, created and distributed by the department, which is adopted into these rules by reference.

(b) The minimum requirements for course content and instruction for a driver education course exclusively for adults are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety Exclusively for Adults Six-Hour Course (POI-Adult Six-Hour), December 2024 [~~May 2022~~] Edition, created and distributed by the department, which is adopted into these rules by reference.

(c) The minimum requirements for course content and instruction for a driving safety course are the standards established in the Course of Organized Instruction for Driving Safety, (COI-Driving Safety), December 2024 [~~May 2022~~] Edition, created and distributed by the department, which is adopted into these rules by reference.

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

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 463-7750

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SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §§84.40, 84.43, 84.44, 84.46

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.40. Driver Education Provider Licensure Requirements.

(a) Application. An application for licensure as a driver education provider must be made on forms prescribed by the department[,] and be accompanied by the appropriate fees. An application for a branch driver education provider license must not have the same physical address as the primary provider. A license application is valid for one year from the date it is filed with the department.

(b) Bond requirements. In the case of an original or a change of owner application, an original bond must be provided. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file must be submitted. The bond or the continuation agreement must be executed on the form provided by the department.

(c) Verification of driver education provider ownership. In the case of an original or change of owner application for a driver education provider, the owner must provide verification of ownership to the department.

(d) Change of ownership of a driver education provider. A change of ownership occurs when there is a change in the control of the provider. The control of a provider is considered to have changed:

(1) in the case of ownership by an individual, when more than 50 percent of the provider has been sold or transferred;

(2) in the case of ownership by a partnership or a corporation, when more than 50 percent of the provider, or of the owning partnership or corporation has been sold or transferred; or

(3) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the provider.

(e) Purchase of a driver education provider.

(1) A person who purchases a licensed driver education provider must obtain an original license or branch location license as applicable.

(2) The purchaser must assume all refund liabilities incurred by any former owner as well as the liabilities, duties, and obligations under the enrollment contracts between the students and any former owner before the transfer of ownership.

(f) New location or change of address.

(1) The department must be notified in writing of any change of address at least fifteen (15) working days before the move.

(2) The driver education provider must submit the appropriate change of address fee prior to the actual move.

(3) If a student is not willing or able to change locations, a pro-rata refund (without deducting any administrative expense) must be made to the student.

(g) Renewal of driver education provider license. An application for the renewal of a license for a driver education provider must be submitted before the expiration of the license and include the following:

(1) the renewal fee;

(2) a current list of instructors at the school, if applicable; and

(3) an executed bond or executed continuation agreement for the bond, currently approved by and on file with the department. [; and]

[(4) if applicable, a current list of all motor vehicles used for instruction.]

(h) Denial, revocation, or conditional license. The authority to operate a branch location ceases if a primary driver education provider license is denied or revoked. The operation of a branch location license may be subject to any conditions placed on the continued operation of the primary driver education provider. A driver education provider license for a branch location may be denied, revoked, or conditioned separately from the license for the primary location.

(i) Driver education provider closure.

(1) The driver education provider owner must notify the department at least fifteen (15) working [business] days before the anticipated provider closure. In addition, the driver education provider owner must provide written notice of the actual discontinuance of the operation on the day of cessation of classes. A driver education provider must make all records available for review to the department upon department request.

(2) The department may declare a driver education provider to be closed:

(A) when the provider no longer has the facilities, vehicles, instructors, or equipment to provide training pursuant to this chapter;

(B) when the provider has stopped delivering instruction and training in driver education and has failed to fulfill contractual obligations to its students;

(C) when the provider informs the department in writing of its intention to no longer deliver instruction or training in driver education and returns all unissued driver education certificates or certificate numbers; or

(D) when the provider owner allows the license to expire.

(3) If a branch location closes and a student is not willing or able to complete the training at the primary location, a pro-rata refund (without deducting any administrative expense) must be made to the student.

(j) A driver education provider must not state or imply that a driver's license, permit, or DE-964 is guaranteed or assured to any student or individual who will take or complete any instruction, or enroll, or otherwise receive instruction from any driver education provider.

(k) Contract site. An in-person driver education provider may conduct a course at a contract site, upon execution of a legal written agreement between the licensed driver education provider and an authorized representative for the contract site to provide driver education instruction. The course is subject to the same rules that apply to the licensed driver education provider, including inspections by department representatives. An on-site inspection is not required prior to use of the site. The written agreement is subject to the recordkeeping requirements under §84.81.

§84.43. Driver Education Certificates.

(a) Relevant driver training entities.

(1) A relevant driver training entity may request driver education certificates or certificate numbers by submitting an online[, mailed or faxed] department prescribed order form, [signed by an authorized representative of the relevant driver training entity,] stating the number of driver education certificates or certificate numbers to be purchased and include payment of all appropriate fees. [A signature is not required for orders placed through the online system.]

(2) Relevant driver training entities must:

(A) issue driver education certificates or certificate numbers only to students who have successfully completed the applicable portion of the approved driver education course;

(B) issue driver education certificates or certificate numbers in serial number order as purchased from the department;

(C) indicate the serial number of the original driver education certificate or certificate number on such certificate or certificate number and any issued duplicate, if necessary;

(D) not use an ADE-1317 driver education certificate or certificate number to replace a DE-964 driver education certificate or certificate number;

(E) not transfer unassigned or blank driver education certificates or certificate numbers at any time;

(F) maintain effective protective measures to ensure the security of driver education certificates or certificate numbers to pre-

vent the unauthorized production or misuse of the certificates, and for the recovery of lost data (electronic or otherwise) for such certificates or certificate numbers;

(G) maintain reconciliation records of all purchased, issued, unissued or unassigned driver education certificates or certificate numbers in ascending serial number order, and ensure security and recovery of the reconciliation record data;

(H) make all records available for review by representatives of the department upon request;

(I) return unissued driver education certificates or certificate numbers to the department within thirty (30) calendar days from the date of the discontinuance of the driver education program, unless otherwise notified by the department;

(J) report to the department all unaccounted driver education certificates or certificate numbers within fifteen (15) working days of the discovery of the incident;

(K) conduct an investigation to determine the circumstances surrounding their unaccounted driver education certificates and report the investigation findings, including preventative measures for recurrence, to the department within thirty (30) calendar days of the discovery;

(L) develop and maintain effective policies and processes to ensure constant privacy, security, and integrity of confidential student information, personal and financial, and make the privacy policy available to all students; and

(M) ensure that the front of each driver education certificate contains the department's complaint contact information and current department telephone number in a font that is visibly recognizable.

(3) Each unaccounted original or duplicate driver education certificate or certificate number (whether lost, stolen, blank, or unissued) may be considered a separate violation.

(4) The right to receive driver education certificates may be immediately suspended for a period determined by the department if:

(A) a department investigation is in progress and the department has reasonable cause to believe the certificates have been misused or abused or that adequate security was not provided; or

(B) the relevant driver training entity or its designee fails to provide information on records requested by the department, or fails, post-audit, to update curriculum based on changes in department rules or applicable law within the required time.

(5) The driver education certificate is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the driver education certificate may result in suspension or revocation of instructor and/or provider credentials or program approval and/or criminal prosecution.

(b) Driver education provider responsibilities.

(1) Driver education certificates or certificate numbers must only be ordered by driver education providers. The primary driver education provider must order all driver education certificates and certificate numbers for its branch locations.

(2) A driver education provider must issue the "For Learner License Only" portion of the DE-964 certificate to the student upon successful completion of Module One of the Program of Organized Instruction for Driver Education and Traffic Safety.

(3) A driver education provider must issue the "For Driver License Only" portion of the DE-964 certificate to the student upon successful completion of the driver education course.

(4) The exception to paragraphs (2) and (3) is a request for transfer by the parent or legal guardian of the student. The transfer policy will be followed to comply with the parent or legal guardian request for transfer.

(5) The DPS copy of a driver education certificate must contain the original signature of the driver education instructor, or the designated parent-taught driver education instructor as applicable. The name of the driver education provider owner or its designee may be written, stamped, or typed.

(c) Public or Private Schools, Education Service Centers, Colleges, or Universities responsibilities.

(1) The driver education certificates must be issued to the superintendent, college, or university chief school official, ESC director, or their designee responsible for managing the certificates for the school. This does not remove the superintendent, college, or university chief school official, or ESC director from obligations pursuant to this subchapter to oversee the program.

(2) The department will accept purchase requisitions from school districts.

(3) Each superintendent, college, or university chief school official, ESC director, or their designee must ensure that the policies concerning driver education certificates are followed by all individuals who have responsibility for the certificates.

(4) The superintendent, college, or university chief school official, ESC director, or their designee must ensure that employees issue a driver education certificate only to a person who has successfully completed the entire portion of the course for which the driver education certificate is being used.

(A) The "For Learner License Only" portion of the driver education certificate must be issued to the student upon completion of Module One of the Program of Organized Instruction for Driver Education and Traffic Safety.

(B) The "For Driver License Only" portion of the driver education certificate must be issued to the student upon completion of the driver education program.

(C) The exception to subparagraphs (A) and (B) is a request for transfer by the parent or legal guardian of the student. The transfer policy will be followed to comply with the parent or legal guardian request for transfer.

(5) The DPS copy of a driver education certificate must contain the original signature of the driver education instructor. The name of the superintendent, college, or university chief school official, ESC director, or their designee may be written, stamped, typed, or omitted.

(6) The superintendent, college, or university chief school official, ESC director, or their designee must complete the affidavit on the driver education certificate if the licensed instructor has left the driver education program, become seriously ill or deceased.

§84.44. Driver Education Instructor License.

(a) An application for licensure as a driver education instructor must be made on forms prescribed by the department and be accompanied by the appropriate fees. A license application is valid for one year from the date it is filed with the department. A person applying for an original driver education instructor license must:

(1) hold a valid class A, B, C, or CDL driver's license, other than a learner license or provisional license, for the preceding three years, that has not been revoked or suspended in the preceding three years;

(2) submit a completed application with non-refundable application fee as prescribed by the department;

(3) submit the instructor licensing fees;

(4) submit a national criminal history record information review fee; and

(5) provide fingerprints to the Texas Department of Public Safety (DPS) through the IdentoGo Fingerprint Service or any other method required by the DPS.

(b) A driver education instructor may perform instruction and administration of the classroom and in-car phases of driver education, as prescribed in the POI-DE, and the classroom phase of the POI-Adult Six-Hour.

(c) An application for renewal of a driver education instructor license must be submitted on forms prescribed by the department. A complete renewal application must include the following:

(1) the renewal fee;

(2) provide a valid driver license record that meets the requirements stated in §84.44(a)(1); and

(3) if selected for audit, proof of successful completion of at least two hours of continuing education credit during the license renewal period relating to driver education, driving safety, and instructional techniques.

(d) The department will employ an audit system for reporting completion of continuing education. The licensee is responsible for maintaining a record of the licensee's continuing education experiences. The certificates, transcripts, or other documentation verifying the completion of continuing education hours must not be forwarded to the department at the time of renewal unless the department has selected the licensee for audit.

(e) The audit process for continuing education will be as follows:

(1) The department will select for audit a random sample of licensees for each renewal period. Licensees will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the licensee must submit copies of certificates, transcripts, or other documentation satisfactory to the department, verifying the licensee's attendance, participation, and completion of the continuing education. All documentation must be provided at the time of the renewal.

(3) Failure to timely furnish documentation or providing false information during the audit process or renewal process are grounds for disciplinary action against the licensee.

(f) An applicant for a driver education instructor license or its renewal must [~~successfully~~] pass a criminal history background check.

§84.46. Attendance and Makeup.

(a) Written or electronic records of student attendance must be prepared daily to document the attendance and absence of the students. A student must make up any time missed. Electronic signatures must comply with Texas Business and Commerce Code, Chapter 322.

(b) Driver education training offered by the provider must not exceed six hours per day. In-person driver education providers may include five minutes of break per instructional hour as identified in §84.500 (relating to Courses of Instruction for Driver Education Providers [~~Schools~~]). In-car instruction provided by the provider must not exceed four hours per day as follows:

(1) four hours or less of in-car training; however, behind-the-wheel instruction must not exceed two hours per day; or

(2) four hours or less of simulation instruction; or

(3) four hours or less of multicar range instruction; or

(4) any combination of the methods delineated in this subsection that does not exceed four hours per day.

(c) A student must complete the hours of instruction for the required classroom and in-car phases of the minor or adult driver education course, including any makeup lessons, within the timeline specified in the original student enrollment contract.

(d) Amendments [~~Variances~~] to the timelines for completion of the driver education instruction stated in the original student enrollment contract may be made at the discretion of the provider owner and must be agreed to in writing by the parent or guardian.

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

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SUBCHAPTER D. PARENT-TAUGHT DRIVER EDUCATION

16 TAC §§84.50 - 84.52

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.50. Parent-Taught Driver Education Program Requirements.

(a) Prior to teaching a department-approved parent-taught driver education course, a parent or other individual authorized under §1001.112 of the Code, must submit a completed request for Parent-Taught Driver Education Instructor Designation Service Application with a non-refundable fee to the department.

(b) After receiving the Parent-Taught Driver Education Instructor Designation Service Application, the instructor must obtain one of the department approved parent-taught driver education courses to fulfill program requirements.

(c) The parent-taught driver education provider must provide the appropriate portion of a control-numbered DE-964 to a person who has completed the objectives found in Module One: Traffic Laws of the POI-DE, or who has successfully completed the entire portion of the course for which the DE-964 is being issued.

(d) The program includes both classroom and in-car instruction phases. Instruction is limited to six hours per day, including not more than two hours of behind-the-wheel instruction per day.

(e) The parent, or other individual authorized under §1001.112 of the Code, may teach both instruction phases, or utilize a licensed driver education provider, or public driver education school for either phase.

(f) The fourteen (14) hours of in-car instruction must be taught under one program: either parent-taught, or a licensed driver education provider, or public driver education school. All previous driver education hours must be repeated if the method of instruction changes prior to completion of either phase.

(g) The remaining hours of classroom following Module One: Traffic Laws of the POI-DE, must be taught under one program, either parent-taught, a licensed driver education provider, or public driver education school.

(h) The additional thirty (30) hours of behind-the-wheel supervised practice must be completed in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(i) A student may apply to the Department of Public Safety for a learner license after completion of the objectives found in Module One: Traffic Laws of the POI-DE.

(j) Behind-the-wheel parent-taught driver education instruction may be conducted in any vehicle that is legally operated with a Class C driver license [~~on a Texas highway~~].

(k) Behind-the-wheel parent-taught driver education instruction and supervised practice may begin after the student receives a learner license. The required curriculum that must be followed includes:

(1) a minimum of 44 hours that consists of: seven hours behind-the-wheel instruction in the presence of a parent or other individual authorized under §1001.112 of the Code;

(2) seven hours of in-car observation in the presence of a parent or other individual authorized under §1001.112 of the Code; and

(3) 30 hours of behind-the-wheel supervised practice, including at least 10 hours at night, certified by a parent or guardian who meets the requirements of Texas Transportation Code, §521.222(d)(2). The 30 hours of behind-the-wheel supervised practice must be endorsed by a parent or legal guardian if the student is a minor.

[~~(k) Behind-the-wheel driver education instruction may begin after the student receives a learner license. The required curriculum that must be followed includes: minimum of 44 hours that includes: seven hours behind the wheel supervised practice instruction in the presence of a parent or other individual authorized under §1001.112 of the Code; seven hours of in-car observation in the presence of a parent or other individual authorized under §1001.112 of the Code; and 30 hours of behind the wheel supervised practice, including at least 10 hours at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).~~]

§84.51. Submission of Parent-Taught Course for Department Approval.

(a) If the curriculum and all materials meet or exceed the applicable minimum standards set forth in the Code, the department will approve the course. No more than 640 minutes of the required hours of classroom instruction delivered via multimedia may be counted.

(b) Notification of approval or denial will be sent to the requesting entity. Deficiencies will be noted in cases of denial. Any substantive change in course curriculum or materials will require submission for approval according to subsection (a).

(c) A written request is required within thirty (30) days if there is any change relating to an approved course, including contact information, company name, and course titles. Updated information will be included as soon as practical.

(d) The department will retain submitted materials according to the department's retention schedule.

(e) Course identification. All parent-taught courses must display the parent-taught provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(f) A parent-taught driver education provider may accept students redirected from a website if the student is redirected to a webpage that clearly identifies the parent-taught provider and license number offering the course. This information must be visible before and during the student registration and course payment processes.

§84.52. Revocation of Department Approval.

(a) A parent-taught driver education provider may be revoked upon finding that the course does not meet the standards required under §1001.112 or §1001.2043(a) of the Code.

(b) Prior to revocation, the department will allow the parent-taught driver education provider ninety (90) days from the date of notification the opportunity to correct the noted deficiencies in the curriculum.

(c) Failure to adequately respond within the required time will result in revocation of the course.

(d) If a parent-taught driver education course is revoked by the department, the entity must wait thirty (30) days before applying for a new Parent Taught Driver Education Provider license.

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

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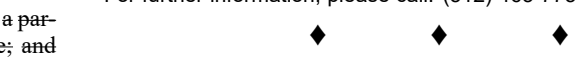

16 TAC §84.51, §84.52

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed repeals.

The legislation that enacted the statutory authority under which the proposed repeals are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.51. Submission of Parent-Taught Course for Department Approval.

§84.52. Cancellation of Department Approval.

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

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SUBCHAPTER E. PROVIDERS

16 TAC §84.60, §84.63

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.60. Driving Safety Provider License Requirements.

(a) Application for driving safety provider license. An application for a driving safety provider license must be made on forms prescribed by the department, and be accompanied by the appropriate fee. A license application is valid for one year from the date it is filed with the department.

(b) Bond requirements for providers. In the case of an original or a change of owner application, an original bond must be provided in the amount of $10,000. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement must be executed on the form prescribed by the department.

(c) Provider license. The provider license must indicate the name of the driving safety course for which approval is granted exactly as stated in the application for the course approval.

(d) Verification of ownership for driving safety provider. In the case of an original or change of owner application for a driving safety provider, the provider owner must provide verification of ownership.

(e) Purchase of driving safety provider. A person or persons purchasing a licensed driving safety provider must obtain an original license and bond. The contract or any instrument transferring the ownership of the driving safety provider must include the following statements:

(1) The purchaser must assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership; and

(2) The purchaser must assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(f) New location. The department must be notified in writing of any change of address of a driving safety provider or its registered agent at least fifteen (15) working days before the move. The appropriate fee and all documents must also be submitted.

(g) Renewal of driving safety provider license. A complete application for the renewal of a license for a driving safety provider must be submitted before the expiration of the license and must include the following:

(1) a completed application for renewal;

(2) an annual renewal fee; and

(3) an executed bond or executed continuation agreement for the bond currently on file with the department.

(h) Provider closure. A provider owner must notify the department of its closure date at least fifteen (15) working [~~business~~] days before the closure. A provider must make all records and all used and unused uniform certificates of course completion and course completion certificate numbers available for review by the department upon request.

§84.63. Uniform Certificate of Course Completion for Driving Safety Course.

(a) For purposes of this section, the term "certificate" refers to uniform certificates of course completion issued by the department to driving safety providers in paper format, and certificate numbers issued to driving safety providers for inclusion on department-approved driving safety course certificate completion forms.

(b) Driving safety provider responsibilities. Providers are responsible for original and duplicate certificates in accordance with this subsection. Each driving safety provider must:

(1) submit a plan for the electronic issuance of certificates for approval by the department prior to its implementation;

(2) issue certificates that comply with the design specifications approved by the department;

(3) develop and maintain a department-approved method for securing, issuing, and maintaining original and duplicate certificates that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates, and allows for the recovery of lost data (electronic or otherwise) for such certificates;

(4) issue certificates only to students who have successfully completed all elements of the provider's approved driving safety course;

(5) maintain secure files (electronic or otherwise) with data pertaining to all certificates purchased from the department, and must make available to the department, upon request, an ascending numerical accounting record of the numbered certificates issued;

(6) issue all original and duplicate certificates using first-class or enhanced postage, equivalent commercial delivery method, or a department-approved electronic issuance method;

(7) sequentially number original certificates from the block of numbers purchased from the department;

(8) use certificates only for the course for which the certificates were ordered from the department;

(9) implement and maintain methods for efficiently issuing original certificates so that issuance of duplicate certificates is kept at a minimal rate;

(10) report all unaccounted original and duplicate certificates or unissued certificates or duplicates to the department within 15 working [~~business~~] days of the discovery of the incident;

(11) conduct an investigation to determine the circumstances surrounding the unaccounted items noted in paragraph (10), and submit a report of the findings of the investigation, including preventative measures for recurrence, to the department within thirty (30) days of the discovery; and

(12) report original and duplicate certificate data, by secure electronic transmission, to the department within five (5) days of issuance using guidelines established and provided by the department. The issue date indicated on the certificate shall be the date the provider issues the certificate to the student.

(c) Disposition of original or duplicate certificates.

(1) The provider's records, including unissued or unnumbered original and duplicate certificates, must be available for review by representatives of the department.

(2) A driver safety provider must not issue, transfer, or transmit an original or duplicate certificate bearing the serial number of a certificate or duplicate previously issued.

(3) Each unaccounted, missing, blank, or unissued original or duplicate certificate may be considered a separate violation. This may include a lost, stolen, or otherwise unaccounted original or duplicate certificate.

(4) When a duplicate certificate is issued by a provider, the duplicate certificate shall bear a serial number from the block of numbers purchased from the department by the provider. The duplicate certificate must clearly indicate the number of both the duplicate and the original serial number of the certificate being replaced.

(5) Any item on a duplicate certificate that has different data than that shown on the original certificate must clearly indicate both the original data and the replacement data; for example, a change in the date of course completion must show the correct date and "changed from XX," where "XX" is the date shown on the original certificate.

(6) If the student requests a duplicate certificate within thirty (30) days of the date of issue of the original certificate because the original was not received, unusable, or was issued with errors due to no fault of the student, the provider must issue the duplicate at no cost to the student. Driving safety providers must include this information in the student enrollment contract.

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SUBCHAPTER G. GENERAL BUSINESS PRACTICES

16 TAC §84.80

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.80. Names and Advertising.

(a) A licensed driver training provider must not conduct business or advertise under a name that is not distinguishable from a name used by any other licensed driver training provider [~~provide~~], or tax-supported educational establishment in this state, unless specifically approved in writing by the department.

(b) Use of names other than the approved provider name may constitute a violation of this section.

(c) Branch providers must conduct business using the same name as the primary driver education provider.

(d) Any publicly posted advertisement from a license applicant subject to license approval by the department must include the following information:

(1) A notice stating "Driving School Coming Soon"; and

(2) Display a functioning phone number and email address for the provider within the advertisement.

(e) An applicant applying for approval of a new provider license must not:

(1) Enroll students or conduct classes in driver training prior to department approval of the license application;

(2) Accept payments from prospective students; or

(3) Publish advertisements including the provider name or upcoming class sessions.

(f) A driver training provider must not advertise without including the provider name and license number as it appears on the provider license.

(g) All advertisements of a multiple classroom location or alternative delivery method shall meet the requirements in subsections (a) - (f).

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

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.502, 84.504

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed repeals.

The legislation that enacted the statutory authority under which the proposed repeals are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.500. Courses of Instruction for Driver Education Providers.

§84.501. Driver Education Course Alternative Method of Instruction.

§84.502. Driving Safety Courses of Instruction.

§84.504. Driving Safety Course Alternative Delivery Method.

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

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16 TAC §§84.500 - 84.505

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.500. Courses of Instruction for Driver Education Providers.

(a) The educational objectives of driver training courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops in accordance with provisions of the Community Safety Education Act; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; leaving children in vehicles unattended; distractions; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; recreational water safety; reducing traffic violations, injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(b) This subsection contains requirements for driver education courses. All course content and instructional material must include current statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval. For courses offered in a language other than English, the course materials must be accompanied by a written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such course materials are subject to the approval of the department prior to its use by a driver education provider.

(1) Minor and adult driver education course.

(A) The driver education classroom phase for students age 14 and over must consist of:

(i) a minimum of 24 hours of classroom instruction in the presence of a person who holds a driver education instructor license or who meets the requirements for a driver education course conducted by a parent, legal guardian, or designated person;

(ii) seven (7) hours of behind-the-wheel instruction in the presence of a person who holds a driver education instructor

license or who meets the requirements for a driver education course conducted by a parent, legal guardian, or designated person;

(iii) seven (7) hours of in-car observation instruction in the presence of a person who holds a driver education instructor license or who meets the requirements for a driver education course conducted by a parent, legal guardian, or designated person; and

(iv) 30 hours of behind-the-wheel supervised practice, including at least 10 hours of nighttime practice, in the presence of a person at least 21 years of age, has at least one year of driving experience, and holds a valid driver license. The 30 hours of behind-the-wheel supervised practice are to be certified by a parent, legal guardian, or designated person if the student is a minor. Simulation hours must not be substituted for the behind-the-wheel supervised practice. Behind-the-wheel supervised practice is limited to two hours per day.

(B) Providers are allowed five minutes of break per instructional hour for all phases. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car instruction, simulation, and multicar range must include the educational objectives established by the department in the POI-DE and the requirements of this subchapter.

(D) Driver education providers that desire to instruct students age 14 and over in an in-person classroom program must provide the same beginning date for each student in the same class of 36 or less. No student must be allowed to enroll and start the classroom phase after the fifth hour of classroom instruction has begun.

(E) Students must receive classroom instruction from an instructor who is licensed by the department. An instructor must be in the classroom and available to students during the entire 24 hours of instruction, including self-study assignments. Instructors must not have other teaching assignments or administrative duties during the 24 hours of classroom instruction.

(F) Videos, tape recordings, guest speakers, and other instructional media that present concepts required in the POI-DE may be used as part of the required 24 hours of in-person classroom instruction. Such supplemental instruction must not exceed 720 minutes of total in-person classroom hours.

(G) Self-study assignments occurring during regularly scheduled class periods must not exceed 25 percent of the course and must be presented to the entire class simultaneously.

(H) Each classroom student must be provided a driver education textbook or access to instructional materials that are in compliance with the POI-DE approved for the school. Instructional materials, including textbooks, must be in a condition that are legible and free of obscenities.

(I) A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the classroom phase of the driver education course.

(J) Each student, including makeup students, must be provided their own seat and table or desk while receiving classroom instruction. A provider must not enroll more than thirty-six (36) students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the provider's location.

(K) When a student changes providers, the provider must follow the current transfer policy developed by the department.

(2) Driver Education Behind-the-Wheel and In-Car Instruction

(A) All behind-the-wheel instruction must include actual driving operation by the student. A provider must not permit a ratio of more than four students per instructor or exceed the seating and occupant restraint capacity of the vehicle used for instruction. Providers that allow one-on-one instruction must notify the parents in the contract.

(B) A student must have a valid driver's license or learner license in his or her possession during any behind-the-wheel instruction or supervised practice.

(C) All behind-the-wheel instruction and supervised practice extended by the provider must begin no earlier than 5:00 a.m. and end no later than 11:00 p.m.

(D) A provider may use multimedia systems, simulators, and multicar driving ranges for behind-the-wheel and observation instruction in a driver education program. Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specification developed by DPS and the department. A licensed driver education instructor must be present during use of multimedia systems, simulators, and multicar driving ranges.

(E) Four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of behind-the-wheel and observation instruction. Two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind-the-wheel and observation instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to actual behind-the-wheel and observation instruction.

(c) In a minor and adult driver education program, a student may apply to the DPS for a learner license after completing the objectives found in Module One: Traffic Laws of the POI-DE.

(d) The instructor must be physically present in appropriate proximity to the student for the type of instruction being given. A driver education instructor, or provider owner must sign or stamp all completed classroom instruction records.

(e) The driver education provider must make a reasonable effort to validate the identity of the student at the time of enrollment.

§84.501. Driver Education Course Alternative Method of Instruction.

(a) Approval process. The department may approve an endorsement for an alternative method whereby a driver education provider is approved to teach all or part of the classroom portion of a driver education course by an alternative method of instruction (AMI) that does not require students to be physically present in a classroom that meets the following requirements.

(1) Standards for approval. The department may approve a driver education provider to teach all or part of the classroom portion of a driver education course by an AMI that does not require students to be present in a classroom only if:

(A) the AMI includes testing and security measures that the department determines are adequately secure to ensure course content and personal validation;

(B) the course satisfies any other requirement applicable to a course in which the classroom portion is taught to students in the usual classroom setting;

(C) a student and instructor are in different locations;

(D) the AMI instructional activities are integral to the academic program; and

(E) adequate communication between a student and instructor and among students is emphasized.

(2) Application. The provider must submit a completed AMI application along with the appropriate fee. The application for AMI approval must be treated the same as an application for the approval of a driver education traditional course, and the AMI must deliver the curriculum as aligned with the POI-DE.

(3) Provider license required. A person or entity offering a classroom driver education course to Texas students by an AMI must hold a driver education provider license. The driver education provider is responsible for the operation of the AMI.

(b) Course content. The AMI must deliver the same topics, instruction requirements, and course content as required by the department in the POI-DE.

(1) Editing. The material presented in the AMI must be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(2) Irrelevant material. Advertisement of goods and services must not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented must not appear during the actual instructional times of the course.

(3) Student breaks. The AMI is allowed five minutes of break per instructional hour for all phases, for a total of 120 minutes of break time. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(4) Minimum content. The AMI shall present sufficient instructional content so that it would take a student a minimum of 24 hours (1,440 minutes) to complete the course. A course that demonstrates that it contains 1,320 minutes of instructional content shall mandate that students take 120 minutes of break time or provide additional educational content for a total of 1,440 minutes (24 hours). In order to demonstrate that the AMI contains sufficient content, the AMI must use the following methods.

(A) Word count. For written material that is read by the student, the total number of words in the written sections of the course must be divided by 180. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. There shall be a minimum of 90 minutes of multimedia presentation. The provider owner must calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 720 minutes.

(C) Charts and graphs. The AMI may assign one minute for each chart or graph.

(D) Time Allotment for Questions. The provider owner may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time allotted for all charts, graphs, questions, and breaks equals or exceeds the minimum 1,440 minutes, the AMI has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the AMI may submit alternate methodology to demonstrate that the AMI meets the minimum 24-hour requirement.

(5) Academic integrity. The academic integrity of the AMI for a classroom driver education course must include:

(A) goals and objectives that are measurable and clearly state what the participants should know or be able to do at the end of the course;

(B) a clear, complete driver education classroom course overview and syllabus;

(C) content and assignments that are sufficient to teach the standards being addressed; and

(D) if online, clearly stated academic integrity and Internet etiquette expectations regarding lesson activities, discussions, e-mail communications, and plagiarism.

(6) Instructional design. Instructional design of AMI for classroom driver education must:

(A) ensure each lesson includes a lesson overview, objectives, resources, content and activities, assignments, and assessments to provide multiple learning opportunities for students to master the content;

(B) include instruction that provides opportunities for students to engage in higher-order thinking, critical-reasoning activities, and thinking in increasingly complex ways;

(C) include a statement that notifies the student of the provider owner's security and privacy policy regarding student data, including personal and financial data; and

(D) include assessment and assignment answers.

(c) Personal validation. The AMI must maintain a method to validate the identity of the person taking the course. The personal validation system must incorporate one of the following requirements.

(1) Provider-initiated method. The AMI may use a method that includes testing and security measures that are at least as secure as the methods available in the in-person classroom.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(B) Placement of questions. At least one personal validation question must appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The provider may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(2) Third party data method. The online course must ask a minimum of 60 personal validation questions randomly throughout the course from a bank of at least 200 questions drawn from a third party data source.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(B) Placement of questions. At least one personal validation question must appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The provider may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(3) Multifactor authentication method. The AMI may use a multifactor or two-factor authentication for personal validation.

(d) Content validation. The AMI must incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The AMI may include built-in timers to ensure that 1,440 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The AMI must ask at least one course validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the AMI must have a test bank of at least four questions.

(B) Question difficulty. The question must be short answer, multiple choice, essay, or a combination of these forms. The question must be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the AMI must either require the student to view the multimedia clip again or the AMI fails the student from the course. If the AMI requires the student to view the multimedia clip again, the AMI must present a different question from its test bank for that multimedia clip. The AMI may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The AMI must not identify the correct answer to the multimedia question.

(3) Mastery of course content. The AMI must test the student's mastery of the course content by asking questions from each of the modules listed in the program of organized instruction for driver education and traffic safety.

(A) Test bank. The test bank for course content mastery questions must include at least:

(i) 20 questions each from Module One listed in the POI-DE; and

(ii) 10 questions each from the remaining modules.

(B) Placement of questions. The mastery of course content questions must be asked at the end of each module.

(C) Question difficulty. Course content mastery questions must be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest options. The AMI may use the following options for students who fail an examination to show mastery of course content.

(A) Repeat the failed module. If the student misses more than 30 percent of the questions asked on a module examination, the AMI must require that the student take the module again. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the module, the AMI must again test the student's mastery of the material. The AMI must present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the final examination. If the student misses more than 30 percent of the questions asked on the final examination, the AMI must retest the student in the same manner as the failed examination, using different questions from its test bank. If the student fails the same unit examination or the comprehensive final examination three times, the student fails the course.

(e) Student records. The AMI must provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The provider must ensure that the student record is readily, securely, and reliably available for inspection by a department-authorized representative. The student records must contain all information required in §84.81 (relating to Recordkeeping Requirements) and the following information.

(1) A record of all questions asked and the student's responses.

(2) The name or identity number of the staff member entering comments or revalidating the student.

(3) The name or identity number of the staff member retesting the student.

(4) If any answer to a question is changed by the provider for a student who inadvertently missed a question, the provider must provide both answers and a reasonable explanation for the change.

(5) A record of the time the student spent in each unit of the AMI and the total instructional time the student spent in the course.

(f) Additional requirements for AMI courses. Courses delivered via the Internet or technology must also comply with the following requirements.

(1) Course identification. All AMI courses must display the driver education provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A driver education provider offering an AMI course may accept students redirected from another website if the student is redirected to the webpage that clearly identifies the name and license number of the provider offering the AMI course. This information must be visible before and during the student registration and course payment processes.

(g) Additional requirements for video courses.

(1) Delivery of the material. For AMIs delivered using videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by the department.

(2) Video requirement. The video course must include no more than 720 minutes of multimedia that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remain-

der of the 1,440 minutes of required instruction must be video material that is relevant to required course instruction content.

(A) A video AMI must ask, at a minimum, at least one course validation question for each multimedia clip of more than 180 seconds.

(B) A video AMI must devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 180 seconds.

(h) Standards for AMIs using new technology. For AMIs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards must be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the usual classroom setting.

(i) Modifications to the AMI. The licensed provider for the approved course on which the AMI is based must ensure that any modification to the AMI is consistent with applicable law, department rules and the POI-DE.

(j) Termination of the provider's operation. Upon termination, providers must deliver any missing student data to the department within five days of termination.

(k) Access to instructor and technical assistance. The provider must establish hours that the student may access an instructor trained in the classroom portion of the curriculum, and for technical assistance. Except for circumstances beyond the control of the provider, the student must have access to the instructor and technical assistance during the specified hours.

(l) Enrollment guidelines. The AMI for driver education classroom that desires to instruct students age 14 and over must provide the same beginning date for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the fifth hour of classroom instruction has been completed.

§84.502. In-Person Driver Education Course Exclusively for Adults.

(a) Driver education course exclusively for adults. Courses offered in an in-person classroom facility to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222 and §521.1601, must be offered in accordance with the following:

(1) In-person approval process. The department may approve an endorsement for a driver education course exclusively for adults to be offered in-person if the course meets the following requirements.

(A) Application. The driver education provider must submit a completed application along with the appropriate fee;

(B) Instructor license required. Students must receive classroom instruction from a licensed driver education instructor; and

(C) Minimum course content. The driver education course exclusively for adults must consist of six clock hours of classroom instruction that meets the minimum course content and instruction requirements contained in the POI-Adult Six-Hour.

(2) Course management. An approved adult driver education course must be presented in compliance with the following:

(A) The instructor must be physically present in appropriate proximity to the student for the type of instruction being given. A licensed driver education instructor, or provider owner must sign or stamp all completed classroom instruction records.

(B) A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the course.

(C) Self-study assignments, videos, tape recordings, guest speakers, and other instructional media that present topics required in the course must not exceed 150 minutes of instruction.

(D) Each student, including makeup students, must be provided their own seat and table or desk while receiving classroom instruction. A provider must not enroll more than 36 students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the provider's location.

(E) A minimum of 330 minutes of instruction is required.

(F) The total length of the course must consist of a minimum of 360 minutes.

(G) Thirty minutes of time, exclusive of the 330 minutes of instruction, must be dedicated to break periods or to the topics included in the minimum course content.

(b) Students must not receive a driver education certificate of completion unless that student receives a grade of at least 70 percent on the highway signs examination and at least 70 percent on the traffic laws examination as required under Texas Transportation Code §521.161.

(c) The driver education provider must make a reasonable effort to validate the identity of the student at the time of enrollment.

§84.503. Online Driver Education Course Exclusively for Adults.

(a) Online approval process. The department may approve an endorsement for an online driver education course exclusively for adults to be offered if the course meets the following requirements.

(1) Application. The applicant for an online driver education provider license must submit a completed application along with the appropriate fee.

(2) Online Provider license required. A person or entity offering an online driver education course exclusively for adults must hold an online driver education provider license.

(3) The online driver education provider must be responsible for the operation of the online course.

(4) Students must receive classroom instruction from a licensed driver education instructor.

(b) Course content. The online course must meet the requirements of the course identified in §1001.1015 of the Code and as described in the POI-Adult Six-Hour.

(1) Length of course. The course must be six hours in length, which is equal to 360 minutes. A minimum of 330 minutes of instruction must be provided. Thirty minutes of time, exclusive of the 330 minutes of instruction, must be dedicated to break periods or to the topics included in the minimum course content. All break periods must be provided after instruction has begun and before the comprehensive examination and summation.

(2) Required material. A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the course.

(3) Editing. The material presented in the online course must be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(4) Irrelevant material. Advertisement of goods and services, and distracting material not related to driver education must not appear during the actual instructional times of the course.

(5) Minimum content. The online course must present sufficient content so that it would take a student 360 minutes to complete the course. To demonstrate that the online course contains sufficient minutes of instruction, the online course must use the following methods.

(A) Word count. For written material that is read by the student, the course must contain the total number of words in the written sections of the course. This word count must be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the online course must calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 150 minutes.

(C) Charts and graphs. The online course may assign one minute for each chart or graph.

(D) Time allotment for questions. The online course may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 330 minutes, the online course has demonstrated the required amount of minimum content.

(F) Alternate time calculation method. In lieu of the time calculation method, the online course may submit alternate methodology to demonstrate that the online course meets the 330-minute requirement.

(c) Personal validation. The online course must maintain a method to validate the identity of the person taking the course. The personal validation system must incorporate at least one of the following requirements.

(1) Provider-initiated method. Upon approval by the department, the online course may use a method that includes testing and security measures that validate the identity of the person taking the course. The method must meet the following criteria.

(A) Time to respond. The student must correctly answer a personal validation question within 90 seconds.

(B) Placement of questions. At least two personal validation questions must appear randomly during each instructional hour, not including the final examination.

(C) Exclusion from the course. The online course must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(2) Third party data method. The online course must ask a minimum of twelve (12) personal validation questions randomly throughout the course from a bank of at least twenty (20) questions drawn from a third party data source. The method must meet the following criteria.

(A) Time to respond. The student must correctly answer a personal validation question within 90 seconds.

(B) Placement of questions. At least two personal validation questions must appear randomly during each instructional hour, not including the final examination.

(C) Exclusion from the course. The online course must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(3) Multifactor authentication method. The online course may use a multifactor or two-factor authentication for personal validation.

(d) Content validation. The online course must incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The online course may include built-in timers to ensure that 330 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The online course must ask at least one course validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the online course must have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question must be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the online course must require the student to view the multimedia clip again. The online course must then present a different question from its test bank for that multimedia clip. The online course may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The online course must not identify the correct answer to the multimedia question.

(3) Course participation questions. The online course must test the student's course participation by asking at least two questions each from Topics Two through Eight of Chapter Four in the POI-Adult Six Hour.

(A) Test bank. The test bank for course participation questions must include at least ten questions each from Topics Two through Eight of Chapter Four in the POI-Adult Six-Hour.

(B) Placement of questions. The course participation questions must be asked at the end of the major unit or the section in which the topic is covered.

(C) Question difficulty. Course participation questions must be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Comprehension of course content. The online course must test the student's mastery of the course content by administering at least 30 questions covering the highway signs and traffic laws required under Texas Transportation Code, §521.161.

(A) Test banks (two). Separate test banks for course content mastery questions are required for the highway signs and traffic laws examination as required under Texas Transportation Code, §521.161, with examination questions drawn equally from each.

(B) Placement of questions. The mastery of course content questions must be asked at the end of the course (comprehensive final examination).

(C) Question difficulty. Course content mastery questions must be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(D) Retest the student. If the student misses more than 30 percent of the questions asked on an examination, the online course must retest the student using different questions from its test bank. The student is not required to repeat the course, but may be allowed to review the course prior to retaking the examination. If the student fails the comprehensive final examination three times, the student fails the course.

(e) Student records. The online course must provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The provider must ensure that the student record is readily, securely, and reliably available for inspection by a department representative. The student records must contain all information required in §84.81 (relating to Recordkeeping Requirements) and contain the following information:

(1) a record of all questions asked and the student's responses;

(2) the name or identity number of the staff member entering comments, retesting, or revalidating the student;

(3) both answers and a reasonable explanation for the change if any answer to a question is changed by the provider for a student who inadvertently missed a question; and

(4) a record of the time the student spent in each unit and the total instructional time the student spent in the course.

(f) Waiver of certain education and examination requirements. A licensed driver education instructor must determine that the student has successfully completed and passed a driver education course exclusively for adults prior to waiving the examination requirements of the highway sign and traffic law parts of the examination required under Texas Transportation Code, §521.167, and signing the ADE-1317 driver education completion certificate.

(g) Age requirement. A person must be at least 18 years of age to enroll in a driver education course exclusively for adults.

(h) Issuance of certificate. Not later than the 15th working day after the course completion date, the provider must issue an ADE-1317 driver education certificate only to a person who successfully completes an approved online driver education course exclusively for adults.

(i) Access to instructor and technical assistance. The provider must establish hours that the student may access an instructor trained in the adult driver education curriculum, and for technical assistance. Except for circumstances beyond the control of the provider, the student must have access to the instructor and technical assistance during the specified hours.

(j) Additional requirements for online courses. Courses delivered via the Internet or technology must also comply with the following requirements.

(1) Re-entry into the course. An online course may allow the student re-entry into the course by username and password authentication or other means that are as secure as username and password authentication.

(2) Navigation. The student must be provided orientation training to ensure easy and logical navigation through the course. The student must be allowed to freely browse previously completed material.

(3) Audio-visual standards. The video and audio must be clear and, when applicable, the video and audio must be synchronized.

(4) Course identification. All online courses must display the driver education provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(5) Domain names. Each provider offering an online course must offer that online course from a single domain.

(6) A driver education provider offering an online course may accept students redirected from a website if the student is redirected to the webpage that clearly identifies the name and license number of the provider offering the online course. This information must be visible before and during the student registration and course payment processes.

(7) Compliance with Texas Transportation Code, §521.1601. Persons age 18 to under 25 years of age must successfully complete either a minor and adult driver education course or the driver education course exclusively for adults. Partial completion of either course does not satisfy the requirements of rule or law.

(8) Issuance of certificate. A licensed provider or instructor may not issue an ADE-1317 adult driver education certificate to a person who is not at least 18 years of age.

§84.504. Driving Safety Courses of Instruction.

This section contains requirements for traditional classroom driving safety courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Courses of instruction must not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course must be submitted by the driving safety provider and approved prior to being offered.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act; the proper use of child passenger safety seat systems; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the driving safety provider must affirm that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to review by the department. Each driving safety course must include the following:

(i) a statement of the course's traffic safety goal;

(ii) a statement of policies related to techniques of instruction, standards, and performance;

(iii) a statement of policies related to student progress, attendance, makeup, and conduct. The policies must be used by each driving safety provider and include the following requirements:

(I) appropriate standards to ascertain the attendance and identity of students. All driving safety providers must use appropriate standards for documenting attendance;

(II) if the student does not complete the entire course, including all makeup lessons within the timeline specified by the court, no credit for instruction shall be granted;

(III) any period of absence for any portion of instruction will require that the student complete that portion of instruction in a manner determined by the driving safety provider; and

(IV) conditions for dismissal and conditions for re-entry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials must not be used in excess of 165 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials to be provided for use by each student as a guide to the course;

(vii) instructional activities and resources to be used to present the material (lecture, films, other media, small-group discussions, workbook materials, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide must identify the questions that will be assigned to the groups;

(viii) techniques for evaluating the comprehension level of the students; and

(ix) a completed form cross-referencing the instructional units to the topics identified in Chapter Four of the COI-Driving Safety. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the department upon request.

(C) Course and time management. Approved driving safety courses must be presented in compliance with the following guidelines and must include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course must consist of a minimum of 360 minutes.

(iii) Sixty (60) minutes of time, exclusive of the 300 minutes of instruction, must be dedicated to break periods or to the topics included in the minimum course content. All break periods must be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures such as enrollment must not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in an in-person classroom must allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day must provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks must be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics must be approved by the department as part of the course approval, and for each student, the course must be taught in the order identified in the approved application.

(viii) Students must not receive a uniform certificate of course completion unless that student receives a grade of at least 70 percent on the final examination.

(ix) In an in-person classroom, there must be sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class must have no more than 50 students.

(x) The driving safety provider must make a reasonable effort to validate the identity of the student at the time of enrollment.

(D) Minimum course content. Driving Safety course content, including video and multimedia, must include current statistical data, references to law, driving procedures, and traffic safety methodology, as shown in the COI-Driving Safety, to assure student mastery of the subject matter.

(E) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course. The comprehensive examination for each driving safety course must include at least two questions from the required units set forth in Chapter Four, Topics Two through Twelve of the COI-Driving Safety, for a total of at least 20 questions. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Provider-designated persons who offer or provide instruction must not assist students in answering the final examination questions but may facilitate alternative testing. Students must not be given credit for the driving safety course unless they score 70 percent or more on the final test. The provider must identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the final examination. The provider may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to

enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(F) The course owner shall update all the course content methodology, procedures, statistical data, and references to law with the latest available data.

(G) The department may alter the due date of the renewal documents by giving the approved course six months' notice. The department may alter the due date to ensure that the course is updated six months after the effective date of new state laws passed by the Texas Legislature.

(H) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(2) The department may revoke approval of any course given to a provider under any of the following circumstances:

(A) Any information contained in the application for the course approval is found to be untrue;

(B) The school has failed to maintain the courses of study on which previous approval was issued;

(C) The provider has been found to be in violation of the Code, and/or this chapter; or

(D) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A).

§84.505. Driving Safety Course Alternative Delivery Method.

(a) The driving safety provider may offer a course by alternative delivery method (ADM) that meets the following requirements:

(1) Standards for acceptance. The department may accept an ADM offered by a driving safety provider for an approved driving safety course if the ADM delivers a course in a manner that is at least as secure as an in-person classroom. ADMs that meet the requirements outlined in subsections (b) - (h), shall receive ADM acceptance.

(2) The ADM must deliver the driving safety provider's curriculum as delineated in the course content guide required by §84.504 (relating to Driving Safety Courses of Instruction), and the COI-Driving Safety.

(3) Provider license required. A person or entity offering a driving safety course to Texas students by an alternative delivery method must hold a driving safety provider license. The driving safety provider is responsible for the operation of the ADM.

(b) Course content. The ADM must deliver the same topics, instruction requirements, and course content as the approved driving safety course established by the department in the COI-Driving Safety.

(1) Course topics. The time requirements for each unit and the course described in §84.504(a)(1)(C) and (D) must be met.

(2) Editing. The material presented in the ADM must be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(3) Irrelevant material. Advertisement of goods and services must not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented must not appear during the actual instructional times of the course.

(4) Minimum content. The ADM must present sufficient content so that it would take a student 300 minutes to complete the course. To demonstrate that the ADM contains sufficient content, the ADM must use the following methods.

(A) Word count. For written material that is read by the student, the driving safety provider must count the total number of words in the written sections of the course. This word count must be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the driving safety provider must calculate the total amount of time it takes for all multimedia presentations to play.

(C) Charts and graphs. The ADM may assign one minute for each chart or graph.

(D) Examinations. The provider may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 300 minutes, the ADM has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the driving safety provider may submit alternate methodology to demonstrate that the ADM meets the 300-minute requirement.

(5) Student breaks. A course that demonstrates that it contains 300 minutes of instructional content must mandate that students take 60 minutes of break time or provide additional educational content for a total of 360 minutes.

(c) Personal validation. The driving safety provider must ensure the ADM maintain a system to validate the identity of the person taking the course. The personal validation system must incorporate one of the following requirements.

(1) Provider-initiated method. The ADM may use a method that includes testing and security measures that are at least as secure as the methods available in the in-person classroom.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds.

(B) Placement of questions. At least one personal validation question must appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The ADM must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The provider may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(2) Third party data method. The online course must ask a minimum of 10 personal validation questions randomly throughout the course drawn equally from at least two different databases.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds.

(B) Placement of questions. At least one personal validation question must appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The ADM must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The provider may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(E) Student affidavits. A student for whom third-party database information is available from fewer than two databases (for example, a student with an out-of-state driver's license) may be issued a uniform certificate of completion upon presentation to the driving safety provider of a notarized copy of the student's driver's license or equivalent type of photo identification and a statement from the student certifying that the individual attended and successfully completed the six-hour driving safety course for which the certificate is being issued and there exists a corresponding student record.

(3) Multifactor authentication method. The AMD may use a multifactor or two-factor authentication for personal validation.

(d) Alternative methods. The driving safety provider may employ an ADM that uses alternate methods that are at least as secure as one of the methods listed above.

(e) Content validation. The driving safety provider must ensure the ADM incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The ADM must include built-in timers to ensure that 300 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The ADM must ask at least one course validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the ADM must have a test bank of at least four questions.

(B) Question difficulty. Each question must be short answer, multiple choice, essay, or a combination of these forms. The questions must be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the ADM shall either require the student view the multimedia clip again or the ADM must fail the student from the course. If the ADM requires the student to view the multimedia clip again, the ADM must present a different question from its test bank for that multimedia clip. The ADM may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The ADM must not identify the correct answer to the multimedia question.

(3) Mastery of course content. The ADM must allow for testing of the student's mastery of the course content by asking at least two questions from each of the topics listed in Chapter Four, Topics Two through Twelve of the COI-Driving Safety.

(A) Test bank. The test bank for course content mastery questions must include at least ten questions from each of the topics identified in Chapter Four, Topics Two through Twelve of the COI-Driving Safety.

(B) Placement of questions. The mastery of course content questions must be asked either at the end of the major unit or section in which the topic identified in Chapter Four, Topics Two through Twelve of the COI-Driving Safety, (unit examination) or at the end of the course (comprehensive final examination).

(C) Question difficulty. Course content mastery questions must be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest options. The ADM may use either of the following options for students who fail an examination to show mastery of course content, but may not use both in the same ADM.

(A) Repeat the failed unit. If the student misses more than 30 percent of the questions asked on an examination, the ADM must require that the student take the unit again. All timers must be reset. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the unit, the ADM must again test the student's mastery of the material. The ADM must present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the student. If the student misses more than 30 percent of the questions asked on an examination, the ADM must retest the student in the same manner as the failed examination, using different questions from its test bank. The student is not required to repeat the failed unit but may be allowed to do so prior to retaking the examination. If the student fails the same unit examination or the comprehensive final examination three times, the student fails the course.

(f) Student records. The ADM must provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. Each entry that verifies enrollment, identifies the question asked or the response given, documents retesting and/or revalidation, and documents any changes to the student's record must include the date and time of the activity reported. The student records must contain the following information.

(1) The student's name and driver's license number.

(2) A record of which personal validation questions were asked and the student's responses.

(3) A record of which multimedia participation questions were asked and the student's responses.

(4) The name or identity number of the staff member entering comments, retesting, or revalidating the student.

(5) If any answer to a question is changed by the driving safety provider for a student who inadvertently missed a question, the provider must provide both answers and a reasonable explanation for the change.

(6) A record of the course content mastery questions asked and the answers given.

(7) A record of the time the student spent in each unit of the ADM and the total instructional time the student spent in the course.

(8) The provider must also ensure that the student record is readily, securely, and reliably available for inspection by the department.

(g) Additional requirements for ADM courses. Courses delivered via the Internet must also comply with the following requirements.

(1) Course identification. All ADM courses must display the driving safety provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A driving safety provider offering a driving safety course through ADM may accept students redirected from another website if the student is redirected to the webpage that clearly identifies the names and license numbers of the provider offering the ADM. This information must be visible before and during the student registration and course payment processes.

(3) Domain names. Each provider offering a driving safety course through ADM must offer that ADM from a single domain.

(h) Additional requirements for video courses.

(1) Delivery of the material. For ADMs delivered using videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a department approved process.

(2) Video requirement. In order to meet the video requirement of §84.504(a)(1)(B)(v), the video course must include between 60 and 150 minutes of multimedia that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction must be video material that is relevant to the required topics and produced specifically for the ADM.

(A) A video ADM must ask at least one course validation question for each multimedia clip of more than 180 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM must devise and submit for approval a method for ensuring that a student correctly answers questions concerning multimedia clips consisting of more than 60 seconds in length presented during the ADM.

(i) Standards for ADMs using new technology. For ADMs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards must be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(j) Modifications to the ADM. A change to a previously approved ADM may be made without the prior approval of the department. The driving safety provider must notify the department of the modification not later than 30 days after its occurrence.

(k) Termination of the driving safety provider's operation. Upon termination, a driving safety provider must deliver any missing student data to the department within five days of termination.

(l) Access to the driving safety provider for technical assistance. The driving safety provider must establish hours that the student may obtain technical assistance. Except for circumstances beyond the control of the provider, the student must have access to the provider and technical assistance during the specified hours.

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

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SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600, §84.601

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.600. Program of Organized Instruction.

(a) To be approved under this subchapter, a driver education plan must include one or more of the following course programs.

(1) Core program. This program must consist of at least 24 [~~32~~] hours of classroom instruction; seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel supervised practice [~~instruction~~], including at least 10 hours of instruction that takes place at night, certified [~~verified~~] by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(2) In-car only program. This program must consist of at least seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel supervised practice [~~instruction~~], including at least 10 hours of instruction that takes place at night, certified [~~verified~~] by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(3) Classroom only program. This program must consist of at least 24 [~~32~~] hours of classroom instruction.

(b) The minimum requirements of the driver education program must be met regardless of how the course is scheduled. The following applies to all minor and adult driver education programs.

(1) A learner portion of a DE-964 must be issued to a student to obtain a learner's license upon completion of Module One of the POI-DE. A driver license portion of the DE-964 must be given when

all in-car laboratory and classroom instruction has been completed by the student.

(2) In-car laboratory lessons may be given only after the student has obtained a learner's license.

(3) Instruction may be scheduled any day of the week, during regular school hours, before or after school, and during the summer.

(4) Instruction must not be scheduled before 5:00 a.m. or after 11:00 p.m.

(5) The driver education classroom phase must have uniform beginning and ending dates. Students must proceed in a uniform sequence. Students must be enrolled and in class before the fifth [~~seventh~~] hour of classroom instruction in a 24 [~~32~~]-hour program and the 12th hour of classroom instruction in 56-hour or semester-length programs.

(6) Self-study assignments occurring during regularly scheduled class periods must not exceed 25 percent of the course and must be presented to the entire class simultaneously.

(7) The driver education course must be completed within the timelines established by the superintendent, college or university chief school official, or ESC director. This must not circumvent attendance or progress. Variances to the established timelines must be determined by the superintendent, college or university chief school official, or ESC director and must be agreed to by the parent or legal guardian.

(8) Public schools [~~Schools~~] are allowed five minutes of break within each instructional hour in all phases of instruction. A break is an interruption in a course of instruction occurring after the lesson introduction and before the lesson summation. It is recommended that the five minutes of break be provided outside the time devoted to behind-the-wheel instruction so students receive a total of seven hours of instruction.

(9) Driver education training offered by the public school must not exceed six hours per day. Public schools may include five minutes of break per instructional hour as identified in §84.500 (relating to Courses of Instruction for Driver Education Providers). In-car instruction provided by the public school must not exceed four hours per day as follows:

(A) four hours or less of in-car training; however, behind-the-wheel instruction must not exceed two hours per day; or

(B) four hours or less of simulation instruction; or

(C) four hours or less of multicar range instruction; or

(D) any combination of the methods delineated in this subsection that does not exceed four hours per day.

[~~(9) A student must not receive credit for more than four hours of driver education training at a public school in one calendar day no matter what combination of training is provided, excluding makeup. Further, for each calendar day, a student is limited to a maximum of:~~]

[~~(A) two hours of classroom instruction;~~]

[~~(B) four hours of observation time;~~]

[~~(C) two hours of multicar range driving;~~]

[~~(D) three hours of simulation instruction; and~~]

[~~(E) one hour of behind-the-wheel instruction.~~]

(10) Driver education training certified [~~verified~~] by the parent is limited to two hours [~~one hour~~] per day.

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range must include the instructional objectives established by the department, as specified in this subsection and the POI-DE, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the department. Schools may use sample instructional modules developed by the department or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety. A student may apply to the Texas Department of Public Safety (DPS) for a learner's license after completing four [~~six~~] hours of instruction as specified in Module One of the POI-DE.

(d) A public school may use multimedia systems, simulators, and multicar driving ranges for instruction in a driver education program.

(e) Each simulator, including the instructional programs, and each plan for a multicar driving range must meet state specifications developed by the department. Simulators are electromechanical equipment that provides for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depiction of traffic environments and driving emergencies. The specifications are available from the department.

(f) A minimum of four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of behind-the-wheel and one hour observation instruction. A minimum of two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind-the-wheel and one hour observation instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction and a minimum of four hours must be devoted to observation instruction.

(g) A school may not permit more than 36 students per driver education class, excluding makeup students.

(h) All behind-the-wheel lessons must consist of actual driving instruction. Observation of the instructor, mechanical demonstrations, etc., must not be counted for behind-the-wheel instruction. The instructor must be in the vehicle with the student during the entire time behind-the-wheel instruction is provided.

(i) Minor and adult driver education programs must include the following components.

(1) Driver education instruction is limited to eligible students between the ages of 14-18 years of age, who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel instruction begins. Students officially enrolled in school who are 18-21 years of age may attend a minor and adult driver education program.

(2) Motion picture films, slides, videos, tape recordings, and other media that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these must not exceed 720 [~~640~~] minutes of the total classroom phase.

(3) Each classroom student must be provided a driver education textbook or driver education instructional materials approved by the department.

(4) A copy of the current edition of the "Texas Driver Handbook" [~~published by DPS~~] or equivalent study material must be made available [~~furnished~~] to each student enrolled in the classroom phase of the driver education course.

(5) No public school should permit a ratio of less than two, or more than four, students per instructor for behind-the-wheel instruction, except behind-the-wheel instruction may be provided for only one student when it is not practical to instruct more than one student, for makeup lessons, or if a hardship would result if scheduled instruction were [~~is~~] not provided. In each case when only one student is instructed:

(A) the school must obtain a waiver signed and dated by the parent or legal guardian of the student and the chief school official stating that the parent or legal guardian understands that the student may be provided behind-the-wheel instruction on a one-on-one basis with only the instructor and student present in the vehicle during instruction;

(B) the waiver may be provided for any number of lessons; however, the waiver must specify the exact number of lessons for which the parent is providing the waiver; and

(C) the waiver must be signed before the first lesson in which the parent is granting permission for the student to receive one-on-one instruction.

(j) Colleges and universities that offer driver education to adults must submit and receive written approval for the course from the department prior to implementation of the program. The request for approval must include a syllabus, list of instructors, samples of instructional records that will be used with the course, and information necessary for approval of the program.

§84.601. Additional Procedures for Student Certification and Transfers.

(a) Unused DE-964s must not be transferred to another school without written approval by the department.

(b) The DE-964 document is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the form as to the prerequisite set forth may result in suspension or revocation of instructor credentials or program approval and/or criminal prosecution.

(c) The superintendent, college or university chief school official, ESC director, or their designee may request to receive serially numbered DE-964 certificates for exempt schools by submitting a completed order on the form provided by the department stating the number of certificates to be purchased and including payment of all appropriate fees. The department will accept purchase requisitions from school districts.

(d) All DE-964 certificates and records of certificates must be provided to the department or DPS upon request. The superintendent, college or university chief school official, ESC director, or their designee must maintain the school copies of the certificates. The chief school official, ESC or DPS director, or their designee must return unissued DE-964 certificates to the department within 30 days from the date the school discontinues the driver education program, unless otherwise notified.

(e) The public school may accept any part of the driver education instruction received by a student in another state; however, the student must complete all the course requirements for a Texas driver education program. Driver education instruction completed in another state must be certified in writing by the chief official or course instructor of the school where the instruction was given and include the hours and minutes of instruction and a complete description of each lesson provided. The certification document must be attached to the student's individual record at the Texas school and be maintained with the record for three [~~seven~~] years or as mandated by the school district.

(f) Students who are licensed in another state and have completed that state's driver education program should contact the DPS for information on the licensing reciprocal agreement between that state and Texas.

(g) All records of instruction must be included as part of the student's final history when it is necessary to compile multiple records to verify that a student successfully completed a driver education course.

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

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 10. GRANT PROGRAMS
SUBCHAPTER B. FAMILY PRACTICE RESIDENCY PROGRAM

19 TAC §§10.50 - 10.58

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter B, §§10.50 - 10.58, concerning the administration of the Family Practice Residency Program grant. Specifically, the new rules are a revision of existing rules in Chapter 6, Subchapter A, which will be repealed in future rulemaking. The new rules include updated sections to ensure consistency with administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.50, Purpose, establishes the purpose for the subchapter is to administer the Family Practice Residency Program grant designed to improved organization and consistency for Coordi-

nating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Family Practice Residency grant program.

Rule 10.51, Authority, establishes authority for this subchapter is found in Texas Education Code, Sections 61.501 - 61.506, which grants the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.52, Definitions, defines terms related to administration of the grant program.

Rule 10.53, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.54, Application Process, describes the main criteria that must be included in the grant application.

Rule 10.55, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.56, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.57, Reporting, establishes reporting requirements for grantees.

Rule 10.58, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section improved organization and consistency for Coordinating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Family Practice Residency grant program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHA-comments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Sections 61.501 - 61.506, which provide the Coordinating Board with rulemaking authority for administration of the grant program.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter B.

§10.50. Purpose.

The purpose of this subchapter is to implement the Family Practice Residency Program to administer awards to Texas medical schools, licensed hospitals, or nonprofit corporations aimed to increase the number of physicians selecting family practice as their medical specialty and to fulfill the goal of increasing access to medical care in medically underserved communities in Texas.

§10.51. Authority.

The authority for this subchapter is found in Texas Education Code, §§61.501 - 61.506.

§10.52. Definitions.

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

(1) Advisory Committee--The Family Practice Residency Advisory Committee as created and described in Texas Education Code §61.505.

(2) Approved Family Practice Residency Program--A family practice residency program, as described in Texas Education Code, §61.501(2).

(3) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(4) Commissioner--The Texas Commissioner of Higher Education.

(5) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board and its staff.

(6) Medical school--An eligible medical institution as identified in Texas Education Code §61.501(1).

(7) Medically Underserved--Areas or populations experiencing infant mortality, poverty, or an elderly population at a rate that exceeds the state average, or having a ratio of population to primary care physician that exceeds the state average for the given geographic designation.

(8) Operational Grant--An annual, renewable grant to support the educational activities of a fully-accredited family practice residency program.

(9) Resident Physician--A physician contractually obligated to a Texas medical school, Texas licensed hospital, or non-profit corporation operating in Texas to receive residency education and training for a specified period.

(10) Rural--A location in Texas that is eligible for Federal Office of Rural Health Policy grant programs.

(11) Support Grant Program--A Grant that includes an optional one-month rotation in a rural or public health setting in Texas

where the faculty support a grant that provides funds to support the leadership development of faculty of a family practice residency program. The advisory committee may recommend funding amounts for support grants.

(12) Urban--Any area in Texas that is not rural, as defined in this section.

§10.53. Eligibility.

To be eligible to apply for and receive grant funding, a Texas medical school, Texas licensed hospital, or nonprofit corporation operating in Texas shall:

(1) Provide evidence that the residency program is accredited by the Accreditation Council on Graduate Medical Education (ACGME);

(2) Provide evidence that the residency program has been operational for three or more academic years; and

(3) Demonstrate the training program's viability and efforts to recruit residents likely to practice in medically underserved urban or medically underserved rural areas of the state and the program's encouragement of residents to enter practice in medically underserved urban or medically underserved rural areas of the state.

§10.54. Application Process.

(a) Operational and Faculty Support Grants.

(1) An eligible program must submit an application to the Coordinating Board. Each application shall:

(A) be submitted electronically in a format specified by the Coordinating Board;

(B) be submitted with documented approval of the President or Chief Executive Officer or designee on or before the day and time specified by the Coordinating Board.

(2) Each application must include:

(A) The projected number of family practice residents enrolled if grant funds are awarded;

(B) A budget that includes resident compensation, professional liability, and other direct resident costs; and

(C) Evidence of support for the residency program by the entity receiving the grant.

(b) Support Grants for Rotation Programs. An eligible program shall submit notification of a resident's intent to complete a rural or public health rotation two-months prior to the beginning of the rotation and shall:

(1) Provide evidence that the program sponsored a resident in a rural or public health rotation; and

(2) Submit evaluations and request for funds upon completion of the rotation.

§10.55. Evaluation of Applications.

(a) Applications for Family Practice Residency Program grants shall be reviewed and evaluated by the Family Practice Residency Advisory Committee.

(b) The Advisory Committee's review shall include the following:

(1) Evidenced-based determination that the proposed program will be able to efficiently and effectively provide indigent health care and training to family practice residency physicians;

(2) Existing and anticipated costs and funding for new and existing programs requesting funding; and

(3) The program's performance in:

(A) improving the distribution of family physicians throughout the state;

(B) providing care to medically underserved urban or medically underserved rural areas of Texas; and

(C) encouraging residents to practice in medically underserved urban or medically underserved rural areas of the state.

(c) The Advisory Committee shall submit a recommendation to the Board for approval and funding of operational and related support grant programs.

§10.56. Grant Awards.

(a) The amount of funding available for the Family Practice Residency Program is dependent on the legislative appropriation for the program for each biennial state budget. Award levels will be determined by a formula approved by the Board based upon the number of certified resident physicians in the training program.

(b) Grant awards shall be subject to approval pursuant to §1.16 of this title (relating to Contracts, Including Grants, for Materials and/or Services).

(c) The Board shall award all Family Practice Residency Grants after receiving the recommendations of the Family Practice Residency Advisory Committee. The Advisory Committee shall annually report all awards to the Board.

(d) A grantee may only expend grant funds on the salary of the resident physician, professional liability, and other direct costs that are necessary and reasonable to support the residency position as stated in grantee's budget, and in accordance with the applicable rules and statutes for the program.

§10.57. Reporting.

(a) Each grantee shall file program narrative, expenditure, and resident roster reports in a format on or before the day and time specified by the Coordinating Board.

(b) No later than ninety (90) days after the end of the Operational Grant or Support Grant Program, the grantee shall conduct a post award audit. The post award audit shall include a review of program goals and grant expenditures. To fulfill this requirement, a grantee shall submit the following reports to the Coordinating Board:

(1) A final narrative report on the grant program's efforts to recruit residents likely to practice in medically underserved urban or medically underserved rural areas of the state and the program's encouragement of residents to enter practice in medically underserved urban or medically underserved rural areas of the state addressing the needs of communities or regions; and

(2) A final expenditure report for all expended grant funds. The final expenditure report must include an attestation from Grantee that all expenditures were allowable expenses pursuant to law and regulation.

§10.58. Additional Requirements.

(a) Cancellation or Suspension of Grant Solicitations. The Commissioner has the right to reject all applications and cancel a grant solicitation at any point.

(b) Forfeiture and Return of Funds.

(1) A grantee shall return to the Coordinating Board any award funds remaining unspent at the end of the grant term as set forth

in the contract or agreement not later than sixty (60) calendar days after the close of the grant term.

(2) A grantee shall notify the Coordinating Board within thirty (30) calendar days of any funded residency position that is vacated.

(3) A grantee shall have sixty (60) calendar days from notification to the Coordinating Board of the vacated position to refill the funded residency position.

(4) If the grantee fails to refill the position in the required timeline, the grantee forfeits and shall return, if grant funds were received, a proportionate share of the grant award for each unfilled residency position as determined by the Commissioner.

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

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Nichole Bunker-Henderson
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SUBCHAPTER H. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION PARTNERSHIP PROGRAM

19 TAC §§10.170 - 10.179

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter H, §§10.170 - 10.179, concerning the Texas Emergency and Trauma Care Education Partnership Program. Specifically, the new rules are a revision of existing rules in Chapter 6, Subchapter E, which will be repealed in future rulemaking. The new rules include updated sections to ensure consistency with administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.170, Purpose, establishes the purpose for the subchapter is to administer the Texas Emergency and Trauma Care Education Partnership Program.

Rule 10.171, Authority, establishes authority for this subchapter is found in Texas Education Code, §§61.9801 - 61.9807, which grants the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.172, Definitions, defines terms related to administration of the grant program.

Rule 10.173, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.174, Application Process, describes the main criteria that must be included in the grant application.

Rule 10.175, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.176, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.177, Reporting, establishes reporting requirements for grantees.

Rule 10.178, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

Rule 10.179, Administrative Costs, provides direction on how funds can be appropriated for administrative costs of the grant program.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the section is improved organization and consistency for Coordinating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Texas Emergency and Trauma Care Education Partnership Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAcomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter HH, Sections 61.9801 - 61.9807, which provide the Coordinating Board with rulemaking authority for administration of the grant program.

The proposed new sections affect Texas Education Code, Sections 61.9801 - 61.9807.

§10.170. Purpose.

The purpose of this subchapter is to administer the Texas Emergency and Trauma Care Education Partnership Program to provide and oversee grants to eligible entities to meet the needs of the state of Texas for doctors and registered nurses.

§10.171. Authority.

The authority for this subchapter is found in Texas Education Code, chapter 61, subchapter HH, §§61.9801 - 61.9807.

§10.172. Definitions.

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

(1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The Texas Commissioner of Higher Education.

(3) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(4) Emergency and Trauma Care Education Partnership--A partnership that consists of one or more hospitals in this state and one or more graduate professional nursing or graduate medical education programs in this state and serves to increase training opportunities in emergency and trauma care for doctors and registered nurses at participating graduate medical education and graduate professional nursing programs.

(5) Graduate Medical Education (GME) Program--The period of didactic and clinical education in a medical specialty, subspecialty, or sub-subspecialty that follows completion of undergraduate medical education (i.e., medical school) and that prepares physicians for the independent practice of medicine in that specialty, subspecialty, or sub-subspecialty.

(6) Graduate Professional Nursing Program--An educational program of a public or private institution of higher education that prepares students for a master's or doctoral degree, as defined in Texas Education Code, §54.355.

(7) Hospital--A Texas general hospital or special hospital, as defined in Texas Health and Safety Code, §241.003, excluding a facility that is owned, maintained, or operated by the federal government or an agency of the federal government.

(8) Request for Application (RFA)--The official document issued by the Coordinating Board to solicit applicants for an award of available grant funds.

§10.173. Eligibility.

(a) A grant under this subchapter may be spent only on costs related to the operation or to the development and operation of a Texas Emergency and Trauma Care Education Partnership.

(b) The following types of emergency and trauma education partnerships are eligible to receive a grant under this program:

(1) A Graduate Nursing Education Program Partnership that:

(A) Consists of one or more hospitals and one or more graduate nursing programs in this state; and

(B) Prepares students to complete a graduate professional nursing program with a specialty focus or post-master's certificate in emergency and trauma care; or

(2) A Graduate Medical Education Program Partnership that:

(A) Consists of one or more hospitals and one or more graduate medical education programs in this state; and

(B) Prepares the physician to earn a board certification by the American Board of Medical Specialties or the Bureau of Osteopathic Specialties.

(c) Each Emergency and Trauma Care Education Partnership shall:

(1) Meet the requirement to increase the number of additional students in each program as follows:

(A) Nursing - Certify an increase of a sufficient number of additional graduate nursing students in the participating graduate education programs, and enroll in the education program additional students as determined by the total number of students enrolled through the grant period minus the number of enrolled students at the time of application.

(B) Graduate Medical Education (GME) - Certify an increase of a sufficient number of additional residents/fellows in the participating graduate medical education program, and intend to increase or, at a minimum, maintain previously funded increases.

(2) Use existing facilities and expertise of the hospitals and graduate education programs participating in the partnership.

(3) Meet any other eligibility criteria set forth in the RFA.

§10.174. Application Process.

(a) Unless otherwise specified in the RFA, an eligible entity may submit the following number of applications:

(1) Graduate Nursing Education Program Partnerships may submit a maximum of one application for each eligible nursing program.

(2) Graduate Medical Education Program Partnerships may submit a maximum of one application for each eligible medical fellowship or residency program.

(b) To qualify for funding consideration, an eligible applicant must submit an application to the Coordinating Board during the period specified in the RFA. Each application must:

(1) Be submitted electronically in a format specified in the RFA;

(2) Adhere to the grant program requirements contained in the RFA; and

(3) Be submitted with documented approval of the President or Chief Executive Officer or designee on or before the day and time specified in the RFA.

(c) Applications shall at a minimum:

(1) Provide a detailed explanation of the eligible partnership, including a description of the role and commitment of the hospital(s) and graduate nursing program or graduate medical education program;

(2) Document how the partnership will serve to increase training opportunities in emergency and trauma care for registered nurses or physician residents or fellows at participating partnerships;

(3) Identify the program director responsible for centralized decision making related to the partnership;

(4) Include a provision to maintain existing clinical training agreements relating to graduate nursing and graduate medical education programs not participating in the partnership and to provide for a specified number of additional registered nurses and/or physician residents or fellows to participate in clinical training;

(5) Include a provision for tracking employment of partnership participants during and after completion of participation;

(6) Describe availability of funds and/or in-kind contributions made available by the partnership to match a portion of the grant funds;

(7) Describe potential partnership program replication;

(8) Describe sustainability of the partnership beyond the grant period; and

(9) Meet other requirements as specified in the RFA.

§10.175. Evaluation.

The Commissioner shall select applicants for funding based on the following requirements and award priority criteria, as required by Texas Education Code, §61.9804. Priority criteria for applications shall include:

(1) Collaborative educational models between one or more participating hospitals and one or more participating education programs that have signed a memorandum of understanding or other written agreement under which the participants agree to comply with standards established by the Coordinating Board, including any standards the Coordinating Board may establish that:

(A) Provide for program management that offers a centralized decision-making process allowing for inclusion of each entity participating in the partnership;

(B) Provide for access to clinical training positions for students in graduate professional nursing and residents/fellows in graduate medical education programs that are not participating in the partnership; and

(C) Specify the details of any requirement relating to a student or a resident/fellow in a participating education program being employed after graduation in a hospital participating in the partnership, including any details relating to the employment of students who do not complete the program, are not offered a position at the hospital, or choose to pursue other employment;

(2) A demonstrable education model to:

(A) Increase the number of students enrolled in, the number of students graduating from, and the number of faculty employed by each participating education program; and

(B) Improve student or resident retention in each participating education program;

(3) The availability of money to match a portion of the grant money, including matching money or in-kind services approved by the board from a hospital, private or nonprofit entity, or institution of higher education;

(4) Replicability by other emergency and trauma care education partnerships or other graduate professional nursing or graduate medical education programs; and

(5) Plans for sustainability of the partnership.

§10.176. Grant Awards.

(a) The amount of funding available to the program is dependent on the legislative appropriation for the program for each biennial state budget and the availability of other funds. The Coordinating Board will provide award levels and estimated number of awards in the RFA.

(b) Maximum award length.

(1) A graduate Nursing Education Program Partnership is eligible to receive funding for up to three years within a grant period.

(2) A Graduate Medical Education Program Partnership is eligible to receive funding for up to two years within a grant period.

(3) Each program award shall be subject to approval pursuant to §1.16, of this title (relating to Contracts, Including Grants, for Materials and/or Services).

(4) The Commissioner of Higher Education may negotiate or adjust a grantee award to best fulfill the purpose of the RFA.

(5) The Coordinating Board may advance a portion of the grant award to a grantee.

(6) Determination of the allowability of administrative costs will be set forth in the RFA.

§10.177. Reporting.

(a) Each grantee shall file reports with the Coordinating Board as required and include the outcomes of the partnership program(s) according to a schedule and in the format required by the Coordinating Board by the deadlines set forth in the RFA.

(b) Each grantee shall provide the following:

(1) Status of the grant program activities;

(2) Budget expenditures; and

(3) Any other information required by the RFA.

§10.178. Additional Requirements.

(a) Forfeiture and Return of Funds.

(1) Each grantee shall return any award funds remaining unspent at the end of the grant term as set forth in the RFA or Notice of Grant Agreement (NOGA) to the Coordinating Board within ninety (90) calendar days after the end date of the period of performance or an earlier due date if specified by the RFA.

(2) Each grantee shall reimburse the Coordinating Board any award funds expended on items that are not necessary and reasonable or in accordance with the applicable law, rules, or NOGA within the time frame and subject to the requirements set forth in the RFA.

(b) The Commissioner may take the following actions if a grantee fails to comply with requirements set forth in the RFA:

(1) Reduce the grant award;

(2) Require the grantee to return unspent grant funds;

(3) Amend the grant agreement; or

(4) Terminate the grant agreement.

(c) The RFA may set forth additional return or reimbursement of fund requirements and termination provisions.

(d) The Commissioner may reallocate returned funds to existing grantees in an equitable manner.

§10.179. Administrative Costs.

A reasonable amount, not to exceed three percent of funds appropriated for purposes of this subchapter, may be used to pay the costs of administering the Texas Emergency and Trauma Care Education Partnership Program.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER J. MINORITY HEALTH RESEARCH AND EDUCATION GRANT PROGRAM.

19 TAC §§10.210 - 10.218

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter J, §§10.210 - 10.218, concerning administration of the Minority Health Research and Education Grant Program. Specifically, the new rules are a revision of existing rules in Chapter 6, Subchapter C, §6.74, which will be repealed in future rulemaking. The new rules include updated sections to ensure consistency with the administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.210, Purpose, establishes the purpose for the subchapter is to administer the Minority Health Research and Education Grant Program.

Rule 10.211, Authority, establishes authority for this subchapter is found in Texas Education Code, §§63.301 - 63.302, which provide the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.212, Definitions, defines terms related to administration of the grant program.

Rule 10.213, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.214, Application Process, describes main criteria that must be included in the grant application.

Rule 10.215, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.216, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.217, Reporting, establishes reporting requirements for grantees.

Rule 10.218, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the rules is improved organization and consistency for Coordinating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Minority Health Research and Education Grant Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAcomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Sections 63.301 - 63.302, which provide the Coordinating Board with the authority to adopt rules to administer the Minority Health Research and Education Grant Program.

The proposed new sections affect Texas Administrative Code, Chapter 10, Subchapter J.

§10.210. Purpose.

The purpose of this subchapter is to administer the Minority Health Research and Education Grant Program to eligible entities to meet the needs of the state of Texas.

§10.211. Authority.

The authority for this subchapter is found in Texas Education Code, §§63.301 - 63.302, which provides the Coordinating Board with the authority to adopt rules to administer the Minority Health Research and Education Grant Program.

§10.212. Definitions.

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

(1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The Texas Commissioner of Higher Education.

(3) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board including the staff who report to the Commissioner and Board.

(4) Eligible Institution--An institution of higher education as defined in §10.213 of this subchapter (relating to Eligibility).

(5) Minority (as it applies to minority health issues)--A group which may include an economic, geographic, or a racial or ethnic group that is under-represented in one or more areas of health research or health education.

(6) Request for Application (RFA)--The official document issued by the Coordinating Board to solicit applicants for an award of available grant funds.

§10.213. Eligibility.

(a) To be eligible to apply for and receive funding under the program an institution of higher education shall:

(1) Meet the definition of Texas institution of higher education as defined by Texas Education Code, §61.003(8), or be a Center for Teacher Education at Jarvis Christian College, Paul Quinn College, Texas College, Huston Tillotson University, or Wiley College; and

(2) Conduct research or educational programs that address minority health issues; or

(3) Form partnerships with minority organizations, colleges or universities to conduct research and educational programs that address minority health issues.

(b) Each grant recipient shall:

(1) Conduct research and educational initiatives, including those that expand existing research and degree programs, and develop other new or existing activities and projects, which are not funded by state appropriations during the funding period;

(2) Propose programs that do not conflict with current judicial decisions and state interpretation on administering minority programs in higher education; and

(3) Meet any other eligibility criteria set forth in the RFA.

§10.214. Application Process.

(a) Unless otherwise specified in the RFA, an eligible institution may submit only one application for the Minority Health Research and Education Grant Program per grant cycle.

(b) An institution shall not submit the same application to the Nursing, Allied Health and Other Health-related Education Grant Program.

(c) To qualify for funding consideration, an eligible applicant must submit an application during the period specified in the RFA to the Coordinating Board. Each application must:

(1) Be submitted electronically in a format specified in the RFA;

(2) Adhere to the grant program requirements contained in the RFA; and

(3) Be submitted with documented approval of the President or Chief Executive Officer or designee on or before the day and time specified in the RFA.

(d) Applications shall at a minimum:

(1) Describe the significance and potential impact of research or educational program for minority health issues;

(2) List a goal and at least three benchmark targets/objectives and estimated dates to monitor adequate progress toward reaching the goal;

(3) Provide a proposed plan for the use of the grant funds reasonable and necessary to meet the program goal and objective; and

(e) Meet any other requirement as specified in the RFA.

§10.215. Evaluation.

The Commissioner shall select applicants for funding based on requirements and award criteria provided in the RFA, including:

(1) Significance and impact of research or educational program for minority health issues;

(2) Program design;

(3) Resources to perform the program;

(4) Cost effectiveness; and

(5) Evaluation and expected outcomes.

§10.216. Grant Awards.

(a) The amount of funding available to the program is dependent on the legislative appropriation for the program for each biennial state budget and the availability of other funds. The Coordinating Board will provide award levels and estimated number of awards in the RFA.

(b) Maximum award length: An eligible institution may receive funding for up to three years within a grant period.

(c) Program awards shall be subject to Coordinating Board approval pursuant to §1.16 of this title (relating to Contracts, Including Grants for Materials and/or Services).

(d) The Commissioner may negotiate or adjust a grantee award to best fulfill the purpose of the RFA.

(e) The Coordinating Board may advance a portion of the grant award to a grantee with the remainder of the award distributed on a cost reimbursement basis.

(f) Determination of the allowability of administrative costs will be set forth in the RFA.

(g) Grant awards may only be used on necessary and reasonable costs as described in the RFA.

§10.217. Reporting.

(a) A grantee shall submit performance and financial reports in the format required by the Coordinating Board by the deadlines set forth in the RFA.

(b) Each grantee shall provide information that includes the following:

(1) Status of the grant project activities;

(2) Budget expenditures; and

(3) Any other information required by the RFA.

§10.218. Additional Requirements.

(a) Forfeiture and Return of Funds.

(1) Each grantee shall return any award funds remaining unspent at the end of the grant term as set forth in the RFA or Notice of Grant Agreement (NOGA) to the Coordinating Board within ninety (90) calendar days after written request or an earlier due date if specified by the RFA.

(2) Each grantee shall return or repay to the Coordinating Board any award funds that the State determines an eligible institution improperly expended on items not listed in the RFA or otherwise prohibited by law within the time frame and subject to the requirements set forth in the RFA.

(b) The Commissioner may take the following actions if a grantee fails to comply with requirements set forth in the RFA:

(1) Reduce the grant award;

(2) Require the grantee to return unspent grant funds;

(3) Amend the grant agreement; or

(3) Terminate the grant agreement.

(c) The RFA may set forth additional return or reimbursement of fund requirements and termination provisions.

(d) The Coordinating Board may retain returned and reimbursed funds for award in a future year as authorized by the General Appropriations Act.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER K. NURSING, ALLIED HEALTH AND OTHER HEALTH-RELATED EDUCATION GRANT PROGRAM

19 TAC §§10.230 - 10.238

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter K, §§10.230 - 10.238, concerning administration of the Nursing, Allied Health and Other Health-Related Education Grant Program. Specifically, the new rules are a revision of existing rules in Chapter 6, Subchapter C, §6.73, which will be repealed in future rulemaking. The new rules include updated sections to ensure consistency with the administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.230, Purpose, establishes the purpose for the subchapter is to administer the Nursing, Allied Health and Other Health-Related Education Grant Program.

Rule 10.231, Authority, establishes authority for this subchapter is found in Texas Education Code, §§63.201 - 63.203, which grant the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.232, Definitions, defines terms related to administration of the grant program.

Rule 10.233, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.234, Application Process, describes main criteria that must be included in the grant application.

Rule 10.235, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.236 Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.237, Reporting, establishes reporting requirements for grantees.

Rule 10.238, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is improved organization and consistency for Coordinating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Nursing, Allied Health and Other Health-Related Education Grant Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHA-comments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, Sections 63.201 - 63.203, which grant the Coordinating Board with authority to adopt rules to administer the grant program.

The proposed new sections affect Texas Administrative Code, Chapter 10, Subchapter J.

§10.230. Purpose.

The purpose of this subchapter is to administer the Nursing, Allied Health and Other Health-Related Education Grant Program to provide and oversee grants to eligible entities to meet the needs of the state of Texas.

§10.231. Authority.

The authority for this subchapter is Texas Education Code, §§63.201 - 63.203, which provides the Coordinating Board with the authority to adopt rules to administer the Nursing, Allied Health and Other Health-Related Education Grant Program.

§10.232. Definitions.

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

(1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The Texas Commissioner of Higher Education.

(3) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(4) Request for Application (RFA)--The official document issued by the Coordinating Board to solicit applicants for an award of available grant funds.

(5) Upper-Level Academic Instruction and Training--A course beyond the core in the fields of nursing, allied health or other health-related education at an institution of higher education.

§10.233. Eligibility.

(a) General Eligibility.

(1) Eligible institutions include public institutions of higher education that offer upper-level academic instruction and training in the fields of nursing, allied health, or other health-related education.

(2) Institutions or components identified under Texas Education Code, §§63.002(c) and 63.101, are not eligible to receive funding through the grant program.

(3) Eligible programs include nursing, allied health or other health-related initiatives, including those that expand existing academic programs, develop new or existing activities and projects, and are not funded by state appropriation during the funding period.

(b) Additional eligibility criteria through September 1, 2027. Notwithstanding the limitations in subsection (a) of this section, for the fiscal biennium ending on August 31, 2025, and the fiscal biennium ending on August 31, 2027, the Coordinating Board shall prioritize institutions proposing to address the shortage of registered nurses by:

(1) Preparing students for initial licensure as registered nurses; or

(2) Preparing qualified faculty members with a master's or doctoral degree.

(c) Institutions and programs shall meet any other eligibility criteria set forth in the RFA.

§10.234. Application Process.

(a) Unless otherwise specified in the RFA, an eligible entity may submit a maximum of one application for the Nursing, Allied Health and Other Health-Related Education Grant Program.

(b) To qualify for funding consideration, an eligible applicant must submit an application to the Coordinating Board during the period specified in the RFA. Each application must:

(1) Be submitted electronically in a format specified in the RFA;

(2) Adhere to the grant program requirements contained in the RFA; and

(3) Be submitted with documented approval of the President or Chief Executive Officer or designee on or before the day and time specified in the RFA.

(c) Applications shall at a minimum:

(1) Describe the significance and impact the grant award shall have on academic instruction and training in health-related education in the state as described in the RFA;

(2) List a goal and at least three benchmark targets/objectives and estimated dates to monitor adequate progress toward reaching the goal;

(3) Provide a budget that is reasonable and necessary that aligns with the goal and objectives; and

(4) Meet other requirements as specified in the RFA.

§10.235. Evaluation.

The Commissioner shall select applicants for funding on a competitive basis to provide the best overall value to the state. Selection criteria shall be based on:

(1) Program quality as determined by peer or staff reviewers;

(2) Impact the grant award shall have on academic instruction and training in public health-related education in the state;

(3) Cost of the proposed program;

(4) Other factors to be considered by the Coordinating Board, including financial ability to perform program, state and regional needs and priorities, ability to continue program after grant period, and past performance; and

(5) Other requirements and award criteria provided in the RFA.

§10.236. Grant Awards.

(a) The amount of funding available to the program is dependent on the legislative appropriation for the program for each biennial state budget and the availability of other funds. The Coordinating Board will provide award levels and estimated number of awards in the RFA.

(b) Maximum award length: A program is eligible to receive funding for up to three years within a grant period.

(c) Each program award shall be subject to approval pursuant to §1.16 of this title (relating to Contracts, Including Grants for Materials and/or Services).

(d) The Coordinating Board may negotiate or adjust a grantee award to best fulfill the purpose of the RFA.

(e) The Coordinating Board may advance a portion of the grant award to a grantee if necessary for grantee to carry out the grant program with the remainder of the award distributed on a cost reimbursement basis.

(f) Determination of the allowability of administrative costs will be set forth in the RFA.

(g) Grant awards may only be used on necessary and reasonable costs as described in the RFA.

§10.237. Reporting.

Each grantee shall submit performance and financial reports in the format required by the Coordinating Board by the deadlines set forth in the RFA. A grantee shall provide the following:

(1) Status of the grant project activities;

(2) Budget expenditures; and

(3) Any other information required by the RFA.

§10.238. Additional Requirements.

(a) A grant award is automatically terminated if the grantee is placed on probation by the Texas Board of Nursing or loses its status as an approved professional nursing program. The grantee shall immediately return all unexpended grant funds.

(b) Each grantee shall return any award funds remaining unspent at the end of the grant term as set forth in the RFA or Notice of Grant Agreement (NOGA) to the Coordinating Board within ninety (90) calendar days after written demand or an earlier due date if specified by the RFA.

(c) Each grantee shall reimburse any award funds that are expended on items not consistent with §10.236(g) of this subchapter (relating to Grant Awards) to the Coordinating Board within the time frame and subject to the requirements set forth in the RFA.

(d) The Commissioner may take the following actions if a grantee fails to comply with requirements set forth in the RFA:

(1) Reduce the grant award;

(2) Require the grantee to return unspent grant funds;

(3) Amend the grant agreement; or

(4) Terminate the grant agreement.

(e) The RFA may set forth additional return or reimbursement of fund requirements and termination provisions.

(f) The Coordinating Board may retain returned and reimbursed funds for the next RFA.

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

Filed with the Office of the Secretary of State on August 5, 2024.

TRD-202403588

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 427-6182

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER EE. COMMISSIONER'S RULES ON PREVENTION, AWARENESS, AND REPORTING OF CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §61.1051, §61.1053

The Texas Education Agency (TEA) proposes the repeal of §61.1051 and §61.1053, concerning prevention, awareness, and reporting of child abuse or neglect, including trafficking of a child. The proposed repeal would relocate the existing requirements relating to school district policies on reporting child abuse and neglect and required signage pertaining to criminal offenses of human trafficking to proposed new 19 TAC Chapter 103, Subchapter EE. The proposed new rules would include updates to align with legislation from the 88th Texas Legislature, Regular Session, 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1051 relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools.

Section 61.1053 relates signage requirements for posting the offenses of human trafficking on public school premises.

In order to align the rules with other provisions on health and safety, the proposed repeal would relocate the requirements from §61.1051 and §61.1053 to proposed new 19 TAC Chapter 103, Health and Safety, Subchapter EE, Commissioner's Rules on Prevention, Awareness, and Reporting of Child Abuse or Neglect, Including Trafficking of a Child. The proposed new sections would incorporate legislative updates from the 88th Texas Legislature, Regular Session, 2023. A separate rule action for proposed new 19 TAC Chapter 103, Subchapter EE, provides a detailed description of the proposed changes from the existing rules.

FISCAL IMPACT: Steve Lecholop, deputy commissioner for governance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

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

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state

agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations in order to relocate the rules.

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 expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lecholop has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be relocating the rules to align them with other requirements for health and safety. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins August 16, 2024, and ends September 16, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 16, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023, which requires each public school to post warning signs describing the increased penalties for trafficking of persons under Texas Penal Code, §20A.02(b-1); TEC, §38.004, which requires the agency to develop a policy governing the reports of child abuse or neglect; TEC, §38.0041, which requires school districts and open-enrollment charter schools to adopt and implement policies addressing sexual abuse, sex trafficking, and other maltreatment of children; TEC, §38.0042, which authorizes the commissioner to adopt rules relating to the size and location of the required posting of the child abuse hotline telephone number; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023; 38.004; 38.0041; and 38.0042; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

§61.1051. Reporting Child Abuse or Neglect, Including Trafficking of a Child.

§61.1053. Required Signage Pertaining to Criminal Offenses of Human Trafficking.

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

Filed with the Office of the Secretary of State on August 5, 2024.

TRD-202403574
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 475-1497

CHAPTER 70. TECHNOLOGY-BASED INSTRUCTION

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING THE TEXAS VIRTUAL SCHOOL NETWORK (TxVSN)

19 TAC §§70.1001, 70.1005, 70.1008, 70.1009, 70.1013, 70.1015, 70.1017, 70.1027, 70.1028

The Texas Education Agency (TEA) proposes amendments to §§70.1001, 70.1005, 70.1008, 70.1009, 70.1013, 70.1015, 70.1017, 70.1027, and 70.1028, concerning the Texas Virtual School Network (TxVSN). The proposed amendments would permit courses lower than Grade 9 to be offered to Texas public schools through the statewide course catalog, update the definition of central operations and student eligibility for full-time enrollment in the TxVSN, eliminate references to the International Association for K-12 Online Learning, and update references to statute and other administrative rule.

BACKGROUND INFORMATION AND JUSTIFICATION: In 2003, the 78th Texas Legislature, Regular Session, established the electronic course program, allowing school districts to offer electronic courses through a full-time online program. TEC, Chapter 30A, State Virtual School Network, added by the 80th Texas Legislature, 2007, provided for the establishment of a state virtual school network to provide supplemental online courses. In 2009, House Bill (HB) 3646, 81st Texas Legislature,

Regular Session, incorporated the electronic course program under the state virtual school network. Additional amendments to TEC, Chapter 30A, were adopted in 2011 and 2015. In 2017, Senate Bill (SB) 587, 85th Texas Legislature, Regular Session, amended eligibility requirements for students to enroll full time in the TxVSN. In 2019, HB 3, 86th Texas Legislature, updated references to statute.

The commissioner adopted 19 TAC Chapter 70 effective February 27, 2013. Additional revisions were adopted effective April 7, 2015. The proposed amendments would update portions of the rules to align with changes made to statute in 2017 and 2019. Additionally, the proposed amendments would permit courses lower than Grade 9 to be offered to Texas public schools through the statewide course catalog, update the definition of central operations, and eliminate references to the International Association for K-12 Online Learning.

The proposed amendment to §70.1001, Definitions, would revise the successful course completion definition, allowing for the expansion of courses to be offered in the statewide course catalog by removing high school-specific references. The proposed amendment would clarify the successful program completion definition and update who carries out the day-to-day operations of the TxVSN because TxVSN central operations was statutorily transitioned to TEA.

The proposed amendments to §70.1005, Texas Virtual School Network Course Requirements; §70.1027, Requirements for Educators of Electronic Courses; and §70.1028, Requirements for Texas Virtual School Network Educator Professional Development, would revise the name of the national standards that are used to establish quality online courses.

The proposed amendment to §70.1009, Texas Virtual School Network Online School Eligibility, would update a cross reference to the rule on financial accountability ratings.

The proposed amendment to §70.1013, Texas Virtual School Network Student Eligibility, would update a cross reference to reflect the renumbering of statute.

The proposed amendment to §70.1015, Texas Virtual School Network Enrollment, Advancement, and Withdrawal, would revise the requirements for a student's home district to include earned grades in the student's academic record and would clarify that a student enrolled full time in an online school program in Grades 3-8 must demonstrate academic proficiency sufficient to earn promotion to the next grade level.

The proposed amendment to §70.1017, Texas Virtual School Network Compulsory Attendance, would revise successful completion attendance requirements by removing grade level references to courses and programs.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand existing regulations by allowing for online middle school courses to be offered to Texas public schools through the statewide course catalog and by providing conforming changes to current standards and statutes.

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.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing local education agencies and students with additional course options and flexibility in offering and completing course requirements. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins August 16, 2024, and ends September 16. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on August 16, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §30A.051(b), which authorizes the commissioner of education to adopt rules necessary to implement the state virtual school network.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §30A.051(b).

§70.1001. Definitions.

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

(1) (No change.)

(2) Successful course completion--The term that applies when a student [~~taking a high school course~~] has demonstrated academic proficiency of course [~~the~~] content by earning [~~for a high school course and has earned~~] a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s), sufficient to earn credit for a high school [~~the~~] course.

(3) Successful program completion--The term that applies when a student enrolled in a Texas Virtual School Network Online School program in Grades 3-8 has demonstrated academic proficiency and has earned a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s) for the educational program, sufficient for promotion to the next grade level.

(4) (No change.)

(5) TxVSN central operations--The TEA staff [~~regional education service center~~] that carries out the day-to-day operations of the TxVSN, including the centralized student registration system, statewide course catalog listings, and other administrative and reporting functions.

(6) - (9) (No change.)

(10) TxVSN statewide course catalog--A supplemental online [~~high school~~] instructional program available through approved course providers.

§70.1005. Texas Virtual School Network Course Requirements.

(a) All electronic courses to be made available through the Texas Virtual School Network (TxVSN) shall be reviewed and approved prior to being offered.

(1) Each electronic course approved for inclusion in the TxVSN shall:

(A) - (E) (No change.)

(F) be aligned with the current [~~International Association for K-12 Learning (iNACOL)~~] National Standards for Quality Online Courses;

(G) - (H) (No change.)

(2) - (6) (No change.)

(b) - (c) (No change.)

§70.1008. Texas Virtual School Network Statewide Course Catalog Receiver District Requirements.

(a) - (b) (No change.)

(c) Each TxVSN receiver district shall:

(1) - (3) (No change.)

(4) in accordance with §74.26 of this title (relating to Award of Credit), award credit to a student enrolled in the district who has successfully completed all state and local requirements and received a grade that is the equivalent of 70 on a scale of 100, based upon the essential knowledge and skills for a high school course offered through the TxVSN statewide course catalog.

(d) - (e) (No change.)

§70.1009. Texas Virtual School Network Online School Eligibility.

(a) To be eligible to serve as a Texas Virtual School Network (TxVSN) online school, a school district or charter school shall:

(1) - (2) (No change.)

(3) be rated at the Standard Achievement level or higher under the state financial accountability rating system as specified in §109.1001 [~~§109.1003~~] of this title (relating to [~~Types of~~] Financial Accountability Ratings);

(4) - (6) (No change.)

(b) (No change.)

§70.1013. Texas Virtual School Network Student Eligibility.

(a) A student is eligible to enroll in a course provided by the Texas Virtual School Network (TxVSN) only if:

(1) the student on September 1 of the school year:

(A) (No change.)

(B) is younger than 26 years of age and entitled to the benefits of the Foundation School Program under the Texas Education Code, §48.003 [~~§42.003~~] ;

(2) (No change.)

(3) the student:

(A) (No change.)

(B) [~~the student~~] is a dependent of a member of the United States military, was previously enrolled in high school in this state, and no longer resides in this state as a result of a military deployment or transfer.

(b) A student is eligible to enroll full time in courses provided through the TxVSN only if the student :

(1) [~~the student~~] was enrolled in a public school in this state in the preceding school year;

(2) is a dependent of a member of the United States military who has been deployed or transferred to this state and was enrolled in a publicly funded school outside of this state in the preceding school year; or

(3) [~~(2)~~] [~~the student~~] has been placed in substitute care in this state, regardless of whether the student was enrolled in a public school in this state in the preceding school year . [~~; or~~]

[~~(3) the student:~~]

[~~(A) is a dependent of a member of the United States military;~~]

[~~(B) was previously enrolled in high school in this state; and~~]

[~~(C) no longer resides in this state as a result of a military deployment or transfer.~~]

(c) - (d) (No change.)

§70.1015. Texas Virtual School Network Enrollment, Advancement, and Withdrawal.

(a) A student taking a course through the Texas Virtual School Network (TxVSN) statewide course catalog or a TxVSN Online School (OLS) program is considered to:

(1) (No change.)

(2) have successfully completed a course if the student demonstrates academic proficiency and, for a high school course, earns credit for the course, as determined by the TxVSN teacher; and

(3) (No change.)

(b) A student taking a course through the TxVSN statewide course catalog:

(1) - (3) (No change.)

(4) shall have the grade assigned by the TxVSN teacher added to the student's record [~~transcript~~] by the student's home district and, for a high school course, added to the student's transcript.

(c) A student enrolled full time in a TxVSN Online School program in Grades 3-8 must demonstrate academic proficiency sufficient to earn promotion to the next grade, as determined by the TxVSN teacher for the educational program.

(d) (No change.)

§70.1017. Texas Virtual School Network Compulsory Attendance.

(a) (No change.)

(b) Based upon successful completion of a TxVSN course [~~for students in Grades 9-12~~] or a TxVSN Online School (OLS) instructional program [~~for students in Grades 3-8~~], students are considered to have met attendance requirements for that course or program. A student who has successfully completed the grade level or course is eligible to receive any weighted funding for which the student is eligible.

(c) (No change.)

§70.1027. Requirements for Educators of Electronic Courses.

(a) Each instructor of an electronic course, including a dual credit course, offered through the Texas Virtual School Network (TxVSN) by a course provider must be certified under the Texas Education Code (TEC), Chapter 21, Subchapter B, to teach that course and grade level or meet the credentialing requirements of the institution of higher education with which they are affiliated and that is serving as a course provider. In addition, each instructor:

(1) must:

(A) (No change.)

(B) have a graduate degree in online or distance learning and have demonstrated mastery of the [~~International Association for K-12 Learning (iNACOL)~~] National Standards for Quality Online Teaching; or

(C) have two or more years of documented experience teaching online courses for students in Grades 3-12 and have demonstrated mastery of the [~~iNACOL~~] National Standards for Quality Online Teaching; and

(2) (No change.)

(b) (No change.)

(c) TxVSN course providers shall affirm the preparedness of instructors of TxVSN electronic courses to teach public school-age students in a highly interactive online classroom and shall:

(1) maintain records documenting:

(A) - (B) (No change.)

(C) instructor's demonstrated mastery of the [~~iNACOL~~] National Standards for Quality Online Teaching prior to teaching through the TxVSN;

(2) - (5) (No change.)

§70.1028. Requirements for Texas Virtual School Network Educator Professional Development.

(a) - (b) (No change.)

(c) The Texas Education Agency shall use the most recent [~~International Association for K-12 Learning (iNACOL)~~] National Standards for Quality Online Teaching to evaluate professional development courses submitted by a TxVSN course provider for approval.

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

Filed with the Office of the Secretary of State on August 5, 2024.

TRD-202403576
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 475-1497

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CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER EE. COMMISSIONER'S RULES ON PREVENTION, AWARENESS, AND REPORTING OF CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §103.1401, §103.1403

The Texas Education Agency (TEA) proposes new §103.1401 and §103.1403, concerning prevention, awareness, and reporting of child abuse or neglect, including trafficking of a child. The proposed new sections would relocate existing requirements from 19 TAC Chapter 61, Subchapter EE, relating to school district policies on reporting child abuse and neglect and required signage pertaining to criminal offenses of human trafficking. Proposed new §103.1401 would include updates to school district policy requirements to align with Texas Family Code, §261.104, as amended by House Bill (HB) 63, 88th Texas Legislature, Regular Session, 2023. Proposed new §103.1403 would include updates to signage requirements to align with Senate Bill (SB) 2069, HB 3553, and HB 3554, 88th Texas Legislature, Regular Session, 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §103.1401 would include existing requirements from 19 TAC §61.1051, which relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools. The following updates would align the new section with HB 63, 88th Texas Legislature, Regular Session, 2023. Proposed new §103.1401(b)(2)(D) would require local policies for reporting to include notice that oral reports made to the Texas Department of Family and Protective Services are recorded. Proposed new §103.1401(b)(2)(E) would require local policies to include notice that an individual making a report must provide his or her name, telephone number, and address and include an explanation of the limited circumstances under which the identity of an individual making a report may be disclosed.

Proposed new §103.1403 would include existing requirements from 19 TAC §61.1053, which relates to signage requirements for posting the offenses of human trafficking on public school premises. To align with SB 2069, 88th Texas Legislature, Regular Session, 2023, proposed new §103.1403(a) would be updated to remove the definition of "premises" and modify the definition of "school." Proposed new §103.1403(b) would also align with SB 2069 by updating the required location of signage. Pro-

posed new §103.1403(c)(1)(A) would update the information related to penalties for trafficking of persons to align with changes to Texas Penal Code, §20A.02, made by HB 3553 and HB 3554, 88th Texas Legislature, Regular Session, 2023.

FISCAL IMPACT: Steve Lecholop, deputy commissioner for governance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations to update the requirements for school district policies related to reporting child abuse and neglect to align with statute and update the requirements related to signage pertaining to criminal offenses of human trafficking to align with statute.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lecholop has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins August 16, 2024, and ends September 16, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on August 16, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023, which requires each public school to post warning signs describing the increased penalties for trafficking of persons under Texas Penal Code, §20A.02(b-1); TEC, §38.004, which requires the agency to develop a policy governing the reports of child abuse or neglect; TEC, §38.0041, which requires school districts and open-enrollment charter schools to adopt and implement policies addressing sexual abuse, sex trafficking, and other maltreatment of children; TEC, §38.0042, which authorizes the commissioner to adopt rules relating to the size and location of the required posting of the child abuse hotline telephone number; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023; 38.004; 38.0041; and 38.0042; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

§103.1401. Reporting Child Abuse or Neglect, Including Trafficking of a Child.

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Child abuse or neglect--The definition of child abuse or neglect includes the trafficking of a child in accordance with Texas Education Code (TEC), §38.004.

(2) Other maltreatment--This term has the meaning assigned by Human Resources Code, §42.002.

(3) Trafficking of a child--This term has the meaning assigned by Texas Penal Code, §20A.02(a)(5), (6), (7), or (8).

(b) The board of trustees of a school district or governing body of an open-enrollment charter school shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements outlined in Texas Family Code, Chapter 261.

(1) The policies must require that every school employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect submit a written or oral report to at least one of the following authorities within 48 hours or less, as determined by the board of trustees, after learning of facts giving rise to the suspicion:

(A) a local or state law enforcement agency;

(B) the Texas Department of Family and Protective Services, Child Protective Services Division;

(C) a local office of Child Protective Services, where available; or

(D) the state agency that operates, licenses, certifies, or registers the facility in which the alleged child abuse or neglect occurred.

(2) The policies must require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:

(A) penalties under Texas Penal Code, §39.06; Texas Family Code, §261.109; and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) for failure to submit a required report of child abuse or neglect;

(B) applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including the following:

(i) Texas Family Code, §261.302 and §261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and

(ii) Texas Family Code, §261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator;

(C) immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;

(D) oral reports made to the Texas Department of Family and Protective Services are recorded;

(E) confidentiality provisions relating to reports of suspected child abuse or neglect, including the following:

(i) the requirement for the individual making the report to provide his or her name and telephone number;

(ii) the requirement for the individual making the report to provide his or her home address or, if the individual making the report is a school employee, agent, or contractor, provide his or her business address and profession; and

(iii) the limited circumstances under which the identity of the individual making a report may be disclosed;

(F) any disciplinary action that may result from noncompliance with the district's reporting policy; and

(G) the prohibition under TEC, §26.0091, against using or threatening to use the refusal to consent to administration of a psychotropic drug to a child or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, except as authorized by TEC, §26.0091.

(3) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, trafficking, and other maltreatment of children. The policy must be included in any informational handbook provided to students and parents and must address the following:

(A) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;

(B) actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and

(C) available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.

(4) The policies must be consistent with Texas Family Code, Chapter 261, and 40 TAC Chapter 700 (relating to Child Protective Services) regarding investigations by the Texas Department of Family and Protective Services, including regulations governing investigation of abuse by school personnel and volunteers.

(5) The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to one of the agencies identified in paragraph (1) of this subsection.

(6) The policies must include the current toll-free telephone number of the Texas Department of Family and Protective Services.

(7) The policies must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by the Texas Department of Family and Protective Services.

(8) The policies must include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.

(c) The policies required by this section and adopted by the board of trustees shall be distributed to all school personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by the board of trustees.

(d) Training concerning prevention techniques for, and recognition of, sexual abuse, trafficking, and all other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities, must be provided as a part of new employee orientation to all new school district and open-enrollment charter school employees and to existing school district and open-enrollment charter school employees not previously trained as required by TEC, §38.0041.

(1) The training must include:

(A) factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;

(B) warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk for sexual abuse, trafficking, or other maltreatment; and

(E) information on community organizations that have relevant research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff, students, and parents.

(2) Each school district and open-enrollment charter school must maintain records that include the name of each staff member who participated in training.

(3) To the extent that resources are not yet available from the Texas Education Agency or commissioner of education, school district and open-enrollment charter schools shall implement the policies and trainings with existing or publicly available resources. The school district or open-enrollment charter school may also work in conjunction with a community organization to provide the training at no cost to the district or charter school.

(e) Using a format and language that is clear, simple, and understandable to students, each public school and open-enrollment charter school shall post, in English and in Spanish:

(1) the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number;

(2) instructions to call 911 for emergencies; and

(3) directions for accessing the Texas Department of Family and Protective Services website (www.txabusehotline.org) for more information on reporting abuse, neglect, and exploitation.

(f) School districts and open-enrollment charter schools shall post the information specified in subsection (e) of this section at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number should be in bold print.

§103.1403. Required Signage Pertaining to Criminal Offenses of Human Trafficking.

(a) When used in this section, the term "school" means a public primary or secondary school.

(b) Each public school shall post warning signs in a conspicuous place reasonably likely to be viewed by all school employees and visitors.

(c) Each warning sign must:

(1) describe the offense of trafficking in persons as provided under Texas Penal Code, §20A.02(a). The sign must emphasize that an offense under Texas Penal Code, §20A.02, is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that the actor committed the offense in a location that was:

(A) on the premises of or within 1,000 feet of the premises of:

(i) a school;

(ii) a juvenile detention facility;

(iii) a post-adjudication secure correctional facility;

(iv) a shelter or facility operating as a residential treatment center that serves runaway youth, foster children, people who are homeless, or persons subjected to human trafficking, domestic violence, or sexual assault;

(v) a community center offering youth services and programs;

(vi) a child-care facility, as defined by Human Resources Code, §42.002; or

(vii) an institution of higher education or private or independent institution of higher education, as defined by Texas Education Code, §61.003; or

(B) on premises or within 1,000 feet of premises where:

(i) an official school function was taking place; or

(ii) an event sponsored or sanctioned by the University Interscholastic League was taking place;

(2) be written in English and Spanish;

(3) be at least 8.5 by 11 inches in size; and

(4) be properly maintained to ensure readability and protection from the elements for outdoor signs.

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

Filed with the Office of the Secretary of State on August 5, 2024.

TRD-202403577
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. AUTOMOBILE INSURANCE

DIVISION 3. MISCELLANEOUS INTERPRETATIONS

28 TAC §5.205

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.205, concerning the Motor Vehicle Crime Prevention Authority (MVCPA) pass-through fee. The amendments to §5.205 implement Senate Bill 224, 88th Legislature, 2023.

EXPLANATION. Amending §5.205 is necessary to implement SB 224, which amended Transportation Code §1006.153 to increase the MVCPA fee amount from $4 to $5 to help fund the detection and prevention of catalytic converter thefts. The proposed amendments replace the $4 fee amount and update the language in the notice that insurers must provide to policyholders when recouping the MVCPA fee.

To provide adequate time for insurers to update the notice, as required under subsection (b), TDI proposes an effective date of 90 days after the date the rule is adopted.

Descriptions of the section's proposed amendments follow.

Section 5.205. Subsection (a) is amended to remove the $4 fee amount. Instead of replacing the $4 fee amount with the updated $5 fee, the amended text states that the insurer must pay the MVCPA fee as set by Transportation Code §1006.153(b), which removes the need to update the fee amount if it is changed in the statute in the future.

Subsection (b) is amended to update the notice that an insurer must provide to a policyholder when the insurer seeks to recoup the MVCPA fee, adding that the detection and prevention of catalytic converter thefts is an activity that the MVCPA fee helps to fund.

Existing subsections (c) and (d) are removed because they contain instructions for updating and filing the notice and are based on a previous amendment. Insurers should have already made these updates to the notice required under subsection (b), making these subsections unnecessary.

A new subsection (c) is added to inform insurers that if the insurer recoups the fee from the policyholder, the insurer must file a new or revised notice with TDI. New subsection (c) also clarifies that an insurer does not need to include the actual fee amount in the filed notice. Rather, the insurer may use a variable field in the filed notice.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Nicole Beall, manager, Property and Casualty Lines, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them, other than that imposed by the statute. Ms. Beall made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Beall does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Beall expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Transportation Code Chapter 1006. In addition, the proposed amendments will help policyholders understand why they are charged the MVCPA fee and what the fee funds.

Ms. Beall expects that the proposed amendments will not increase the cost of compliance with Transportation Code Chapter 1006 because the proposed amendments do not impose new requirements beyond those in the statute. The increased fee is required by the statute, not the rule. Transportation Code §1006.153 requires insurers to pay to the MVCPA a fee equal to $5 multiplied by the total number of years or portions of years during which a motor vehicle is covered by insurance. As a result, the costs associated with the increased fee and any filings needed to update the fee or the required notice do not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The increased fee is required by the statute and is not a result of the rule. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposed amendments do not impose a cost on regulated persons. Even if the amendments did impose a cost, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §5.205 are necessary to implement legislation. The proposed amendments implement Transportation Code §1006.153, as amended by SB 224.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 16, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 16, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §5.205 under Transportation Code §1006.153 and Insurance Code §36.001.

Transportation Code §1006.153 provides that an insurer pay to the MVCPA a fee equal to $5 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer.

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

CROSS-REFERENCE TO STATUTE. Section 5.205 implements Transportation Code §1006.153.

§5.205. Motor Vehicle Crime Prevention Authority Pass-Through Fee.

(a) Each insurer must pay a fee [~~of $4.00~~] per "motor vehicle year of insurance" to the Motor Vehicle Crime Prevention Authority, as set [~~as required~~] by Transportation Code §1006.153(b), concerning Fee

Imposed on Insurer [§1006.153]. The insurer is authorized to recoup some or all of this fee from the policyholder.

(b) If an insurer recoups the fee from the policyholder under subsection (a) of this section, the insurer must:

(1) provide the policyholder with a notice using the following or similar language, in at least 10-point type: "Your payment includes a $[_____] fee per vehicle each year. This fee helps fund (1) auto burglary, theft, and fraud prevention;[,] (2) criminal justice efforts;[, and] (3) trauma care and emergency medical services for victims of accidents due to traffic offenses; and (4) the detection and prevention of catalytic converter thefts. By law, this fee funds the Motor Vehicle Crime Prevention Authority.";

(2) include the notice on or with each motor vehicle insurance policy, as defined in 43 TAC §57.48 (relating to Motor Vehicle Years of Insurance Calculations), that is delivered, issued for delivery, or renewed in this state, including those policies issued through the Texas Automobile Insurance Plan Association; and

(3) if the notice language required by paragraph (1) of this subsection is provided somewhere other than the declarations page, renewal certificate, or billing, also include the following or similar language on the declarations page of the policy, renewal certificate, or billing: "Motor Vehicle Crime Prevention Authority Fee $[_____] (See enclosed explanation)."

(c) An insurer that recoups the fee from policyholders must file with TDI a new or revised notice as required by subsection (b)(1) of this section. An insurer does not need to include the fee amount in the filed notice. Instead, the insurer can use a variable field for the fee amount, like this: "$[_____]."

[(c) An insurer may continue providing a notice used on or before the effective date of this section if the notice:]

[(1) contains the correct fee amount;]

[(2) includes "Motor Vehicle Crime Prevention Authority" in place of "Automobile Burglary and Theft Prevention Authority;" and]

[(3) has any statutory references removed or updated to change Tex. Rev. Civ. Stat. Ann. Art. 4413(37) to Transportation Code Chapter 1006.]

[(d) A notice that complies with subsection (c) of this section is considered similar to the notice language required by subsection (b) of this section.]

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

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

TRD-202403567
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 676-6555

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SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §5.4905

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.4905, concerning minimum retained premium. Amendments to §5.4905 implement House Bill 3208, 88th Legislature, 2023.

EXPLANATION. Amendments to §5.4905 are necessary to implement changes that HB 3208 made to Insurance Code §2210.204. HB 3208 limited the circumstances in which the Texas Windstorm Insurance Association (TWIA) must refund premium when an insured cancels an insurance policy.

Descriptions of the proposed amendments follow.

Section 5.4905. Amendments to subsection (a) clarify that the minimum retained premium provision is subject to Insurance Code §2210.204, and specify that--except as provided in the rule--the minimum retained premium on a TWIA policy is equal to the premium for the full annual policy term.

Existing subsection (b) is replaced by a new subsection (b). New subsection (b) still provides that a TWIA policy is subject to a $100 minimum retained premium if it is canceled for specific reasons, but it now refers to the reasons specified in Insurance Code §2210.204(d). It also specifies that reasons include a change in the majority ownership of the insured property, including foreclosure or the death of the policyholder.

A new subsection (c) is added that maintains the requirement from current subsection (b) that if any unearned premium remains after applying the minimum retained premium, then it must be refunded pro rata. Existing subsections (c) and (d) are redesignated as (d) and (e) to reflect the insertion of new subsection (c).

In addition, the proposed amendments include nonsubstantive changes to conform the section to the agency's current drafting style and plain language preferences, and to improve the rule's clarity. Examples include replacing "Association" with "TWIA" and the phrase "shall not" with "may not" and "shall be" with "is."

Amendments also delete obsolete language specifying the applicable minimum retained premium for policies effective before and after November 27, 2011. To clarify the section, existing text is restructured and language that is effectively duplicative is eliminated.

TDI invited public comment on an informal draft posted on TDI's website on May 13, 2024, through May 27, 2024. No comments were received.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them, other than those imposed by the statute. Mr. Muckerheide made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Muckerheide does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr.

Muckerheide expects that administering them will have the public benefit of ensuring that TDI's rules conform to Insurance Code §2210.204.

Mr. Muckerheide expects that the proposed amendments will not increase the cost of compliance with Insurance Code §2210.204 because they do not impose requirements beyond those in the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Even if the proposal did impose costs, no additional rule amendments would be required under Government Code §2001.0045 because the amendments to §5.4905 are necessary to implement legislation. The proposed rule implements Insurance Code §2210.204, as amended by HB 3208.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 16, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 16, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §5.4905 under Insurance Code §2210.008(b) and §36.001.

Insurance Code §2210.008(b) provides that the commissioner may adopt rules that are reasonable and necessary to implement Insurance Code Chapter 2210.

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

CROSS-REFERENCE TO STATUTE. Section 5.4905 implements Insurance Code §2210.204.

§5.4905 Minimum Retained Premium.

(a) Except as provided in this section and subject to Insurance Code §2210.204, concerning Cancellation of Certain Coverage, for cancellation of insurance coverage, the minimum retained premium on a TWIA [~~an Association~~] policy issued on an annual basis is equal to the premium for the full annual policy term. [~~shall be:~~]

[~~(1) equal to the greater of:~~]

[~~(A) 90 days of the annual policy term or $100, for policies that become effective on and after November 27, 2011; or~~]

[~~(B) 180 days of the annual policy term or $100, for policies that become effective before November 27, 2011; and~~]

[~~(2) fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.~~]

(b) A TWIA policy is subject to a $100 minimum retained premium if it is canceled because of:

(1) any of the reasons specified in Insurance Code §2210.204(d); or

[~~(b) An Association policy canceled due to the reasons specified in paragraphs (1) - (4) of this subsection is subject to the $100 minimum retained premium. The minimum retained premium shall be fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.~~]

(2) [~~(1)~~] a [~~A~~] change in majority ownership of the insured property, including [~~sale of the insured property to an unrelated party, or~~] foreclosure of the insured property; or

[~~(2) the replacement of the Association policy with other similar coverage in the voluntary market;~~]

[~~(3) the removal of the item(s) insured under an Association policy due to a total loss of the item(s), including demolition of the item(s); or~~]

(3) [~~(4)~~] the death of the policyholder.

(c) Any unearned premium after the application of the minimum retained premium in this section must be refunded pro rata.

(d) [~~(c)~~] TWIA may [~~The Association shall~~] not issue a new or renewal policy to an applicant who owes premium on a prior TWIA [~~Association~~] policy.

(e) [~~(d)~~] The minimum retained premium may [~~shall~~] not create or extend coverage beyond the policy's effective cancellation date.

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

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

TRD-202403568
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 676-6555

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SUBCHAPTER J. RULES TO IMPLEMENT THE AMUSEMENT RIDE SAFETY INSPECTION AND INSURANCE ACT

28 TAC §§5.9001 - 5.9004, 5.9006 - 5.9014

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§5.9001 - 5.9004 and 5.9006 - 5.9014, concerning inspection of amusement rides. Proposed amendments implement House Bill 1553, 88th Legislature, 2023, which revised the definition of "amusement ride" in Occupations Code §2151.002. The proposed amendments also make nonsubstantive updates to the sections.

EXPLANATION. HB 1553 revised the definition of "amusement ride" in Occupations Code §2151.002 to exclude from the definition water slides in which passengers are carried along a course that is less than 200 feet in length, are substantially constructed from vinyl or vinyl-coated polyester, and are not mechanically inflated using a continuous airflow device. The current definition of "amusement ride" in §5.9002 uses the language of the previous statutory definition, so the rule text needs to be updated to reflect the change made to the statute.

To reduce the need for additional rule amendments if the definition of "amusement ride" in Occupations Code §2151.002 is revised in the future, the definition of "amusement ride" is changed to state that it is "as defined in Occupations Code §2151.002," rather than restating the statute's definition in rule text. Similar amendments are made to the definitions of other terms that are already defined in Occupations Code §2151.002.

Proposed amendments also make revisions to the rule text to address changes since the rules were last adopted or amended, including revising text for consistent use of form names and to update form revision dates where necessary, and updating the program area name and mailing address for form submissions.

In addition, amendments make nonsubstantive changes for consistency with current TDI rule text drafting preferences. These include revising use of the word "shall" for consistency with TDI's current plain language preferences; and removing the unnecessary designation of "TDI" as an acronym in separate sections, since "TDI" is a defined term applicable throughout the subchapter. These amendments are not noted in the following descriptions of the sections unless it is necessary or appropriate to provide additional context or explanation.

Details of the sections' proposed amendments follow.

Section 5.9001. Amendments to §5.9001 update citations to the Occupations Code in the section's initial sentences and in paragraph (1), update citations to the Insurance Code in paragraphs (4) and (6), and revise punctuation in paragraph (7).

Section 5.9002. Amendments to §5.9002 revise the definitions of "Amusement ride," "Class A amusement ride," "Class B amusement ride," and "Mobile amusement ride" to remove text that repeats statutory language. Amendments instead define the terms by pointing to the definitions in Occupations Code §2151.002. Amendments also update citations to the Occupations Code and other codes throughout the section, replace the word "five" with the numeral "5" in paragraph (6)(B), lowercase "commissioner of insurance" in paragraph (7), remove a duplicate acronym designation for "ASTM" in paragraph (8), and replace "his or its" with "that person or entity's" in paragraph (13).

Section 5.9003. An amendment to §5.9003 updates the internet address where an amusement ride owner or operator may pay the annual fee required by the Amusement Ride Safety Inspection and Insurance Act. Additional changes revise punctuation, replace the phrase "over the Internet" with the word "online," and remove an unnecessary use of the word "online."

Section 5.9004. Amendments throughout §5.9004 update citations to the Occupations Code and make minor nonsubstantive wording and grammar changes for clarity. References to forms in subsections (b)(5), (b)(8), (c), (c)(11), (c)(12), (e)(3), and (f) are also revised, as are program area names in subsections (c)(11), (c)(12), (e)(3), and (f). Amendments in subsection (b)(6), (c)(7), and (d) change the words "prior to" to "before." Amendments also replace TDI's old mailing address with its new mailing address and provide TDI's website where referenced forms may be obtained in subsections (c)(11), (e)(3), and (f), and an amendment in subsection (f) provides the TDI mailing address where the referenced form may be obtained. Another amendment replaces the word "line" with "lines" and "prior to" with "before."

Section 5.9006. Amendments to §5.9006 clarify and improve the readability of signage requirements in paragraph (1) and replace the words "at which" with "where" in paragraph (3).

Section 5.9007. Amendments to §5.9007 update references to forms in subsections (a)(1) and (b)(1). Amendments also update the applicable program area name and replace TDI's old mailing address with its new mailing address in subsections (a)(1) and (b)(1), and amendments in subsections (a)(1) and (b)(1) provide TDI's website where the referenced forms may be obtained. Plain language changes make minor nonsubstantive wording, punctuation, and grammar changes throughout the section for clarity.

Section 5.9008. An amendment to the introductory sentence of §5.9008 updates a citation to the Occupations Code. Additional amendments change the words "prior to" to "before" in paragraph (1) and revise a reference to a form in paragraph (2).

Section 5.9009. Amendments to §5.9009 make minor nonsubstantive wording, punctuation, and grammar changes throughout the section for clarity and update a citation to the Occupations Code.

Section 5.9010. Amendments to §5.9010 replace the words "at which" with "where" in subsection (a) and revise references to forms in subsections (a) and (b).

Section 5.9011. An amendment to §5.9011 removes the unnecessary designation of the acronym "ASTM." "ASTM" is a defined term applicable throughout the subchapter, so it is not necessary to establish it as an acronym in the section.

Section 5.9012. Amendments to §5.9012 remove or replace the word "such" in subsections (a) and (d) and remove the phrase "set forth" in subsection (d). Citations to the Occupations Code in subsections (e) and (f) are also revised. Amendments also

make minor nonsubstantive wording and punctuation changes throughout the section for clarity.

Section 5.9013. Amendments to §5.9013 update a statutory reference to use the defined term "the Act," add the word "with," change "his/her agent's" to "the state attorney general's agents," and insert a comma.

Section 5.9014. Amendments to §5.9014(a) change "he/she" to "the owner/operator," insert the word "it," and add the words "of this title" to a reference to an Administrative Code section. An amendment to subsection (b) revises text for better consistency with statutory language concerning compliance with the rules and statutes. Amendments in subsections (b) and (c) update citations to the Occupations Code.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jacob Martinez, manager in the Inspections Office, Property and Casualty Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Mr. Martinez made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Martinez does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Martinez expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Occupations Code §2151.002 as amended by HB 1553.

Mr. Martinez expects that the proposed amendments will not increase the cost of compliance with Occupations Code §2151.002 because they do not impose requirements beyond those in the statute. The amendments merely update a definition for consistency with a statutory amendment and make additional nonsubstantive updates. As a result, any cost associated with the proposal results from the enforcement or administration of Occupations Code §2151.002.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities because the amendments merely update a definition for consistency with a statutory change and make additional nonsubstantive revisions. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 16, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 16, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §§5.9001 - 5.9004 and 5.9006 - 5.9014 under Occupations Code §§2151.051, 2151.1021, and 2151.105 and Insurance Code §36.001.

Occupations Code §2151.051 provides that the commissioner administer and enforce Occupations Code Chapter 2151, which addresses the regulation of amusement rides.

Occupations Code §2151.1021 provides that the commissioner adopt rules requiring operators of mobile amusement rides to perform inspections of mobile amusement rides, including rules requiring daily inspections of safety restraints.

Occupations Code §2151.105 provides that the commissioner adopt rules requiring that a sign be posted to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law. The rules must require the sign to be posted at the principal entrance to the site at which an amusement ride is located or at any location on that site at which tickets for an amusement ride are available.

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

CROSS-REFERENCE TO STATUTE. The amendments to §§5.9001 - 5.9004 and 5.9006 - 5.9014 implement Occupations Code §§2151.002, 2151.051, 2151.1021, 2151.105, and 2151.152.

§5.9001. Purpose and Scope.

It is the purpose of this subchapter to aid in implementing the Amusement Ride Safety Inspection and Insurance Act (Occupations Code, Chapter 2151, concerning Regulation of Amusement Rides) [(hereinafter referred to as the Act)]. The provisions of this subchapter are in addition to, and not in lieu of, the provisions of Occupations Code Chapter 2151 [the Act (Title 13, Occupations Code, Chapter 2151)]. This subchapter applies to:

(1) any amusement ride as defined in Occupations Code [the Act,] §2151.002, concerning Definitions;

(2) the owner and operator of any amusement ride;

(3) any agent or representative of the owner or operator of any amusement ride;

(4) any insurer, including any surplus lines insurer, as defined in [the] Insurance Code Chapter 981, concerning Surplus Lines Insurance, and any other nonadmitted company;

(5) any agent or representative of any insurer, including surplus lines agents, as defined in [the] Insurance Code Chapter 981 and agents of any nonadmitted company;

(6) any independently procured policy subject to [the] Insurance Code Chapter 101, concerning Unauthorized Insurance, §101.001 et seq., providing bodily injury liability insurance for amusement rides; and

(7) any inspector working as an independent contractor or as an employee of an insurance carrier performing amusement ride inspections on behalf of[,] or under contract with[,] an insurance carrier.

§5.9002. Definitions.

The following words and terms, when used in this subchapter, [shall] have the following meanings.

(1) Act--The Amusement Ride Safety Inspection and Insurance Act, (Occupations Code Chapter 2151, concerning Regulation of Amusement Rides) [(Title 13, Occupations Code, Chapter 2151)].

(2) Amusement ride--As defined in Occupations Code §2151.002, concerning Definitions. [Any mechanical, gravity, or water device or devices that carry or convey passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement, but such term does not include:]

[(A) any coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator;]

[(B) nonmechanized playground equipment, including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, playground slides, trampolines, and physical fitness devices; or]

[(C) a challenge course or any part of a challenge course, as defined in §2151.107 of the Act to mean a challenge, ropes, team building, or obstacle course that is constructed and used for educational, team and confidence building, or physical fitness purposes, if the person who operates the challenge course has an insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the operator against liability for injury to persons arising out of the use of the challenge course, in an amount not less than:]

[(i) for facilities with a fixed location:]

[(I) $100,000 bodily injury and $50,000 property damage per occurrence, with a $300,000 annual aggregate; or]

[(II) $150,000 per occurrence combined single limit, with a $300,000 annual aggregate; and]

[(ii) for facilities other than those with a fixed location:]

[(I) $1,000,000 bodily injury and $500,000 property damage per occurrence; or]

[(II) $1,500,000 per occurrence combined single limit.]

(3) ASTM--The American Society for Testing and Materials.

(4) Class A amusement ride--As defined in Occupations Code §2151.002. [An amusement ride with a fixed location and designed primarily for use by children 12 years of age or younger.]

(5) Class B amusement ride--As defined in Occupations Code §2151.002. [Any amusement ride not defined as a Class A amusement ride.]

(6) Class B motorized train amusement ride--A Class B amusement ride that:

(A) consists of a motorized vehicle that tows one or more separate passenger cars in a manner similar to a train but without regard to whether the vehicle and cars operate on a fixed track or course;

(B) does not travel under its own power in excess of 5 [five] miles per hour;

(C) has safety belts for all passengers;

(D) does not run on an elevated track;

(E) has passenger seating areas enclosed by guardrails or doors; and

(F) does not have passenger cars that rotate independently from the motorized vehicle.

(7) Commissioner--The commissioner of insurance [Commissioner of Insurance].

(8) Inspector--A person qualified by training, education, or experience to conduct safety inspections of amusement rides or devices on behalf of an insurance company and in accordance with the ASTM [American Society for Testing and Materials (ASTM)], the manufacturer's standards and criteria, or standards established by the insurance company.

(9) Inspection--A procedure to be conducted by an inspector to determine whether an amusement ride or device is being assembled, maintained, tested, operated, and inspected in accordance with the current ASTM standards, the manufacturer's, or insurer's standards, whichever is the most stringent, and that determines the current operational safety of the ride or device.

(10) Interlocal agreement--An interlocal contract as defined in Government Code §791.003(2), concerning Definitions.

(11) Local government--A county, municipality, or special district; a junior college district, or other political subdivision of this state or another state; a local government corporation created under Transportation Code, Chapter 431, Subchapter D, concerning Local

Government Corporations [~~Chapter 431~~]; a political subdivision corporation created under Local Government Code Chapter 304, concerning Energy Aggregation Measures for Local Governments; a local workforce development board created under Government Code §2308.253, concerning Creation of Local Workforce Development Boards; or a combination of two or more of such entities.

(12) Mobile amusement ride--As defined in Occupations Code §2151.002. [~~An amusement ride that is designed or adapted to be moved from one location to another and is not fixed at a single location.~~]

(13) Owner/operator--The person or entity responsible for an amusement ride and that person or entity's [~~his or its~~] agents or representatives. A separate reference to owner or operator is [~~shall be~~] deemed to include owner/operator.

(14) TDI--The Texas Department of Insurance.

§5.9003. Administration and Enforcement.

TDI [~~The Texas Department of Insurance~~] is required by the Act to administer and enforce the Act. Owners/operators operating amusement rides must pay a fee of $40 per year for each amusement ride subject to the Act. The fees must be paid by check or money order made payable to TDI [~~the Texas Department of Insurance~~]; or, if paying online [~~over the Internet~~], the fee must be submitted through the following website: https://feepay.txapps.texas.gov/tdi/amusement-ride-sticker-payments [~~Texas OnLine Project, as directed by the Texas OnLine Authority~~], which may add a surcharge for the [~~online~~] transaction. Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable and nontransferable.

§5.9004. Amusement Ride Operation Requirements.

(a) Operational Requirements. An owner/operator may not operate an amusement ride unless the owner/operator has satisfied and is continuing to satisfy the requirements in subsections (a) - (f) of this section.

(b) Insurance. The owner/operator must file with TDI [~~the Texas Department of Insurance (TDI)~~] the insurance policy or a photocopy of the insurance policy certifying that the policy is a true copy of the insurance policy provided to the insured as required by Occupations Code [~~the Act,~~] Chapter 2151, concerning Regulation of Amusement Rides.

(1) Occupations Code [~~The Act,~~] §2151.101, concerning Requirements for Operation, requires that any person who operates an amusement ride must have currently in force a combined single limit or split limit insurance policy written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by [~~the~~] Insurance Code[~~,~~] Chapter 981, concerning Surplus Lines Insurance, or have an independently procured policy subject to [~~the~~] Insurance Code[~~,~~] Chapter 101, concerning Unauthorized Insurance, insuring the owner or operator against liability for injury to persons arising out of use of the amusement ride in an amount of not less than:

(A) for Class A amusement rides:

(i) $100,000 bodily injury and $50,000 property damage per occurrence with a $300,000 annual aggregate; or

(ii) $150,000 per occurrence combined single limit with a $300,000 annual aggregate;

(B) for Class B amusement rides, except for Class B motorized train amusement rides:

(i) $1,000,000 bodily injury and $500,000 property damage per occurrence; or

(ii) $1,500,000 per occurrence combined single limit.

(2) Occupations Code [~~The Act,~~] §2151.1011, concerning Liability Insurance for Certain Amusement Rides, requires that any person who operates a Class B motorized train amusement ride must have an insurance policy currently in effect written by an insurance company authorized to conduct business in this state or by a surplus lines [~~line~~] insurer, as defined by Insurance Code Chapter 981, or have an independently procured policy subject to Insurance Code Chapter 101, insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than $1 million in aggregate for all liability claims occurring in a policy year.

(3) A local government may satisfy the insurance requirements prescribed by paragraphs (1) and (2) of this subsection by obtaining liability coverage through an interlocal agreement.

(4) The policy or certified photocopy of the policy must be complete, including all applicable coverage forms and endorsements. Certificates of insurance will not be acceptable for this purpose.

(5) The policy must contain a schedule listing by name and serial number if applicable to [~~of~~] each amusement ride insured by the policy. In the event of additions or deletions of amusement rides during the policy term, such changes must [~~shall~~] be shown on a change endorsement, a copy of which must be submitted to TDI. Additions will also require an inspection certificate (TDI Form AR-100[~~,~~] (Amusement Ride Certificate of Inspection/Reinspection) [~~Inspection/Re-Inspection~~], revised effective February 2022 [~~Revised Effective October, 2005~~]) and a $40 fee for each amusement ride to be submitted to TDI before [~~prior to~~] any operation of the added amusement ride. Additions or deletions must [~~shall~~] be filed not [~~no~~] later than 10 days after the change.

(6) In the event of policy cancellation by either the insured owner/operator or the insurance company, the company must [~~shall~~] furnish notice of [~~such~~] cancellation to TDI as soon as possible, but not later than 10 days before the [~~prior to~~] cancellation.

(7) The owner/operator will provide to any sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public[~~,~~] a photocopy of the inspection certificate and the insurance policy required by this section.

(8) If the owner/operator obtains an additional amusement ride device, the ride must [~~shall~~] be added to the insurance policy and a copy of the endorsement submitted to TDI along with the required inspection certificate (TDI Form AR-100[~~, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005~~]) and the $40 fee before [~~prior to~~] operation in Texas.

(c) Inspection/Reinspection Certificate. The owner/operator must also file the original amusement ride inspection certificate (TDI Form AR-100) [~~(TDI Form AR-100, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005)~~] certifying with respect to each amusement ride the matters required by the Act. A separate inspection certificate is required for each amusement ride that shows the ride's [~~showing the~~] name, serial number, and manufacturer [~~of the ride~~], as well as the inspector's name, the owner/operator, a picture of the ride in an operable state taken at the time of the inspection, and other information as requested. The serial number, name, and description [~~and name/description~~] of the amusement ride must [~~shall~~] coincide with the same information identified on the insurance policy. If major components of the ride (for example, the crane used in a bungee operation) [~~, i.e., the crane used in a bungee operation,~~] are interchangeable, then the name, serial number, and man-

ufacturer of the inspected component must [shall] be included on the inspection certificate. The inspection certificate is valid for a period of one year, and for expedience in processing, it should, if possible, coincide with the effective date of the insurance policy. The inspection must [shall] be conducted by the insurer or a person with whom the insurer has contracted. The inspector must [shall] provide both the insurer and owner/operator with a written certificate that the inspection has been made and that the amusement ride meets the standards for coverage.

(1) The inspection certificate may [shall] not be submitted to TDI until all discrepancies have been resolved and all necessary repair(s) or replacement(s) required for the amusement ride to meet the standards for coverage have been made.

(2) The inspection required by Occupations Code §2151.101(a) [of the Act] must include a method to test the stress- and wear-related damage of critical parts of a ride that the manufacturer of the amusement ride determines are reasonably subject to failure as the result of stress and wear and could cause injury to a member of the [general] public as a result of a failure. The inspection must [shall] include a review of the owner/operator's daily inspection records and inspection and maintenance program in accordance with ASTM practice or the manufacturer's guidelines/inspection criteria. The inspection must [shall] be conducted with the amusement ride or device in an operable state and include an evaluation of the device for a minimum of one complete operating cycle.

(3) If the amusement ride or device consists of interchangeable major components, such as cranes used in bungee jumping operations, the crane or major component used during the inspection is [shall be] considered an integral part of the amusement ride and the inspection certificate must [shall] include the manufacturer and serial number of the crane or major component inspected with the amusement ride. If the inspected crane or major component is replaced by another unit, a new inspection is required to include the new identification and serial number of the replacement unit.

(4) Any bungee jumping amusement device must [shall] include a safety net or air bag as an integral part of the ride. The safety net or air bag must [shall] be of sufficient size to cover the jump zone. The safety net or air bag must [shall] be rated for the maximum free-fall [free fall] height possible from the jump platform used. If the jump area is over water, the water must be of sufficient depth to provide an adequate safety cushion. The safety net or air bag must [shall] be inspected as an integral part of the amusement ride.

(5) The inspection certificate must [shall] be signed by a representative of the insurer.

(6) If the amusement ride or device does not meet the inspection standards, the amusement ride may [shall] not be operated until all necessary repair(s) and/or replacement(s) have been made and the ride reinspected and an inspection/reinspection [inspection/re-inspection] certificate issued.

(7) It is [shall be] the responsibility of the amusement ride owner/operator to complete the following before [prior to] any operation of the ride:

(A) to request the insurer to certify that the insurance policy and the inspection certificate are true copies by an official of the insurer;

(B) to receive the completed policy and inspection certificate from the insurer if they elect to provide coverage; and

(C) to submit a certified copy of the insurance policy, the original inspection certificate, and the fee to TDI for review. A planning factor of 10 days should be allowed for TDI review and approval before [prior to] any operation of the ride. Errors of omission or commission on either the policy or inspection certificate may delay TDI approval.

(8) Immediately after any injury or death involving equipment failure, structural failure, or operator error, the amusement ride/device must [shall] be closed for public use until a new inspection is performed and an inspection/reinspection [inspection/re-inspection] certificate is submitted to TDI.

(9) In addition to the requirements of paragraphs (7) and (8) of this subsection, a mobile amusement ride on which a death occurs may not be operated until the requirements of Occupations Code §2151.1526, concerning Prohibition of Mobile Amusement Ride Operation, [of the Act] are met.

(10) In addition to the requirements of this subsection, an amusement ride whose operation has been prohibited by a municipal, county, or state law enforcement official under Occupations Code [pursuant to] §2151.152, concerning Other Enforcement Actions, or §2151.1525, concerning Prohibition of Amusement Ride Operation, [of the Act] may not be operated until the requirements of that section are met. Any on-site corrections that are made under [pursuant to] the requirements of Occupations Code §2151.1525 [of the Act] must be presented to the appropriate municipal, county, or state law enforcement official.

(11) TDI Form AR-100[,] (Amusement Ride Certificate of Inspection/Reinspection), revised effective February 2022 [Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005], is adopted by reference and must [shall] be used for each filing of an amusement ride inspection certificate required by this section. This form [(the Amusement Ride Certificate of Inspection/Re-Inspection)] is published by TDI [the Texas Department of Insurance] and copies of the form may be obtained from the Inspections Office, MC: PC-INSP, [Loss Control Regulation Division, Mail Code 103-9A,] Texas Department of Insurance, P.O. Box 12030, [149104,] Austin, Texas 78711-2030, or on TDI's website at www.tdi.texas.gov/forms/formlisting.html. [78714-9104.]

(12) The inspection/reinspection [inspection/re-inspection] certificate, insurance policy, and fee must [shall] be submitted to the Inspections Office [TDI, Loss Control Regulation Division,] for review. If the inspection/reinspection [inspection/re-inspection] certificate and insurance policy meet the requirements of this subchapter, the [inspection/re-inspection] certificate will be date-stamped and forwarded to the owner/operator with TDI Form AR-101 (Texas Amusement Ride Compliance Sticker), effective [Effective] May[,] 2000, and adopted [herein] by reference. TDI Form AR-101 will indicate the expiration date of the inspection certificate and must [shall] be affixed to a major component of the amusement ride in a location visible to the ride participants.

(13) The records of the inspections required by this section will [shall] be made available for inspection by any municipal, county, or state law enforcement official at the location where [at which] the amusement ride is operated.

(d) Insurance Policy and Inspection Certificate Renewal. Renewal of the policy or inspection certificate must [shall] be completed with sufficient lead time to provide these documents to TDI with a minimum of 10 working days to review and approve the documents before [prior to] the expiration of either the policy or the inspection certificate.

(1) In the event of policy cancellation or expiration, the policy must [shall] promptly be replaced or renewed without any lapse in coverage while the amusement ride is offered for use by the public. Any operation without a valid and current insurance policy

and current inspection certificate constitutes an illegal operation and is subject to the enforcement provisions and penalties under [~~pursuant to~~] Occupations Code §§2151.151, concerning Injunction; 2151.152; [~~,~~] 2151.1525; [~~,~~] 2151.1526; [~~,~~] and 2151.153, concerning Criminal Penalties [~~of the Act~~]. The sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public must [~~shall~~] be notified by the owner/operator of the coverage discontinuance.

(2) A renewal certificate of insurance will be acceptable for the purpose of this subsection, if the renewal certificate shows:

(A) insurance coverage insuring the owner or operator against liability arising out of the use of the amusement ride/device in an amount of not less than:

(i) for Class A amusement rides:

(I) $100,000 bodily injury and $50,000 property damage per occurrence with a $300,000 annual aggregate; or

(II) $150,000 per occurrence combined single limit with a $300,000 annual aggregate;

(ii) for Class B amusement rides, except for Class B motorized train amusement rides:

(I) $1,000,000 bodily injury and $500,000 property damage per occurrence; or

(II) $1,500,000 per occurrence combined single limit;

(iii) for Class B motorized train amusement rides, $1,000,000 in aggregate for all liability claims occurring in a policy year; and

(B) a policy term that includes the period of time during which the amusement ride will be offered for public use.

(e) Daily Inspections. In addition to the inspection required under this section, the owner/operator who operates a mobile amusement ride must perform and record daily inspections of the mobile amusement ride including safety restraints on each mobile amusement ride.

(1) Records of the daily inspections must be available for inspection by any municipal, county, or state law enforcement official at the location where [~~at which~~] the amusement ride is operated, and the records must be maintained with the amusement ride for a period of one year.

(2) The daily inspection record must include an inspection of the following:

(A) safety belts, bars, locks, and other passenger restraints;

(B) all automatic and manual safety devices;

(C) signal systems, brakes, and control devices;

(D) safety pins and keys;

(E) fencing, guards, barricades, stairways, and ramps;

(F) ride structure and moving parts;

(G) tightness of bolts and nuts;

(H) blocking, support braces, and jackstands;

(I) electrical equipment;

(J) lubrication as per manufacturer's instructions;

(K) hydraulic and/or pneumatic equipment;

(L) communication equipment necessary for operation (if applicable);

(M) operation of ride prior to opening through one complete cycle of proper functioning; and

(N) any other component that is included in the manufacturer's specific ride maintenance and safety checks or current ASTM standards, or that the operator or person performing the daily inspection deems necessary for inspection.

(3) TDI [~~The Texas Department of Insurance (TDI)~~] adopts and incorporates [~~herein~~] by reference TDI Form AR-300 (Texas Amusement Ride Safety Inspection and Insurance Act Daily Inspection Record), revised effective May 2022 [~~Effective May, 2000~~]. This form is published by TDI, and copies of the form may be obtained from the Inspections Office, MC: PC-INSP, [~~Loss Control Regulation Division, Mail Code 103-9A,~~] Texas Department of Insurance, P.O. Box 12030 [~~149104~~], Austin, Texas 78711-2030, or on TDI's website at www.tdi.texas.gov/forms/formlisting.html. [~~78714-9104.~~] This form sets forth the inspection requirements of this subsection and also includes the name of the device, location (city, state), date of the inspection, manufacturer and serial number, and owner/operator. The form must be signed by the person performing the daily inspection and the inspector's [~~his~~] supervisor.

(4) Daily inspection record forms used by industry associations, individual operators, or individual manufacturers may be used to fulfill the requirements of this subsection if the forms contain all of the inspection items and elements set forth in this subsection and the TDI Form AR-300 [~~(Daily Inspection Record)~~].

(5) In addition to the requirements of this subsection, the owner/operator who operates a mobile amusement ride must also follow the manufacturer's specific checklist for specific ride maintenance and safety checks.

(f) Schedule of Operations. In addition to the inspection requirements of this section, TDI Form AR-102 (Amusement Ride Schedule of Operations in Texas), revised effective May 2022, which [~~, Amusement Ride Schedule of Operations in Texas, Effective May, 2000,~~] is adopted [~~herein~~] by reference, must be used to provide [~~and shall include~~] a schedule of operating locations and dates for each six-month period for mobile operations. This form is published by TDI, and copies of the form may be obtained from the Inspections Office, MC: PC-INSP, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030, or on TDI's website at www.tdi.texas.gov/forms/formlisting.html. This information must [~~shall~~] be provided by the owner/operator to the Inspections Office, MC: PC-INSP [~~TDI, Loss Control Regulation Division, Mail Code 103-9A~~], Texas Department of Insurance, P.O. Box 12030 [~~149104~~], Austin, Texas 78711-2030 [~~78714-9104~~], a minimum of 10 days before [~~in advance of~~] each six-month period. Any changes in the schedule must be submitted on an amended TDI Form AR-102 to TDI by the owner/operator within 10 days of the [~~such~~] change.

§5.9006. Public Information Sign.

An owner/operator who operates an amusement ride in this state must [~~shall~~] post a sign to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law.

(1) The sign must be at least 20 inches in width and 30 inches in length and must be in at least 50-point[~~, all capital~~] block letters, bold-faced red-on-white-background type and must be readable from a distance of 25 feet.

(2) The sign must be printed in both English and Spanish.

(3) The sign must be posted at the principal entrance(s) to the site at which an amusement ride is located or at any location on that site where [~~at which~~] tickets for an amusement ride are available.

(4) The sign must state the following:
Figure: 28 TAC §5.9006(4) (No change.)

§5.9007. Quarterly Reports.

(a) An owner/operator who operates an amusement ride (the operator) must [~~shall~~] maintain accurate records of each injury caused by the ride in any state in which the injury results in death or requires medical treatment. An injury is caused by the ride if the injury occurs on the ride or is in any way associated with the ride.

(1) TDI [~~The Texas Department of Insurance (TDI)~~] adopts and incorporates by reference TDI Form AR-800 (Quarterly Injury Report Amusement Ride Safety Inspection and Insurance Act), revised effective May 2022 [~~(Quarterly Injury Report) Revised Effective October, 2005~~]. This form is published by TDI, and copies of the form may be obtained from the Inspections Office, MC: PC-INSP [~~Loss Control Regulation Division, Mail Code 103-9A~~], Texas Department of Insurance, P.O. Box 12030 [~~149104~~], Austin, Texas 78711-2030, or on TDI's website at www.tdi.texas.gov/forms/formlisting.html. [~~78714-9104.~~] The operator must [~~shall~~] file an injury report on TDI Form AR-800 with TDI on a quarterly basis and must [~~shall~~] include in the report a description of each verifiable injury caused by a ride that results in death or an injury that requires medical treatment.

(2) For purposes of this section, the term "medical treatment" includes treatment (other than first aid) administered by a physician or by registered professional personnel under the standing orders of a physician.

(3) For purposes of this section, the term "medical treatment" does not include first-aid treatment (one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and any other minor injuries that do not ordinarily require medical care) even though treatment is provided by a physician or by registered professional personnel.

(4) The quarterly injury report is not required of the operator for any quarter in which no reportable injury occurs in any state.

(b) An owner/operator who operates an amusement ride must [~~(the operator) shall~~] maintain accurate records of any governmental action taken in any state relating to that particular amusement ride, including an inspection resulting in the repair or replacement of equipment used in the operation of the amusement ride.

(1) TDI adopts and incorporates [~~herein~~] by reference TDI Form AR-801 (Quarterly Governmental Action Report Amusement Ride Safety Inspection and Insurance Act), revised effective May 2022. [~~(Quarterly Governmental Action Report) Effective May, 2000.~~] This form is published by TDI, and copies of the form may be obtained from the Inspections Office, MC: PC-INSP, [~~Loss Control Regulation Division, Mail Code 103-9A,~~] Texas Department of Insurance, P.O. Box 12030 [~~149104~~], Austin, Texas 78711-2030, or on TDI's website at www.tdi.texas.gov/forms/form13amusement.html. [~~78714-9104.~~] The owner/operator must [~~operator shall~~] file a governmental action report on TDI Form AR-801 with TDI on a quarterly basis and must [~~shall~~] include in the report a description of each governmental action taken in any state during the quarter covered by the report relating to that particular amusement ride, including an inspection resulting in the repair or replacement of equipment used in the operation of the amusement ride.

(2) For purposes of this section, the term "governmental action" includes an action in the exercise of police power or in the exercise of constitutional, legislative, administrative, or judicial powers conferred on federal, state, or local government, and that [~~which~~] results in any notification to the owner/operator relating to the amusement ride, including notifications of any perceived deficiencies regarding the safety of the amusement ride or the possibility of actual or imminent noncompliance [~~non-compliance~~] with applicable laws,[~~;~~] or any action taken in an administrative law forum or court of law, including private civil lawsuits.

(3) The quarterly governmental action report is not required of the owner/operator [~~operator~~] for any quarter in which no reportable governmental action was taken in any state.

(c) An owner/operator who operates an amusement ride [~~(the operator)~~] must [~~shall~~] maintain for not less than two years at the location where the ride is operated, for inspection by a municipal, county, or state law enforcement official, a photocopy of any quarterly report required under subsection (a) or (b) of this section to be filed with the commissioner.

§5.9008. Filing Affidavit.
In addition to the requirements of Occupations Code [~~the Act,~~] §2151.101(b), concerning Requirements for Operation, the following requirements apply.

(1) In the event a contract for use of an amusement ride provides that the amusement ride will not be operated until after July 1 but before [~~prior to~~] December 31 of any year, then timely filing of the insurance policy and inspection certificate must [~~shall~~] be made with [~~Texas Department of Insurance (~~]TDI[~~)~~] prior to the operation of the amusement ride. In no event may an amusement ride be operated before the inspection certificate, insurance policy, and fee are submitted to TDI as required by §5.9004 of this title (relating to Amusement Ride Operation Requirements).

(2) If the amusement ride is inspected more than once a year due to the requirements of this subchapter, a supplemental inspection certificate (TDI Form AR-100[~~,~~] (Amusement Ride Certificate of Inspection/Reinspection), revised effective February 2022 [~~Amusement Ride Certificate of Inspection/ Re-Inspection, Revised Effective October, 2005~~]) must be submitted to TDI not later than 15 days after each subsequent inspection. An additional annual $40 fee is not required for supplemental inspection certificates.

§5.9009. Information Request.
TDI [~~The Texas Department of Insurance (TDI)~~] may request[~~,~~] from the owner/operator, sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public[~~,~~] information concerning whether [~~or not~~] insurance in the amount required by [~~Title 13,~~] Occupations Code[~~,~~] Chapter 2151, concerning Regulation of Amusement Rides, or this subchapter is in effect for [~~on~~] the amusement ride. The owner/operator, sponsor, lessor, landowner, or other person to whom the information request is made must [~~shall~~] respond to TDI within 15 days after the request is made. The response must be by written verification. For the purpose of verification, the written response must [~~shall~~] include a copy of the declarations page of the policy insuring the amusement ride owner/operator [~~owner or operator~~].

§5.9010. Confirmation of Required Insurance and Inspection Certificate; Rule Construction.

(a) After the required insurance policy and inspection certificate, including certified check or money order for the total amount of annual fee have been received by TDI [~~the Texas Department of Insurance (TDI)~~] and found to be in compliance with the Act and this subchapter, the original amusement ride inspection certificate (TDI Form AR-100[~~,~~] (Amusement Ride Certificate of Inspection/Reinspection),

revised effective February 2022, [~~Inspection/ Re-Inspection, Revised Effective October, 2005~~]) will be stamped "Texas Department of Insurance Amusement Ride Program," will include the date of approval, and will be returned to the insured owner or operator as evidence of compliance with filing requirements. The returned inspection certificate must be kept on the premises where [~~at which~~] the amusement ride is offered for public use and made available to any person granted authority under the Act to investigate compliance with the Act. A TDI Form AR-101[~~,~~] (Texas Amusement Ride Compliance Sticker), effective [~~Effective~~] May[~~,~~] 2000, will be returned with each inspection certificate. This weatherproof form must [~~shall~~] be affixed to the appropriate ride or device in a place easily visible to all ride participants.

(b) If the required insurance policy, inspection certificate, and/or annual fee is found not to be in compliance with the Act, this subchapter, or other applicable law, notice will be provided to the insured owner or operator or their insurer by TDI indicating the necessary action(s) for compliance. If noncompliance is due to mechanical problems or failure to meet insurance standards, another TDI Form AR-100 must [~~, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005 shall~~] be submitted to TDI for approval after the necessary corrective action(s) or repair(s) have been completed by the owner or operator. After the necessary actions have been completed by the owner/operator to the satisfaction of TDI, the TDI Form AR-100[~~, Revised Effective October, 2005~~] will be stamped and mailed to the insured owner or operator as described in subsection (a) of this section.

(c) Nothing in this subchapter may be construed to authorize the operation of an amusement ride until all applicable requirements of law are met.

§5.9011. Standards and Compliance.

An amusement ride covered by the Act that is sold, maintained, or operated in this state must [~~shall~~] comply with current standards established by the ASTM [~~American Society for Testing and Materials (ASTM)~~]. Those standards are minimum standards. To the extent that the standards of the ASTM [~~American Society for Testing and Materials~~] conflict with the requirements of the Act, the more stringent requirement or standard applies.

§5.9012. Denial of Entry to Amusement Rides; Prohibiting Operation of Amusement Rides.

(a) The owner/operator of an amusement ride or device must [~~shall~~] have the ability to view patrons so that no one is permitted on a [~~such~~] ride or device who appears to be in an intoxicated, drugged, or other condition of health that could be detrimental to the safety of the patron, [~~themselves,~~] other patrons, the operator, or spectators.

(b) The owner/operator must [~~shall~~] exercise reasonable control to prohibit the wearing of improper attire or lack of attire as deemed appropriate for the ride or device.

(c) The owner/operator must [~~will~~] prohibit the carrying of any article that [~~which~~] might be dropped or thrown from the ride or device.

(d) The restrictions [~~set forth~~] in this section and others that will preclude participation on an amusement ride or device must [~~shall~~] be posted in plain view at the entrance to the ride. No operator may waive these [~~such~~] restrictions.

(e) A municipal, county, or state law enforcement official may enter and inspect without notice any amusement ride or device at any time to ensure public safety, and the owner/operator of an amusement ride must comply with the requirements of Occupations Code §2151.152 [~~of the Act~~], concerning Other Enforcement Actions, including providing copies of the inspection certificate and insurance policy and cooperating in the prohibiting of the operation of the amusement ride, if applicable.

(f) A municipal, county, or state law enforcement official may immediately prohibit operation of an amusement or device ride as set forth in Occupations Code §§2151.152 [~~§2151.152~~]; 2151.1525, concerning Prohibition of Amusement Ride Operation; [~~,§2151.1525~~] or 2151.1526, concerning Prohibition of Mobile Amusement Ride Operation [~~§2151.1526 of the Act~~], and a person may not operate the amusement ride until the requirements of Occupations Code §§2151.152, 2151.1525, and 2151.1526 [~~of the Act~~] are met.

§5.9013. Injunctions.

Any person who operates an amusement ride, amusement attraction, or amusement device, and offers such for the public, must meet the requirements of the [~~Texas Amusement Ride Safety Inspection and Insurance~~] Act. Failure to comply with or violations of the Act constitute a Class B misdemeanor. Each day of public operation constitutes [~~shall constitute~~] a separate and distinct offense. The district attorney of each county in which an amusement ride or device is operated or, on request of the commissioner of insurance, the state attorney general, or one of the state attorney general's [~~his/her~~] agents, may seek an injunction against any person operating an amusement ride or device in violation of the Act or in violation of this subchapter.

§5.9014. Penalties; Enforcement.

(a) An amusement ride owner/operator commits an offense if the owner/operator [~~he/she~~] fails to comply with any requirement under §5.9004 of this title (relating to Amusement Ride Operation Requirements), §5.9006 of this title (relating to Public Information Sign), §5.9007 of this title (relating to Quarterly Reports), or §5.9008 of this title (relating to Filing Affidavit). An owner/operator, sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public commits an offense if the owner/operator [~~he/she~~] fails to provide information required by this subchapter or provides false information under §5.9004(a)(2)(G) of this title. Any offense under this subchapter is considered a Class B misdemeanor. Each time a violation of this subchapter is committed it constitutes a separate offense.

(b) In addition to action by the state attorney general, local municipal, county, or state law enforcement officials may be solicited to determine compliance with this subchapter or with Occupations Code Chapter 2151, Subchapter C, concerning Operation of Amusement Rides, other than Occupations Code §2151.104, concerning Access to Rides, [~~§§2151.101 - 2151.103 of the Act~~] in conjunction with TDI [~~Texas Department of Insurance~~], and may institute an action in a court of competent jurisdiction to enforce the Act [~~Title 13, Occupations Code, Chapter 2151,~~] and this subchapter.

(c) The prosecuting attorney in a case in which a person is convicted of an offense under Occupations Code §2151.153, concerning Criminal Penalties, must [~~of the Act shall~~] report the offense to TDI not later than the 90th day after the date of the conviction.

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

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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER TT. ALL-PAYOR CLAIMS DATABASE

28 TAC §§21.5401, 21.5403 - 21.5406

The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §21.5401 and §§21.5403 - 21.5406, concerning the all-payor claims database. An amendment to §21.5401 implements House Bill 4611, 88th Legislature, 2023. Amendments to §21.5406 implement House Bill 3414, 88th Legislature, 2023. Other amendments to the sections implement HB 2090, 87th Legislature, 2021, which amended the Texas Insurance Code by adding Chapter 38, Subchapter I, concerning Texas All Payor Claims Database (APCD). TDI also proposes nonsubstantive amendments in each section.

EXPLANATION. The proposed amendments make changes in accordance with HB 3414, which made amendments to Insurance Code Chapter 38, including revisions to the definition of "payor" in Insurance Code §38.402, the membership of the stakeholder advisory group in §38.403, and permissible data collection in Insurance Code §38.404. A nonsubstantive change to §21.5401 is made to conform with HB 4611, which changed the location in the Government Code of statutes concerning Medicaid managed care programs. Other amendments are made in accordance with HB 2090. The proposed amendments include a new version of the Texas APCD Common Data Layout (CDL) to conform with changes to the national CDL and other changes to support the purpose and mission of the APCD.

The CDL is a technical and natural language description of the file format that payors are required to use to submit data to the APCD. The CDL details the data structure and organization necessary for successful file submissions. Clear technical instructions--including definitions of data fields, required headers, and descriptions--in the CDL are necessary to ensure the integrity and validity of the APCD data. Periodic updates to the technical instructions ensure the CDL's long-term usability and relevance by allowing clarifications that improve payor understanding of the CDL requirements and accommodating technological improvements or changes in claim standards.

In addition, the proposed amendments enhance clarity, streamline the sections, and make the text consistent with current agency drafting style and plain language preferences. These nonsubstantive changes include adding rule cross-references; deleting unnecessary statutory citations; and otherwise improving wording, such as by replacing "such" with "this" and "said" with "the." These amendments are not noted in the following descriptions of the amendments unless it is necessary or appropriate to provide additional context or explanation.

Descriptions of the sections' proposed amendments follow.

Section 21.5401. The amendments to §21.5401 revise subsection (b) to clarify that the listing of payors required to submit data files is not exclusive but includes any payor subject to Chapter 38. Self-insurance funds established under Government Code Chapter 2259, concerning Self-Insurance by Governmental Units, are added to the listing to clarify applicability to those payors, and subsequent paragraphs are renumbered to reflect this addition. In paragraph (19), the citation to the Government Code for Medicaid managed care plans is changed to Title 4, Subtitle I, instead of Chapter 533, because of a change in the citation to these programs in Insurance Code §38.402(7) made in Section 2.117 of HB 4611.

Section 21.5403. An amendment to §21.5403(a) updates the CDL version that a payor is required to follow to version 3.0.1. The Texas APCD CDL has been updated to align with the national CDL. It identifies the types of data a payor is required to report by listing the standardized data elements for each data file identified in §21.5404(c) and identifying whether the data element is required. For each data element, it also identifies data quality standards and provides technical guidance describing the information payors must submit, including the source of the information and coding standards.

Amendments to subsection (b) permit the Center for Health Care Data at the University of Texas Health Science Center at Houston (Center) to adopt future versions of the Texas APCD CDL, as long as no additional data elements are required beyond those required in version 3.0.1 and no data elements are required that fall outside the scope of Chapter 38, Subchapter I. This will streamline the Center's ability to update technical guidance and will reduce confusion by payors, clarifying that such guidance can be incorporated in the Texas APCD CDL, rather than in a separate document. It will also allow the Center to monitor changes taking place across the country to maximize uniformity with other states' APCDs, which is more cost-effective for the payors subject to reporting. Any addition of required data elements would occur only through TDI rulemaking. If the Center publishes an updated version of the Texas APCD CDL, it will communicate an implementation deadline and provide at least 90 days for payors to transition to the new version of the Texas APCD CDL.

Section 21.5404. An amendment to subsection (a)(1) updates the cross-reference to §21.5401 to conform with changes to numbering in that section. An amendment in subsection (b) clarifies that the requirement to register applies to payors or their designees that are subject to the subchapter where §21.5404 is located. An amendment removes paragraph (1) from subsection (d) to eliminate the option to use a USB drive because it is less efficient to administer, and no payors have chosen to use this option. Subsequent paragraphs are renumbered to reflect this change. The prohibition against using data with a unique coding system is eliminated from subsection (k) because it duplicates language in subsection (m).

Section 21.5405. The amendments to subsection (a) modify the due date of payor reporting, reducing the time to submit the data from 90 days post-adjudication to 30 days. This change will provide more timely data to researchers and will allow the APCD to better and more timely support infectious disease monitoring efforts in coordination with the Texas Epidemic Public Health Institute (TEPHI). The updated submission timeframe will also allow the APCD, at the aggregate-geographic-region level, to support other state agency epidemiological monitoring of acute health conditions or events like pandemics or natural disasters.

Current subsection (b) is deleted because its provisions relating to the original commencement of APCD reporting are no longer necessary. A new subsection (b) is added to clarify the circumstances in which payors must submit test data files.

Current subsections (c) and (e) are deleted, and their exception and extension provisions have been incorporated into current subsection (d), which is redesignated as subsection (c). The text of redesignated subsection (c) is also revised to allow payors to submit requests for exceptions and extensions 15 days in

advance rather than 30 days, and to clarify that the deadline for data submissions is tolled while the Center considers a request for exception or extension. Redesignated subsection (c) authorizes payors to request temporary exceptions or extensions for up to 12 months if they demonstrate that compliance would impose an unreasonable cost or burden relative to the public value that would be gained from full compliance. To ensure APCD reporting is not a barrier to new payors entering the market, the subsection allows an extension for a payor's first required reporting if the payor registers with the Center and demonstrates it has fewer than 10,000 covered lives across all plans subject to reporting. This approach ensures that the Center can make reasonable accommodations to help payors comply with APCD reporting obligations. To assist with the oversight and enforcement required by Insurance Code §38.409(a)(3), redesignated subsection (c) is also amended to add an annual reporting requirement for the Center to share information with TDI about payor compliance, exceptions, and extensions.

Existing subsections (f) and (g) are redesignated as subsections (d) and (e).

A new subsection (f) is added. It states that payors must provide reasonable follow-up information requested by the Center, limited to ensuring that the payor submitted complete and correct information.

Existing subsections (h) and (i) are redesignated as subsections (g) and (h).

A new subsection (i) is added. It provides the starting date for the new data submission time frames found in subsection (a). Depending on the timing of the rule adoption, TDI may adjust the starting date of the new data submissions to provide payors at least 90 days from the date the rule amendments are adopted to transition to the new data submission dates.

Section 21.5406. New subsection (d) is added, establishing a one-year term of office for the new advisory member representing an institution of higher education, as required by HB 3414. New subsection (e) is added, limiting terms of office to no more than six consecutive years, except as provided by current subsection (d), which is redesignated as subsection (f). An amendment to redesignated subsection (f) changes the required designation of a replacement member to serve the remainder of a term to a permissive designation.

TDI received comments on an informal draft of this proposal posted on the department's website on April 16, 2024. TDI considered those comments when drafting this proposal. In response to those comments, two data elements that were included in the informal draft of the Texas APCD CDL (related to drug strength and therapeutic classification) are changed from required to optional fields.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Ms. Bowden made this determination because, other than possibly the clarification of the applicability of the rule, the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments. Regarding the applicability of the rule, the proposal clarifies that the definition of payor includes a self-insurance fund established under Government Code Chapter 2259. However, this is done to be consistent with the definition of payor in Insurance Code §38.402(7), which includes "a health benefit plan offered or administered by or on behalf of this state or a political subdivision of this state or an agency or instrumentality of the state or a political subdivision of this state. . . ." Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Bowden expects that administering them will have the public benefits of ensuring that TDI rules conform to Insurance Code Chapter 38, Subchapter I, and making them clearer and more consistent. Clarifying the applicability of the payors that must submit data to the APCD to be consistent with the definition of payor in Subchapter I may result in more data being submitted to the APCD, furthering the stated purpose in Insurance Code §38.401, concerning Purpose of Subchapter, of increasing public transparency of health care information. Updating the Texas APCD CDL to incorporate changes to the national CDL will provide administrative efficiency for payors subject to reporting. Updating the CDL to obtain more useful information and requiring that it be filed more quickly after adjudication is complete will further the second goal of Subchapter I of improving the quality of health care in this state by further enabling and improving health care research. Obtaining more recent claims data will allow the APCD to make timely contributions to the Texas Epidemic Public Health Institute, created in 2021 by the passage of SB 1780 (87R), which added Chapter 75, Subchapter D, to the Education Code.

Ms. Bowden notes that TDI posted an informal draft substantially similar to this proposal on the department's website on April 16, 2024. TDI particularly requested that carriers provide "estimates on the cost to implement these changes." No carrier indicated any cost of implementation. Even so, TDI anticipates that the proposed amendments may impose minor economic costs on persons required to comply with the amendments. The costs will vary based on each payor's data systems and staffing strategies. Costs may result from amendments to the CDL and amending the due date for submitting data to 30 days post-adjudication from 90 days, resulting in required changes to data submissions and programming.

Cost of personnel associated with programming information systems for data collection. The United States Department of Labor, Bureau of Labor Statistics State Occupational Employment and Wage Estimates for Texas, indicates that the hourly mean wage for computer programmers is $49.35 (www.bls.gov/oes/current/oes_tx.htm#15-0000). TDI recognizes that costs will vary depending on each payor's data systems and staffing strategies, but the proposed changes are minimal. Ms. Bowden estimates a one-time requirement of between eight and 24 hours to amend the existing programming. Ms. Bowden expects there will be no cost added by proposed amendments to §21.5406, which outlines appointment standards for the stakeholder advisory committee.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

TDI has determined that the proposed new sections will not have an adverse economic effect on rural communities, but they may have an adverse economic effect on small or micro businesses, to the extent that they are subject to reporting data to the APCD. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses.

TDI estimates that between three and 15 payors that are small or micro businesses may be required to report data to the APCD. They will have to amend their reporting if the CDL is amended and submit data within 30 days of adjudication, rather than the current 90 days. The primary objective of this proposal is to continue to support an APCD that increases transparency of health care costs, utilization, and access across all payors in Texas and includes information useful for purposes of improving health care quality and outcomes, improving population health, and controlling health care costs. TDI considered the following options to minimize any adverse effect on small and micro businesses while accomplishing the proposal's objectives:

(1) exempting payors from reporting if they are small or micro businesses or based on a minimum threshold of covered lives;

(2) requiring payors that are small or micro businesses to report fewer data elements; and

(3) providing additional time to comply with the rules for payors that are small or micro businesses or based on a minimum threshold of covered lives.

In considering Option 1, TDI declined to provide an exemption for payors that are small or micro businesses because such an exemption is not supported by the statute. As stated in the cost note, the statute specifies a particular set of information that must be collected at a minimum. TDI does not have authority to exempt small or micro businesses from the collection of some of the data, and without the guidance provided by these rules, small or micro businesses would have a more difficult time complying with the requirements of the statute and might not provide usable data.

In regard to Option 2, TDI believes an incomplete dataset would provide little value to researchers and would not satisfy the purpose of the statute. However, the proposal does continue to authorize the Center to grant temporary exceptions for issuers that are unable to comply with certain reporting requirements. Such exceptions may be granted if compliance would impose an unreasonable cost relative to the public value that would be gained from full compliance.

After considering Option 3, TDI opted to continue to provide additional implementation time based on the number of lives covered by the payor in plans subject to reporting. This will mitigate the costs required to implement the rule by allowing eligible payors to spread those costs over a longer timeframe. This may further reduce costs by enabling payors to implement the requirements without hiring additional staff. This flexibility will be available to all payors with fewer than 10,000 covered lives in plans that are subject to reporting, including small and micro businesses. This is a metric that can be validated by TDI and ensures that high-value datasets are not delayed.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because (1) the proposed new sections are necessary to implement legislation, and (2) the amendments are necessary to protect the health, safety, and welfare of the residents of this state. The proposed rules implement Insurance Code Chapter 38, Subchapter I, as added by HB 2090 and amended by HB 3414. The amendments to the CDL and the timing of data submissions support the mission of the APCD to improve the quality of health care in this state, such as by providing more timely data to the Texas Epidemic Public Health Institute.

The Legislature intended that changes would be made to APCD data collection over time in order to maximize the public health benefit. In Insurance Code §38.403, the Legislature required the creation of the stakeholder advisory group, in part to assist with "establishing and updating the standards, requirements, policies, and procedures relating to the collection and use of data. . . ." In §38.404, the Legislature tasked the Center with "determining the information a payor is required to submit" and required it to "establish" and "update" its data collection procedures. Section 38.409 requires TDI to adopt rules "in consultation with the center . . . specifying the types of data a payor is required to provide" and "specifying the schedule" in which a payor must provide the data. The Center has recommended the data-related changes in this rule proposal.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand and limit an existing regulation;

- will increase the number of individuals subject to the rule's applicability by more closely following the statutory definition of payor; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 16, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 16, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §21.5401 and §§21.5403 - 5406 under Insurance Code §38.409 and §36.001.

Insurance Code §38.409 provides that the commissioner adopt rules specifying the types of data a payor is required to provide to the Center and also specifying the schedule, frequency, and manner in which a payor must provide data to the Center. It also requires the commissioner to adopt rules establishing oversight and enforcement mechanisms to ensure the submission of data.

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

CROSS-REFERENCE TO STATUTE. Section 21.5401 implements Insurance Code §38.402. Sections 21.5403 - 21.5405 implement Insurance Code §38.404 and §38.409. Section 21.5406 implements Insurance Code §38.403.

§21.5401. Applicability.

(a) This subchapter applies to a payor that issues, sponsors, or administers a plan subject to reporting under subsection (b) of this section.

(b) Payors must submit data files as required by this subchapter with respect to [~~each of the following types of~~] health benefit plans or dental benefit plans issued in Texas that are subject to Insurance Code Chapter 38, Subchapter I, concerning Texas All Payor Claims Database, including:

(1) a health benefit plan as defined by Insurance Code §1501.002, concerning Definitions;

(2) an individual health care plan that is subject to Insurance Code §1271.004, concerning Individual Health Care Plan;

(3) an individual health insurance policy providing major medical expense coverage that is subject to Insurance Code Chapter 1201, concerning Accident and Health Insurance;

(4) a health benefit plan as defined by §21.2702 of this title (relating to Definitions);

(5) a student health plan that provides major medical coverage, consistent with the definition of student health insurance coverage in 45 CFR §147.145, concerning Student Health Insurance Coverage;

(6) short-term limited-duration insurance as defined by Insurance Code §1509.001, concerning Definition;

(7) individual or group dental insurance coverage that is subject to Insurance Code Chapter 1201 or Insurance Code Chapter 1251, concerning Group and Blanket Health Insurance;

(8) dental coverage provided through a single service HMO that is subject to Chapter 11, Subchapter W, of this title (relating to Single Service HMOs);

(9) a Medicare supplement benefit plan under Insurance Code Chapter 1652, concerning Medicare Supplement Benefit Plans, if the payor elects to submit such data;

(10) a health benefit plan as defined by Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements;

(11) basic coverage under Insurance Code Chapter 1551, concerning Texas Employees Group Benefits Act;

(12) a basic plan under Insurance Code Chapter 1575, concerning Texas Public School Employees Group Benefits Program;

(13) a health coverage plan under Insurance Code Chapter 1579, concerning Texas School Employees Uniform Group Health Coverage;

(14) basic coverage under Insurance Code Chapter 1601, concerning Uniform Insurance Benefits Act for Employees of the University of Texas System and the Texas A&M University System;

(15) a county employee health benefit plan established under Local Government Code Chapter 157, concerning Assistance, Benefits, and Working Conditions of County Officers and Employees;

(16) group dental, health and accident, or medical expense coverage provided by a risk pool created under Local Government Code Chapter 172, concerning Texas Political Subdivisions Uniform Group Benefits Program;

(17) coverage for medical expenses provided under a self-insurance fund established under Government Code Chapter 2259, concerning Self-Insurance by Governmental Units;

(18) [~~(17)~~] the state Medicaid program operated under Human Resources Code Chapter 32, concerning Medical Assistance Program;

(19) [~~(18)~~] a Medicaid managed care plan operated under Government Code Title 4, Subtitle I, concerning Health and Human Services [~~Chapter 533, concerning Medicaid Managed Care Program~~];

(20) [~~(19)~~] the child health plan program operated under Health and Safety Code Chapter 62, concerning Child Health Plan for Certain Low-Income Children;

(21) [~~(20)~~] the health benefits plan for children operated under Health and Safety Code Chapter 63, concerning Health Benefits Plan for Certain Children;

(22) [~~(21)~~] a Medicare Advantage Plan providing health benefits under Medicare Part C as defined in 42 USC §1395w-21, *et seq*., concerning Medicare+Choice Program;

(23) [~~(22)~~] a Medicare Part D voluntary prescription drug benefit plan providing benefits as defined in 42 USC §1395w-101, *et seq*., concerning Voluntary Prescription Drug Benefit Program; and

(24) [~~(23)~~] a health benefit plan or dental plan subject to the Employee Retirement Income Security Act of 1974 (29 USC §1001 *et seq*.) if the plan sponsor or administrator elects to submit this [~~such~~] data.

(c) Data files required by this subchapter must include information with respect to all Texas resident members, as defined in §21.5402(16) of this title (relating to Definitions). Information on persons who are not Texas resident members is not required.

§21.5403. Texas APCD Common Data Layout and Submission Guide.

(a) Payors must submit complete and accurate data files for all applicable plans as required by this subchapter and consistent with the data elements and technical requirements found in the Texas APCD CDL v3.0.1 [~~v1.09, released May 20, 2022~~]. The Texas APCD CDL v3.0.1 is available on the Center's website. [~~and:~~]

[~~(1) is modeled on the "All-Payer Claims Database Common Data Layout" published by the National Association of Health Data Organizations and used with permission;~~]

[~~(2) identifies which data elements payors are required to submit in each data file and which data elements are optional, consistent with Insurance Code §38.404(c), concerning Establishment and Administration of Database; and~~]

[~~(3) identifies the record specifications, definitions, code tables, and threshold levels for each required data element.~~]

(b) If the Center adopts subsequent versions of the Texas APCD CDL, payors must submit data consistent with the requirements of each subsequent version, but this subchapter does not require the submission by payors of additional data elements that are not required in the Texas APCD CDL v3.0.1 or that do not fall within the scope of Insurance Code Chapter 38, Subchapter I, concerning Texas All Payor Claims Database. The Center will communicate to payors an implementation deadline for use of an updated version of the Texas APCD CDL that is not less than 90 days after the updated version has been published by the Center in its final form. [~~The Center may issue technical guidance that provides flexibility regarding the existing requirements contained in the Texas APCD CDL, such as removing required data elements, clarifying specifications, increasing the maximum length, or decreasing the minimum threshold. However, such guidance may not modify statutory requirements, impose more stringent requirements, or increase the scope of the data being collected.~~]

(c) The Center will establish, evaluate, and update data collection procedures within a submission guide, consistent with Insurance Code §38.404(f), concerning Establishment and Administration of Database. Notwithstanding subsection (b) of this section, in the event of an inconsistency between this subchapter and the submission guide, this subchapter controls.

§21.5404. Data Submission Requirements.

(a) Payors must submit the data files required by subsection (c) of this section to the Center according to the schedule provided in §21.5405 of this title (relating to Timing and Frequency of Data Submissions). Payors are responsible for submitting or arranging to submit all applicable data under this subchapter, including data with respect to benefits that are administered or adjudicated by another contracted or delegated entity, such as carved-out behavioral health benefits or pharmacy benefits administered by a pharmacy benefit manager. Payors may arrange for a third-party administrator or delegated or contracted entity to submit data on behalf of the payor[~~,~~] but may not submit data that duplicates data submitted by a third party.

(1) The Texas Health and Human Services Commission may submit data on behalf of all applicable payors participating in a plan or program identified in §21.5401(b)(18) - (b)(21) [~~§21.5401(b)(17) - (b)(20)~~] of this title (relating to Applicability).

(2) A payor that acts as an administrator on behalf of a health benefit plan or dental plan for which reporting is optional per Insurance Code §38.407, concerning Certain Entities Not Required to Submit Data, may ask the plan sponsor whether it elects or declines to participate in or submit data to the Center and may include data for such plans within the payor's data submission. Both the inquiry to and response from the plan sponsor should be in writing.

(3) A payor providing Medicare Supplement benefit plans may elect to submit Medicare Supplement benefit plan data to the Center.

(b) Payors or their designees that are subject to this subchapter must register with the Center each year [~~to submit data~~], consistent with the instructions and procedures contained in the submission guide. Payors must communicate any changes to registration information by contacting the Center within 30 days using the contact information provided in the submission guide. Upon registration, the Center will assign a unique payor code and submitter code to be used in naming the data files and provide the credentials and information required to submit data files.

(c) Payors must submit the following files, consistent with the requirements of the Texas APCD CDL:

(1) enrollment and eligibility data files;

(2) medical claims data files;

(3) pharmacy claims data files;

(4) dental claims data files; and

(5) provider files.

(d) Payors must package all files being submitted into zip files that are encrypted according to the standard provided in the submission guide. Payors must submit the encrypted zip files to the Center using one of the following file submission methods:

[~~(1) save the files on a Universal Serial Bus (USB) flash drive and use a secure courier to deliver the USB drive to the database according to delivery instructions provided in the submission guide;~~]

(1) [~~(2)~~] transmit the files to the Center's Managed File Transfer servers using the Secure File Transport Protocol (SFTP) and the credentials and transmittal information provided upon registration;

(2) [~~(3)~~] upload files from an internet browser using the Hypertext Transfer Protocol Secure (HTTPS) protocol and the credentials and transmittal information provided upon registration; or

(3) [~~(4)~~] transmit the files using a subsequent electronic method as provided in the data submission guide.

(e) Payors must name data files and zip files consistent with the file naming conventions specified by the Center in the submission guide.

(f) Payors must format all data files as standard 8-bit UCS Transformation Format (UTF-8) encoded text files with a ".txt" file extension and adhere to the following standards:

(1) use a single line per record and do not include carriage returns or line feed characters within the record;

(2) records must be delimited by the carriage return and line feed character combination;

(3) all data fields are variable field length, subject to the constraints identified in the Texas APCD CDL, and must be delimited using the pipe (|) character (ASCII=124), which must not appear in the data itself;

(4) text fields must not be demarcated or enclosed in single or double quotes;

(5) the first row of each data file must contain the names of data columns as specified by the Texas APCD CDL;

(6) numerical fields (e.g., ID numbers, account numbers, etc.) must not contain spaces, hyphens, or other punctuation marks, or be padded with leading or trailing zeroes;

(7) currency and unit fields must contain decimal points when appropriate;

(8) if a data field is not to be populated, a null value must be used, consisting of an empty set of consecutive pipe delimiters (||) with no content between them.

(g) Data files must include information consistent with the Texas APCD CDL that enables the data to be analyzed based on the market category, product category, coverage type, and other factors relevant for distinguishing types of plans.

(h) Payors must include data in medical, pharmacy, and dental claims data files for a given reporting period based on the date the claim is adjudicated, not the date of service associated with the claim. For example, a service provided in March[~~,~~] but adjudicated in April[~~,~~] would be included in the April data report. Likewise, any claim adjustments

must be included in the appropriate data file based on the date the adjustment was made and include a reference that links the original claim to all subsequent actions associated with that claim. Payors must report medical, pharmacy, and dental claims data at the visit, service, or prescription level. Payors must also include claims for capitated services with all medical, pharmacy, and dental claims data file submissions.

(i) Payors must include all payment fields specified as required in the Texas APCD CDL. With respect to medical, pharmacy, and dental claims data file submissions, payors must also:

(1) include coinsurance and copayment data in two separate fields;

(2) clearly identify claims where multiple parties have financial responsibility by including a Coordination of Benefits, or COB, notation; and

(3) include specified types of denied claims and identify a denied claim either by a denied notation or assigning eligible, allowed, and payment amounts of zero. The data submission guide will specify the types of denied claims that must be included on the basis of the claim adjustment reason code associated with the denial. In general, denied claims are not required when the reason for the denial was incomplete claim coding or duplicative claims. Denied claims are required when they accurately reflect care that was delivered to an eligible member but not covered by a plan due to contractual terms, such as benefit maximums, place of service, provider type, or care deemed not medically necessary or experimental or investigational. Payors are not required to include data for rejected claims or claims that are denied because the patient was not an eligible member.

(j) Every data file submission must include a control report that specifies the count of records and, as applicable, the total allowed amount and total paid amount.

(k) Unless otherwise specified, payors must use the code sources listed and described in the Texas APCD CDL within the member eligibility and enrollment data file and medical, pharmacy, and dental claims data file and provider file submissions. [~~When standardized values for data fields are available and stated within the Texas APCD CDL, a payor may not submit data that uses a unique coding system.~~]

(l) Payors must use the member's social security number as a unique member identifier (ID) or assign an alternative unique member ID as provided in this subsection.

(1) If a payor collects the social security number for the subscriber only, the payor must assign a discrete two-digit suffix for each member under the subscriber's contract.

(2) If a payor does not collect the subscriber's social security number, the payor must assign a unique member ID to the subscriber and the member in its place. The payor must also use a discrete two-digit suffix with the unique member ID to associate members under the same contract with the subscriber.

(3) A payor must use the same unique member ID for the member's entire period of coverage under a particular plan. If a change in the unique member ID or the use of two different unique member IDs for the same individual is unavoidable, the payor must provide documentation, if available, linking the member IDs in the form and method provided by the Center.

(m) When standardized values for data variables are available and stated within the Texas APCD CDL, no specific or unique coding systems will be permitted as part of the health care claims data set submission.

(n) Within the enrollment and eligibility data files, payors must report member enrollment and eligibility information at the individual member level. If a member is covered as both a subscriber and a dependent on two different policies during the same month, the payor must submit two member enrollment and eligibility records. If a member has two different policies for two different coverage types, the payor must submit two member enrollment and eligibility records.

(o) Payors must include a header and trailer record in each data file submission according to the formats described in the Texas APCD CDL. The header record is the first record of each separate file submission, and the trailer record is the last.

§21.5405. Timing and Frequency of Data Submissions.

(a) Payors must submit monthly data files according to the following schedule:

(1) January data must be submitted no later than March [~~May~~] 7 of that year;

(2) February data must be submitted no later than April [~~June~~] 7 of that year;

(3) March data must be submitted no later than May [~~July~~] 7 of that year;

(4) April data must be submitted no later than June [~~August~~] 7 of that year;

(5) May data must be submitted no later than July [~~September~~] 7 of that year;

(6) June data must be submitted no later than August [~~October~~] 7 of that year;

(7) July data must be submitted no later than September [~~November~~] 7 of that year;

(8) August data must be submitted no later than October [~~December~~] 7 of that year;

(9) September data must be submitted no later than November 7 of that [~~January 7 of the following~~] year;

(10) October data must be submitted no later than December 7 of that [~~February 7 of the following~~] year;

(11) November data must be submitted no later than January [~~March~~] 7 of the following year; and

(12) December data must be submitted no later than February [~~April~~] 7 of the following year.[~~;~~]

(b) Payors must submit test data files as provided in the submission guide:

(1) after registering for the first time with the Center as a payor that is subject to reporting under this subchapter;

(2) after a merger, acquisition, divestiture, or other change of ownership that requires an update to a payor's registration; and

(3) before the effective date of a new version of the TX APCD CDL, consistent with §21.5403 of this title (relating to Texas APCD Common Data Layout and Submission Guide) that contains additional data elements.

[~~(b) Except as provided in subsections (c) and (d) of this section, payors must submit test data files, historical data files, and monthly data files according to the dates specified by the Center, subject to the following requirements:~~]

[(1) the Center will provide notice of the timeline for payors to submit registration and test data no later than 90 days before the data is due, and test data will be due no sooner than October 1, 2022;]

[(2) the Center will provide notice of the timeline for submitting historical data, which must include data for reporting periods spanning from January 1, 2019, to the most recent monthly reporting period, no later than 120 days before the data is due, and historical data will be due no sooner than January 1, 2023; and]

[(3) the Center will provide notice of the timeline for submitting monthly data no later than 180 days before the commencement of the monthly data submission, and the first monthly data submission date will be no sooner than March 1, 2023.]

[(c) A payor with fewer than 10,000 covered lives in plans that are subject to reporting under this subchapter as of December 31 of the previous year must begin reporting no later than 12 months after the dates otherwise required, as specified by the Center, consistent with subsection (a) of this section. The payor must register with the Center to document the payor's eligibility for this extension.]

(c) [(d)] A payor may request a temporary exception or extension of time from complying with one or more requirements of this subchapter or the Texas APCD CDL by submitting a request to the Center, as provided in the submission guide posted on https://go.uth.edu/DSG, no less than 15 [30] calendar days before the date the payor is otherwise required to comply with the requirement.

(1) The [Except as provided in paragraph (2) of this subsection, the] Center may grant an exception or extension for good cause for not more than 12 consecutive months, if the payor demonstrates that compliance would impose an unreasonable cost or burden relative to the public value that would be gained from full compliance. An exception may not be granted from any requirement contained in Insurance Code Chapter 38, Subchapter I, concerning Texas All Payor Claims Database.

[(1) An exception may not last more than 12 consecutive months.]

(2) A payor that registers with the Center and demonstrates that it has fewer than 10,000 covered lives in plans subject to this subchapter qualifies for an extension under this subsection for the payor's first required reporting. The Center may grant an extension for new payors for not more than 12 consecutive months.

[(2) An exception may not be granted from any requirement contained in Insurance Code Chapter 38, Subchapter I.]

(3) The Center may request additional information from a payor in order to make a determination on an exception or extension request. A request for additional information must be in writing and must be submitted to the payor within 14 calendar days from the date the payor's request is received. The deadline for data submission is tolled while the Center makes a determination on an exception or extension request.

(4) A request for an exception or extension that is neither accepted nor rejected by the Center within 14 calendar days from the date the payor's request is received will be deemed accepted. If the Center has requested additional information from a payor under paragraph (3) of this subsection, the 14-day timeline begins the day after the payor submits the [such] information. If a payor does not respond to or fails to provide the Center with additional information as requested, the payor's request for an exception or extension may be deemed withdrawn by the Center at the end of the 14-day period.

(5) In order to assist TDI's oversight and enforcement required by Insurance Code §38.409, the Center will provide TDI on or before July 1st of each year for the prior year:

(A) the names of payors that timely reported data;

(B) information about payors that did not report data and either requested an exception or extension that the Center did not grant or otherwise failed to demonstrate an exemption from reporting under this subchapter;

(C) information about payors that obtained exceptions and extensions, including the nature of the exceptions and amount of extensions granted;

(D) information about payors that failed to report timely without obtaining an exception or extension, including the filing due dates and the dates of actual filing; and

(E) information about payors that otherwise failed to materially comply with the requirements of Insurance Code Chapter 38, Subchapter I, or this subchapter.

[(e) A payor that is unable to meet the reporting schedule provided by this section may submit a request for an extension to the Center before the reporting due date. The Center may grant a request for good cause at its discretion.]

[(1) The Center may request additional information from a payor in order to make a determination on an extension request. A request for additional information must be in writing and must be submitted to the payor within 14 calendar days from the date the payor's request is received.]

[(2) A request for an extension that is neither accepted nor rejected by the Center within 14 calendar days from the date the payor's request is received will be deemed accepted. If the Center has requested additional information from a payor under paragraph (1) of this subsection, the 14-day timeline begins the day after the payor submits such information. If a payor does not respond to or fails to provide the Center with additional information as requested, the payor's request for an extension may be deemed withdrawn by the Center at the end of the 14-day period.]

(d) [(f)] The Center will assess each data submission to ensure the data files are complete, accurate, and correctly formatted.

(e) [(g)] The Center will communicate receipt of data within 14 calendar days, inform the payor of the data quality assessments, and specify any required data corrections and resubmissions.

(f) Payors must provide reasonable follow-up information requested by the Center, limited to ensuring that the payor submitted complete and correct information.

(g) [(h)] Upon receipt of a resubmission request, the payor must respond within 14 calendar days with either a revised and corrected data file or an extension request.

(h) [(i)] If a payor fails to submit required data or fails to correct submissions rejected due to errors or omissions, the Center will provide written notice to the payor. If the payor fails to provide the required information within 30 calendar days following receipt of the [said] written notice, the Center will notify the department of the failure to report. The department may pursue compliance with this subchapter via any appropriate corrective action, sanction, or penalty that is within the authority of the department.

(i) The reporting schedule under subsection (a) of this section applies to monthly data submissions due on or after March 7, 2025, containing data for months beginning January 1, 2025. Payors must

submit data for November and December 2024 at the same time as January 2025 data.

§21.5406. Stakeholder Advisory Group Terms.

(a) Except as otherwise provided in [~~by subsections (b) and (c) of~~] this section, the term of office for seats on the [~~members of the~~] stakeholder advisory group, as specified by [~~designated under~~] Insurance Code §38.403 [~~§38.403(b)(2) - (4)~~], concerning Stakeholder Advisory Group, is [~~serve fixed terms of~~] three years.

(b) Initial terms of office for the members of the stakeholder advisory group will end December 31, 2024.

(c) Subsequent terms of office for the members [~~designations~~] of the stakeholder advisory group will begin January 1, 2025, and will be staggered as follows:

(1) the terms of office for the seats of the two members representing the business community [~~, as provided by Insurance Code §38.403(b)(4)(A),~~] and the two members representing consumers will [~~, as provided by Insurance Code §38.403(b)(4)(B), with terms to~~] expire December 31, 2026;

(2) the terms of office for the seats of the member designated by the Teacher Retirement System of Texas, the[~~;~~] two members representing hospitals, [~~as provided by Insurance Code §38.403(b)(4)(C);~~] and the two members representing health benefit plan issuers will [~~, as provided by Insurance Code §38.403(b)(4)(D), with terms to~~] expire December 31, 2027; and

(3) the terms of office for the seats of the member designated by the Employees Retirement System; the two members representing physicians[~~, as provided by Insurance Code §38.403(b)(4)(E)~~]; and the two members not professionally involved in the purchase, provision, administration, or review of health care services, supplies, or devices, or health benefit plans will [~~, as provided by Insurance Code §38.403(b)(4)(F), with terms to~~] expire December 31, 2028.

(d) The term of office for the seat of a member representing an institution of higher education is one year.

(e) Except as provided by subsection (f) of this section, members may not serve for more than six consecutive years.

(f) [~~(d)~~] If a member does not complete the member's three-year term, a replacement member may [~~must~~] be designated to complete the remainder of the term. [~~A member designated by the Center to serve a partial term of less than two years will not be prevented from serving for an additional two consecutive terms.~~]

~~[(e) Except as provided by subsection (d) of this section, members designated by the Center under Insurance Code §38.403(b)(4) may not serve more than two consecutive terms.]~~

(g) [~~(f)~~] Members and prospective members of the stakeholder advisory group are subject to the conflicts of interest and standards of conduct provisions in paragraphs (1) - (4) of this subsection.

(1) A prospective member of the stakeholder advisory group must disclose to the designating entity any conflict of interest before being designated to the group.

(2) A member of the stakeholder advisory group must immediately disclose to the Center and the member's designating entity any conflict of interest that arises or is discovered while serving on the group.

(3) A conflict of interest means a personal or financial interest that would lead a reasonable person to question the member's objectivity or impartiality. An example of a conflict of interest is employment by or financial interest in an organization with a financial interest in work before the stakeholder advisory group, such as evaluating data requests from qualified research entities under Insurance Code §38.404(e)(2), concerning Establishment and Administration of Database.

(4) A member of the stakeholder advisory group must comply with Government Code §572.051(a), concerning Standards of Conduct; State Agency Ethics Policy, to the same extent as a state officer or employee.

(h) [~~(g)~~] A member may be removed from the stakeholder advisory group for good cause by the member's designating entity.

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

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

TRD-202403558
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 676-6555

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 290. PUBLIC DRINKING WATER SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.38, 290.45, 290.46

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§290.38, 290.45 and 290.46.

Background and Summary of the Factual Basis for the Proposed Rules

During the 88th Texas Legislature (2023), House Bill (HB) 3810, HB 4559, and Senate Bill (SB) 594 passed and require amendments to 30 Texas Administrative Code (TAC) Chapter 290 to implement the enacted legislation.

This rulemaking reflects changes to Texas Health and Safety Code (THSC), §341.033 enacted in HB 3810, requiring nonindustrial water systems to report to the commission an unplanned condition that has caused the system to issue drinking water advisories or a boil water notice. The proposed rules provide a definition of "nonindustrial water system" and "unplanned condition" and address notification requirements.

This rulemaking reflects changes to Texas Water Code (TWC), §13.1395 enacted in HB 4559, which amended the definition of "affected utility" by changing county population. The amended population maintains the applicability of the counties required to have an Emergency Preparedness Plan (EPP) under TWC, §13.1395 or TWC, §13.1394.

This rulemaking reflects changes to THSC, §341.0315 enacted in SB 594, which requires the commission to establish equivalency values for each meter size used to serve a 'recreational vehicle park', as defined by TWC, §13.087, to determine connection count. The proposed rules establish the equivalency value and establish how public water systems calculate alternatives to connection count for recreational vehicle parks that are metered customers of a public water system and have actual water usage more than 10% below the equivalency value.

Section by Section Discussion

§290.38, Definitions

The commission proposes to amend §290.38(3)(B) defining "affected utility," by changing the population from "550,000" to "800,000" in accordance with TWC, §13.1395 as amended by HB 4559. The amended population maintains the applicability of the counties required to have an Emergency Preparedness Plan (EPP) under TWC, §13.1395 or TWC, §13.1394. Specifically, the amendment maintains TWC, §13.1395 applicability to Fort Bend and Harris counties.

The commission proposes to amend §290.38(18), defining "connection," by adding a connection equivalency value as well as the alternative recreational vehicle park connection equivalency for recreational vehicle parks that are retail customers of public water systems. The proposed definition establishes that the number of connections for these recreational vehicle parks is calculated as the number of recreational vehicle or cabin sites divided by eight in accordance with THSC, §341.0315 as amended by SB 594.

§290.45, Minimum Water System Capacity Requirements

The commission proposes new §290.45(j) to establish the process by which a public water system can calculate an alternative recreational vehicle park connection equivalency for recreational vehicle parks that are retail customers of a public water system, to coincide with the amended definition of "connection" in §290.38(18)(B) in accordance with THSC, §341.0315 as amended by SB 594. A table is provided with the Alternative Recreational Vehicle Park Connection Equivalency utilizing significant figures; the calculations are based on source capacity per connection in accordance with TAC §290.45(b) and (c) as well as the definition of maximum daily demand in §290.38.

§290.46, Minimum Acceptable Operating Practices for Public Water Systems

In accordance with THSC, §341.033 as amended by HB 3810, the commission proposes to amend §290.46(w) and add new §290.46(w)(6) to require nonindustrial public water systems to provide the executive director with immediate notification of unplanned conditions resulting in water system outages that result in drinking water advisories or boil water notices and to define "nonindustrial water system" and "unplanned condition" within §290.46(w)(6) to clarify public water system types and situations, respectively.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be compliance and consistency with state law, specifically, HB 3810, HB 4559, and SB 594 from the 88th Texas Legislative Session (2023). The proposed rulemaking is not anticipated to result in significant fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to §2001.0225. A "major environmental rule" means a rule with a specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking

is to address unplanned conditions at a nonindustrial public water system that cause an outage or issuance of drinking water advisories or boil water notices; to revise the county population in the definition of affected utility in accordance with TWC, §13.1395(a)(1), which applies to those affected utilities which need to submit emergency preparedness plans to the commission for review and approval; and to meet the legislative requirement for the commission to establish connection equivalency values for each meter size used to serve recreational vehicle parks for use in determining the number of connections served by a public water system.

Second, the rulemaking does not meet the statutory definition of a "major environmental rule" because the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the rulemaking does not meet any of the four applicability requirements for a "major environmental rule" listed in Texas Government Code §2001.0225(a). Section §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements because this rulemaking: does not exceed any standard set by federal law for public water systems; does not exceed any express requirement of state law; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government; and is not based solely under the general powers of the agency, but under THSC, §341.031 and §341.0315, which allows the commission to adopt and enforce rules related to public drinking water, as well under the general powers of the commission.

The commission invites public comment regarding the draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter §2007.

The commission proposes these rules to implement House Bills 3810, 4559 and Senate Bill 594, 88th Texas Legislative Session (2023). HB 3810 amended THSC, §341.033 by requiring nonindustrial public water systems to notify the commission when an unplanned condition caused a public water supply outage or issuance of drinking water advisories or a boil water notice. HB 4559 amended TWC, §13.1394(a)(1) by changing the county population in the definition of "affected utility." An affected utility is required to file an emergency preparedness plan with the executive director for review and approval. SB 594 amended THSC, §341.0315, which requires the commission to adopt rules establishing connection equivalency values for each retail meter size used to serve a recreational vehicle park in calculating connection counts.

The commission's analysis indicates that Texas Government Code, Chapter §2007, does not apply to these rules based upon exceptions to applicability in Texas Government Code, §2007.003(b). The rulemaking is an action that is taken to fulfill obligations mandated under state law for all of the proposed rules. The rulemaking related to emergency preparedness plans is also an action taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the public health and safety purpose, and that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code, §2007.003(b)(4) and (13).

First, the rulemaking is an action taken to fulfill obligations under state law. The law requires actions by the commission and the regulated community when unplanned conditions at a nonindustrial public water system result in a system outage or issuance of drinking water advisories or boil water notices under THSC, §341.033; the change to the county population in the definition of "affected utility" maintains those affected utilities requirements to submit emergency preparedness plans to the commission under TWC, §13.1395a)(1) in the counties where the population has increased passed 500,000; and state law now requires the commission to promulgate rules to establish connection equivalency values for each meter size used to serve a recreational vehicle park for purposes of public water system connection counts under THSC, §341.0315. Texas Government Code, §2007.003(b)(4).

Second, The proposed rules would ensure the emergency preparedness plans are submitted by affected utilities in appropriate counties designated by the legislature. The proposed rules would significantly advance the public health and safety purpose; and do not impose a greater burden than is necessary to achieve the public health and safety purpose. These rules advance the public health and safety by ensuring appropriate governmental regulation and do so in a way that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code, §2007.003(b)(13).

Further, the commission has determined that promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. The rules require compliance with the actions required by nonindustrial public water systems when unplanned conditions result in a system outage or issuance of drinking water advisories or boil water notices; compliance regarding submission by an affected utility to the commission of its emergency preparedness plan, which is meant to ensure public health and safety; and state law requires that connection equivalency values be established for each retail meter size used to serve a recreational vehicle park. Therefore, the rules would not constitute a taking under Texas Government Code, Chapter §2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the sections proposed for amendments are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or

authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on September 12, 2024 at 10:00 a.m. in building F; room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by September 10, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on September 11, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the Hearing, you may do so at no cost at:

https://events.teams.microsoft.com/event/1edc845c-d424-4035-9209-3f5b3eaa3880@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Rico, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2024-015-290-OW. The comment period closes at 11:59 p.m. on September 17, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Rheaa Miller, Emergency Preparedness and Response Section, at (512) 239-5728 or by email at rheaa.miller@tceq.texas.gov.

Statutory Authority

The rulemaking is proposed under Texas Water Code (TWC) §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC §5.103 and TWC §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC) §341.031, which requires drinking water supplies to meet standards established by the commission; and THSC §341.0315, which requires public drinking water systems to comply with commission standards established to ensure the supply of safe drinking water.

The proposed rulemaking implements legislation enacted by the 88th Texas Legislature in 2023: THSC, §341.033 in House Bill (HB) 3810; TWC, §13.1395(a)(1) in HB 4559; and THSC, §341.0315 in Senate Bill 594.

§290.38. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in the following list, its definition shall be as shown in 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of *The Water Dictionary: A Comprehensive Reference of Water Terminology,* prepared by the American Water Works Association.

(1) Accredited laboratory - A laboratory accredited by the executive director to analyze drinking water samples to determine compliance with maximum contaminant levels, action levels, and microbial contaminants in accordance with §290.119 of this title (relating to Analytical Procedures).

(2) Adverse Weather Conditions - Any significant temperature, wind velocity, accumulation of precipitation including drought, or other weather pattern that may trigger the issuance of a national weather service watch, advisory, or warning.

(3) Affected utility -

(A) A retail public utility (§291.3 of this title (relating to Definitions of Terms)), exempt utility (§291.103 of this title (relating to Certificates Not Required)), or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility as defined in TWC §13.1394; or

(B) A retail public utility (§291.3 of this title (relating to Definitions of Terms)), exempt utility (§291.103 of this title (relating to Certificates Not Required)), or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility, as defined in TWC §13.1395, in a county with a population of:

(i) 3.3 million or more; or

(ii) 800,000 [~~550,000~~] or more adjacent to a county with a population of 3.3 million or more.

(4) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

(5) American National Standards Institute (ANSI) standards--The standards of the American National Standards Institute, Inc.

(6) American Society of Mechanical Engineers (ASME) standards--The standards of the ASME.

(7) American Water Works Association (AWWA) standards--The latest edition of the applicable standards as approved and published by the AWWA.

(8) Approved laboratory--A laboratory approved by the executive director to analyze water samples to determine their compliance with treatment technique requirements and maximum or minimum allowable constituent levels in accordance with §290.119 of this title (relating to Analytical Procedures).

(9) ASTM International standards--The standards of ASTM International (formerly known as the American Society for Testing and Materials).

(10) Auxiliary power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as auxiliary power in areas which are not subject to large scale power outages due to natural disasters.

(11) Bag filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(12) Baseline performance--In reference to a membrane treatment facility, the detailed assessment of observed operational conditions at the time the membrane facility is placed in service for the purpose of tracking changes over time and determining when maintenance or service is required. Examples of parameters where baseline performance data is collected include: net driving pressure, normalized permeate flow, salt rejection, and salt passage.

(13) Cartridge filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(14) Certified laboratory--A laboratory certified by the commission to analyze water samples to determine their compliance with maximum allowable constituent levels. After June 30, 2008, laboratories must be accredited, not certified, in order to perform sample analyses previously performed by certified laboratories.

(15) Challenge test--A study conducted to determine the removal efficiency (log removal value) of a device for a particular organism, particulate, or surrogate.

(16) Chemical disinfectant--Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(17) Community water system--A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(18) Connection--A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served. For the purposes of this definition: [~~definition,~~]

(A) a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

(i) [~~(A)~~] the water is used exclusively for purposes other than those defined as human consumption (see human consumption);

(ii) [~~(B)~~] the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or

(iii) [~~(C)~~] the executive director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards.

(B) For a recreational vehicle park, as defined by Texas Water Code, §13.087(a)(3), that is a retail customer of a public water system, the number of connections shall be calculated as:

(i) the number of recreational vehicle sites or cabin sites, whether occupied or not, divided by eight; or

(ii) the number of recreational vehicle sites or cabin sites, whether occupied or not, divided by the alternative recreational vehicle park connection equivalency specified in §290.45(j) of this title (relating to Minimum Water System Capacity Requirements).

(19) Contamination--The presence of any foreign substance (organic, inorganic, radiological, or biological) in water which tends to degrade its quality so as to constitute a health hazard or impair the usefulness of the water.

(20) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(21) Direct integrity test--A physical test applied to a membrane unit in order to identify and isolate integrity breaches/leaks that could result in contamination of the filtrate.

(22) Disinfectant--A chemical or a treatment which is intended to kill or inactivate pathogenic microorganisms in water.

(23) Disinfection--A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(24) Distribution system--A system of pipes that conveys potable water from a treatment plant to the consumers. The term includes pump stations, ground and elevated storage tanks, potable water mains, and potable water service lines and all associated valves, fittings, and meters, but excludes potable water customer service lines.

(25) Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "drinking water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(26) Drinking water standards--The commission rules covering drinking water standards in Subchapter F of this chapter (relating

to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(27) Elevated storage capacity--That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

(28) Emergency operations--The operation of an affected utility during an extended power outage at a minimum water pressure of 20 pounds per square inch (psi) or a pressure approved by the executive director as required under TWC §13.1394 and 35 psi as required under TWC §13.1395.

(29) Emergency power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as emergency power in areas which are not subject to large scale power outages due to natural disasters.

(30) Extended power outage--A power outage lasting for more than 24 hours.

(31) Filtrate--The water produced from a filtration process; typically used to describe the water produced by filter processes such as membranes.

(32) Flux--The throughput of a pressure-driven membrane filtration system expressed as flow per unit of membrane area. For example, gallons per square foot per day or liters per hour per square meter.

(33) Grantee--For purposes of this chapter, any person receiving an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(34) Grantor--For purposes of this chapter, any person who conveys an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(35) Groundwater--Any water that is located beneath the surface of the ground and is not under the direct influence of surface water.

(36) Groundwater under the direct influence of surface water--Any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium;*

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions; or

(C) site-specific characteristics including measurements of water quality parameters, well construction details, existing geological attributes, and other features that are similar to groundwater sources that have been identified by the executive director as being under the direct influence of surface water.

(37) Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(38) Human consumption--Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

(39) Indirect integrity monitoring--The monitoring of some aspect of filtrate water quality, such as turbidity, that is indicative of the removal of particulate matter.

(40) Innovative/alternate treatment--Any treatment process that does not have specific design requirements in §290.42(a) - (f) of this title (relating to Water Treatment).

(41) Interconnection--A physical connection between two public water supply systems.

(42) International Fire Code (IFC)--The standards of the International Code Council.

(43) Intruder-resistant fence--A fence six feet or greater in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle with the smooth side of the fence on the outside wall. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

(44) L/d ratio--The dimensionless value that is obtained by dividing the length (depth) of a granular media filter bed by the weighted effective diameter "d" of the filter media. The weighted effective diameter of the media is calculated based on the percentage of the total bed depth contributed by each media layer.

(45) Licensed professional engineer--An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(46) Log removal value (LRV)--Removal efficiency for a target organism, particulate, or surrogate expressed as log10 (i.e., log10 (feed concentration) - log10 (filtrate concentration)).

(47) Maximum contaminant level (MCL)--The MCL for a specific contaminant is defined in the section relating to that contaminant.

(48) Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.

(49) Membrane filtration--A pressure or vacuum driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test; includes the following common membrane classifications microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO), as well as any "membrane cartridge filtration" (MCF) device that satisfies this definition.

(50) Membrane LRVC-Test --The number that reflects the removal efficiency of the membrane filtration process demonstrated during challenge testing. The value is based on the entire set of log removal values (LRVs) obtained during challenge testing, with one representative LRV established per module tested.

(51) Membrane module--The smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(52) Membrane sensitivity--The maximum log removal value that can be reliably verified by a direct integrity test.

(53) Membrane unit--A group of membrane modules that share common valving, which allows the unit to be isolated from the

rest of the system for the purpose of integrity testing or other maintenance.

(54) Milligrams per liter (mg/L)--A measure of concentration, equivalent to and replacing parts per million in the case of dilute solutions.

(55) Monthly reports of water works operations--The daily record of data relating to the operation of the system facilities compiled in a monthly report.

(56) National Fire Protection Association (NFPA) standards--The standards of the NFPA.

(57) NSF International--The organization and the standards, certifications, and listings developed by NSF International (formerly known as the National Sanitation Foundation) related to drinking water.

(58) Noncommunity water system--Any public water system which is not a community system.

(59) Nonhealth hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that generally will not be a health hazard, but will constitute a nuisance, or be aesthetically objectionable, if introduced into the public water supply.

(60) Nontransient, noncommunity water system--A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

(61) Pass--In reference to a reverse osmosis or nanofiltration membrane system, stages of pressure vessels in series in which the permeate from one stage is further processed in a following stage.

(62) Peak hourly demand--In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

(63) Plumbing inspector--Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

(64) Plumbing ordinance--A set of rules governing plumbing practices which is at least as stringent and comprehensive as one of the following nationally recognized codes:

(A) the International Plumbing Code; or

(B) the Uniform Plumbing Code.

(65) Potable water customer service line--The sections of potable water pipe between the customer's meter and the customer's point of use.

(66) Potable water main--A pipe or enclosed constructed conveyance operated by a public water system which is used for the transmission or distribution of drinking water to a potable water service line.

(67) Potable water service line--The section of pipe between the potable water main and the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.

(68) Potential contamination hazard--A condition which, by its location, piping or configuration, has a reasonable probability of being used incorrectly, through carelessness, ignorance, or negligence, to create or cause to be created a backflow condition by which contamination can be introduced into the water supply. Examples of potential contamination hazards are:

(A) bypass arrangements;

(B) jumper connections;

(C) removable sections or spools; and

(D) swivel or changeover assemblies.

(69) Process control duties--Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director.

(70) psi--Pounds per square inch.

(71) Public drinking water program--Agency staff designated by the executive director to administer the Safe Drinking Water Act and state statutes related to the regulation of public drinking water. Any report required to be submitted in this chapter to the executive director must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(72) Public health engineering practices--Requirements in this chapter or guidelines promulgated by the executive director.

(73) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(74) Quality Control Release Value (QCRV)--A minimum quality standard of a non-destructive performance test established by the manufacturer for membrane module production that ensures that the module will attain the targeted log removal value demonstrated during challenge testing.

(75) Reactor Validation Testing--A process by which a full-scale ultraviolet (UV) reactor's disinfection performance is determined relative to operating parameters that can be monitored. These param-

eters include flow rate, UV intensity as measured by a UV sensor and the UV lamp status.

(76) Resolution--The size of the smallest integrity breach that contributes to a response from a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water.

(77) Sanitary control easement--A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding. For an example, see commission Form 20698.

(78) Sanitary survey--An onsite review of a public water system's adequacy for producing and distributing safe drinking water by evaluating the following elements: water source; treatment; distribution system; finished water storage; pump, pump facilities, and controls; monitoring, reporting, and data verification; system management, operation and maintenance; and operator compliance.

(79) Sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water; also applies to some continuous indirect integrity monitoring methods.

(80) Service line--A pipe connecting the utility service provider's main and the water meter, or for wastewater, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(81) Service pump--Any pump that takes treated water from storage and discharges to the distribution system.

(82) Significant deficiency--Significant deficiencies cause, or have the potential to cause, the introduction of contamination into water delivered to customers. This may include defects in design, operation, or maintenance of the source, treatment, storage, or distribution systems.

(83) Stage--In reference to a reverse osmosis or nanofiltration membrane system, a set of pressure vessels installed in parallel.

(84) System--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

(85) Transfer pump--Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

(86) Transient, noncommunity water system--A public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient, noncommunity water system.

(87) Vessel--In reference to a reverse osmosis or nanofiltration membrane system, a cylindrical housing unit where membrane modules are placed in a series to form one unit.

(88) Wastewater lateral--Any pipe or constructed conveyance carrying wastewater, running laterally down a street, alley, or easement, and receiving flow only from the abutting properties.

(89) Wastewater main--Any pipe or constructed conveyance which receives flow from one or more wastewater laterals.

(90) Water system--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

§290.45. Minimum Water System Capacity Requirements.

(a) General provisions.

(1) The requirements contained in this section are to be used in evaluating both the total capacities for public water systems and the capacities at individual pump stations and pressure planes which serve portions of the system that are hydraulically separated from, or incapable of being served by, other pump stations or pressure planes. The capacities specified in this section are minimum requirements only and do not include emergency fire flow capacities for systems required to meet requirements contained in §290.46(x) and (y) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(2) The executive director will require additional supply, storage, service pumping, and pressure maintenance facilities if a normal operating pressure of 35 pounds per square inch (psi) cannot be maintained throughout the system, or if the system's maximum daily demand exceeds its total production and treatment capacity. The executive director will also require additional capacities for a system that is unable to maintain a minimum pressure of 20 psi during firefighting, line flushing, other unusual conditions, and systems that are required to provide fire flow as specified in §290.46(x) and (y) of this title.

(3) The executive director may establish additional capacity requirements for a public water system using the method of calculation described in subsection (g)(2) of this section if there are repeated customer complaints regarding inadequate pressure or if the executive director receives a request for a capacity evaluation from customers of the system.

(4) Throughout this section, total storage capacity does not include pressure tank capacity.

(5) The executive director may exclude the capacity of facilities that have been inoperative for the past 120 days and will not be returned to an operative condition within the next 30 days when determining compliance with the requirements of this section.

(6) The capacity of the treatment facilities shall not be less than the required raw water or groundwater production rate or the anticipated maximum daily demand of the system. The production capacity of a reverse osmosis or nanofiltration membrane system shall be the quantity of permeate water after post-treatment that can be delivered to the distribution system. The amount available for customer use must consider:

(A) the quantity of feed water discharged to waste;

(B) the quantity of bypass water used for blending;

(C) the quantity of permeate water used for cleaning and maintenance; and

(D) any other loss of raw water or groundwater available for use due to other processes at the reverse osmosis or nanofiltration facility.

(7) If a public water system that is an affected utility fails to provide a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395 respectively, throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan or justification regarding pressure drop shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.

(8) A public water system that is an affected utility is required to review its emergency preparedness plan once every three years. An affected utility shall submit a new or revised emergency preparedness plan to the executive director for approval within 90 days after any of the following conditions occur:

(A) An affected utility chooses to implement a different option or options other than those in the most recent approved emergency preparedness plan;

(B) A previously non-affected utility meets the definition of an affected utility;

(C) An affected utility makes a significant change as described in §290.39(j) of this title that affects emergency operations; or

(D) An affected utility makes changes to utility contact or emergency communications information. For these changes, the affected utility must submit only the updated applicable pages of the emergency preparedness plan to the executive director.

(b) Community water systems.

(1) Groundwater supplies must meet the following requirements.

(A) If fewer than 50 connections without ground storage, the system must meet the following requirements:

(i) a well capacity of 1.5 gallons per minute (gpm) per connection; and

(ii) a pressure tank capacity of 50 gallons per connection.

(B) If fewer than 50 connections with ground storage, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more service pumps having a total capacity of 2.0 gpm per connection; and

(iv) a pressure tank capacity of 20 gallons per connection.

(C) For 50 to 250 connections, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required; and

(iv) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection.

(D) For more than 250 connections, the system must meet the following requirements:

(i) two or more wells having a total capacity of 0.6 gpm per connection. Where an interconnection is provided with another acceptable water system capable of supplying at least 0.35 gpm for each connection in the combined system under emergency conditions, an additional well will not be required as long as the 0.6 gpm per connection requirement is met for each system on an individual basis. Each water system must still meet the storage and pressure maintenance requirements on an individual basis unless the interconnection is permanently open. In this case, the systems' capacities will be rated as though a single system existed;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required;

(iv) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section are met; and

(v) emergency power for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm per connection and meet minimum pressure requirements to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm for each connection in the combined system. Emergency power must be maintained as required by §290.46(m)(8) of this title.

(E) Mobile home parks with a density of eight or more units per acre and apartment complexes which supply fewer than 100 connections without ground storage must meet the following requirements:

(i) a well capacity of 1.0 gpm per connection; and

(ii) a pressure tank capacity of 50 gallons per connection with a maximum of 2,500 gallons required.

(F) Mobile home parks and apartment complexes which supply 100 connections or greater, or fewer than 100 connections and utilize ground storage must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection. Systems with 250 or more connections must have either two wells or an approved interconnection which is capable of supplying at least 0.35 gpm for each connection in the combined system;

(ii) a total storage of 200 gallons per connection;

(iii) at least two service pumps with a total capacity of 2.0 gpm per connection; and

(iv) a pressure tank capacity of 20 gallons per connection.

(2) Surface water supplies must meet the following requirements:

(A) a raw water pump capacity of 0.6 gpm per connection with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gpm per connection under normal rated design flow;

(C) transfer pumps (where applicable) with a capacity of 0.6 gpm per connection with the largest pump out of service;

(D) a covered clearwell storage capacity at the treatment plant of 50 gallons per connection or, for systems serving more than 250 connections, 5.0% of daily plant capacity;

(E) a total storage capacity of 200 gallons per connection;

(F) a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane;

(G) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for systems of up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section are met; and

(H) emergency power for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm per connection and meet minimum pressure requirements to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm for each connection in the combined system. Emergency power must be maintained as required by §290.46(m)(8) of this title.

(3) Any community public water system that is an affected utility, defined in TWC §13.1394 or §13.1395 shall have an emergency preparedness plan approved by the executive director and must meet the requirements for emergency operations contained in subsection (h) or (i) of this section. This includes any affected utility that provides 100 gallons of elevated storage capacity per connection.

(c) Noncommunity water systems serving transient accommodation units. The following water capacity requirements apply to noncommunity water systems serving accommodation units such as hotel rooms, motel rooms, travel trailer spaces, campsites, and similar accommodations.

(1) Groundwater supplies must meet the following requirements.

(A) If fewer than 100 accommodation units without ground storage, the system must meet the following requirements:

(i) a well capacity of 1.0 gpm per unit; and

(ii) a pressure tank capacity of ten gallons per unit with a minimum of 220 gallons.

(B) For systems serving fewer than 100 accommodation units with ground storage or serving 100 or more accommodation units, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per unit;

(ii) a ground storage capacity of 35 gallons per unit;

(iii) two or more service pumps which have a total capacity of 1.0 gpm per unit; and

(iv) a pressure tank capacity of ten gallons per unit.

(2) Surface water supplies, regardless of size, must meet the following requirements:

(A) a raw water pump capacity of 0.6 gpm per unit with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gpm per unit;

(C) a transfer pump capacity (where applicable) of 0.6 gpm per unit with the largest pump out of service;

(D) a ground storage capacity of 35 gallons per unit with a minimum of 1,000 gallons as clearwell capacity;

(E) two or more service pumps with a total capacity of 1.0 gpm per unit; and

(F) a pressure tank capacity of ten gallons per unit with a minimum requirement of 220 gallons.

(3) A noncommunity public water system that is an affected utility, defined in TWC §13.1394 or §13.1395 shall meet the requirements of subsection (h) or (i) of this section.

(d) Noncommunity water systems serving other than transient accommodation units.

(1) The following table is applicable to paragraphs (2) and (3) of this subsection and shall be used to determine the maximum daily demand for the various types of facilities listed.
Figure: 30 TAC §290.45(d)(1) (No change.)

(2) Groundwater supplies must meet the following requirements.

(A) Subject to the requirements of subparagraph (B) of this paragraph, if fewer than 300 persons per day are served, the system must meet the following requirements:

(i) a well capacity which meets or exceeds the maximum daily demand of the system during the hours of operation; and

(ii) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(B) Systems which serve 300 or more persons per day or serve fewer than 300 persons per day and provide ground storage must meet the following requirements:

(i) a well capacity which meets or exceeds the maximum daily demand;

(ii) a ground storage capacity which is equal to 50% of the maximum daily demand;

(iii) if the maximum daily demand is less than 15 gpm, at least one service pump with a capacity of three times the maximum daily demand;

(iv) if the maximum daily demand is 15 gpm or more, at least two service pumps with a total capacity of three times the maximum daily demand; and

(v) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(3) Each surface water supply or groundwater supply that is under the direct influence of surface water, regardless of size, must meet the following requirements:

(A) a raw water pump capacity which meets or exceeds the maximum daily demand of the system with the largest pump out of service;

(B) a treatment plant capacity which meets or exceeds the system's maximum daily demand;

(C) a transfer pump capacity (where applicable) sufficient to meet the maximum daily demand with the largest pump out of service;

(D) a clearwell capacity which is equal to 50% of the maximum daily demand;

(E) two or more service pumps with a total capacity of three times the maximum daily demand; and

(F) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(4) A noncommunity public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, shall meet the requirements of subsection (h) or (i) of this section.

(e) Water wholesalers. The following additional requirements apply to systems which supply wholesale treated water to other public water supplies.

(1) All wholesalers must provide enough production, treatment, and service pumping capacity to meet or exceed the combined maximum daily commitments specified in their various contractual obligations. If a contract prohibits a purchaser from securing water from sources other than the contracted wholesaler during emergency operations, the wholesaler is responsible for meeting applicable capacity requirements.

(2) For wholesale water suppliers, minimum water system capacity requirements shall be determined by calculating the requirements based upon the number of retail customer service connections of that wholesale water supplier, if any, fire flow capacities, if required by §290.46(x) and (y) of this title and adding that amount to the maximum amount of water obligated or pledged under all wholesale contracts.

(3) Emergency power is required for each portion of the system which supplies more than 250 connections under direct pressure and does not provide an elevated storage capacity of at least 100 gallons per connection. If emergency power is required, it must be sufficient to deliver 20% of the minimum required service pump capacity and meet minimum pressure requirements in the event of the loss of normal power supply. When the wholesaler provides water through an air gap into the purchaser's storage facilities it will be the purchaser's responsibility to meet all minimum water system capacity requirements including emergency power. For wholesale contracts executed or amended on or after January 1, 2025, the contract must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations to comply with TWC §13.1394 or §13.1395.

(4) A wholesaler that is an affected utility, defined in TWC §13.1394 or §13.1395, must meet the requirements specified in subsection (h) or (i) of this section.

(f) Purchased water systems. The following requirements apply only to systems which purchase treated water to meet all or part of their production, storage, service pump, or pressure maintenance capacity requirements.

(1) The water purchase contract must be available to the executive director in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated. For purposes of this section, a contract may be defined as a signed written document of specific terms agreeable to the water purchaser and the water wholesaler, or in its absence, a memorandum or letter of understanding between the water purchaser and the water wholesaler.

(2) The contract shall authorize the purchase of enough water to meet the monthly or annual needs of the purchaser.

(3) The contract shall also establish the maximum rate at which water may be drafted on a daily and hourly basis. In the absence of specific maximum daily or maximum hourly rates in the contract, a uniform purchase rate for the contract period will be used.

(4) The maximum authorized daily purchase rate specified in the contract, or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system must be at least 0.6 gpm per connection.

(5) For systems which purchase water under direct pressure, the maximum hourly purchase authorized by the contract plus the actual service pump capacity of the system must be at least 2.0 gpm per connection or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less.

(6) The purchaser is responsible for meeting all capacity requirements. If additional capacity to meet increased demands cannot be attained from the wholesaler through a new or amended contract, additional capacity must be obtained from water purchase contracts with other entities, new wells, or surface water treatment facilities. However, if the water purchase contract prohibits the purchaser from securing water from sources other than the wholesaler, the wholesaler is responsible for meeting applicable capacity requirements. For wholesale contracts executed or amended on or after January 1, 2025, the contract must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations to comply with TWC §13.1394 or §13.1395.

(7) All other minimum capacity requirements specified in this section and §290.46(x) and (y) of this title shall apply.

(g) Alternative capacity requirements. Public water systems may request approval to meet alternative capacity requirements in lieu of the minimum capacity requirements specified in this section. Any water system requesting to use an alternative capacity requirement must demonstrate to the satisfaction of the executive director that approving the request will not compromise the public health or result in a degradation of service or water quality and comply with the requirements found in §290.46(x) and (y) of this title. Alternative capacity requirements are unavailable for groundwater systems serving fewer than 50 connections without total storage as specified in subsection (b)(1) of this section or for noncommunity water systems as specified in subsections (c) and (d) of this section.

(1) Alternative capacity requirements for public water systems may be granted upon request to and approval by the executive director. The request to use an alternative capacity requirement must include:

(A) a detailed inventory of the major production, pressurization, and storage facilities utilized by the system;

(B) records kept by the water system that document the daily production of the system. The period reviewed shall not be less than three years. The applicant may not use a calculated peak daily demand;

(C) data acquired during the last drought period in the region, if required by the executive director;

(D) the actual number of active connections for each month during the three years of production data;

(E) description of any unusual demands on the system such as fire flows or major main breaks that will invalidate unusual peak demands experienced in the study period;

(F) any other relevant data needed to determine that the proposed alternative capacity requirement will provide at least 35 psi in the public water system except during line repair or during firefighting when it cannot be less than 20 psi; and

(G) a copy of all data relied upon for making the proposed determination.

(2) Alternative capacity requirements for existing public water systems must be based upon the maximum daily demand for the system, unless the request is submitted by a licensed professional engineer in accordance with the requirements of paragraph (3) of this subsection. The maximum daily demand must be determined based upon the daily usage data contained in monthly operating reports for the system during a 36 consecutive month period. The 36 consecutive month period must end within 90 days of the date of submission to ensure the data is as current as possible.

(A) Maximum daily demand is the greatest number of gallons, including groundwater, surface water, and purchased water delivered by the system during any single day during the review period. Maximum daily demand excludes unusual demands on the system such as fire flows or major main breaks.

(B) For the purpose of calculating alternative capacity requirements, an equivalency ratio must be established. This equivalency ratio must be calculated by multiplying the maximum daily demand, expressed in gpm per connection, by a fixed safety factor and dividing the result by 0.6 gpm per connection. The safety factor shall be 1.15 unless it is documented that the existing system capacity is adequate for the next five years. In this case, the safety factor may be reduced to 1.05. The conditions in §291.93(3) of this title (relating to Adequacy of Water Utility Service) concerning the 85% rule shall continue to apply to public water systems that are also retail public utilities.

(C) To calculate the alternative capacity requirements, the equivalency ratio must be multiplied by the appropriate minimum capacity requirements specified in subsection (b) of this section. Standard rounding methods are used to round calculated alternative production capacity requirement values to the nearest one-hundredth.

(3) Alternative capacity requirements which are proposed and submitted by licensed professional engineers for review are subject to the following additional requirements.

(A) A signed and sealed statement by the licensed professional engineer must be provided which certifies that the proposed alternative capacity requirements have been determined in accordance with the requirements of this subsection.

(B) If the system is new or at least 36 consecutive months of data is not available, maximum daily demand may be based upon at least 36 consecutive months of data from a comparable public water system. A licensed professional engineer must certify that the data from another public water system is comparable based on consideration of the following factors: prevailing land use patterns (rural versus urban); number of connections; density of service populations; fire flow obligations; and socio-economic, climatic, geographic, and topographic considerations as well as other factors as may be relevant. The comparable public water system shall not exhibit any of the conditions listed in paragraph (6)(A) of this subsection.

(4) The executive director shall consider requests for alternative capacity requirements in accordance with the following requirements.

(A) For those requests submitted under the seal of a licensed professional engineer, the executive director must mail written acceptance or denial of the proposed alternative capacity requirements to the public water system within 90 days from the date of submission. If the executive director fails to mail written notification within 90 days, the alternative capacity requirements submitted by a licensed professional engineer automatically become the alternative capacity requirements for the public water system.

(B) If the executive director denies the request:

(i) the executive director shall mail written notice to the public water system identifying the specific reason or reasons for denial and allow 45 days for the public water system to respond to the reason(s) for denial;

(ii) the denial is final if no response from the public water system is received within 45 days of the written notice being mailed; and

(iii) the executive director must mail a final written approval or denial within 60 days from the receipt of any response timely submitted by the public water system.

(5) Although elevated storage is the preferred method of pressure maintenance for systems of over 2,500 connections, it is recognized that local conditions may dictate the use of alternate methods utilizing hydropneumatic tanks and on-site emergency power equipment. Alternative capacity requirements to the elevated storage requirements may be obtained based on request to and approval by the executive director. Special conditions apply to systems qualifying for an elevated storage alternative capacity requirement.

(A) The system must submit documentation sufficient to assure that the alternate method of pressure maintenance is capable of providing a safe and uninterrupted supply of water under pressure to the distribution system during all demand conditions.

(i) A signed and sealed statement by a licensed professional engineer must be provided which certifies that the pressure maintenance facilities are sized, designed, and capable of providing a minimum pressure of at least 35 psi at all points within the distribution network at flow rates of 1.5 gpm per connection or greater. In addition, the engineer must certify that the emergency power facilities are capable of providing the greater of the average daily demand or 0.35 gpm per connection while maintaining distribution pressures of at least 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively, and that emergency power facilities powering production and treatment facilities are capable of supplying at least 0.35 gpm per connection to storage.

(ii) The system's licensed professional engineer must conduct a hydraulic analysis of the system under peak conditions. This must include an analysis of the time lag between the loss of the normal power supply and the commencement of emergency power as well as the minimum pressure that will be maintained within the distribution system during this time lag. In no case shall this minimum

pressure within the distribution system be less than 20 psi. The results of this analysis must be submitted to the executive director for review.

(iii) For existing systems, the system's licensed professional engineer must provide continuous pressure chart recordings of distribution pressures maintained during past power failures, if available. The period reviewed shall not be less than three years.

(iv) A public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, must conduct the modeling requirements contained in clauses (i) - (iii) of this subparagraph using the requirements specified in subsection (h) or (i) of this section.

(B) Emergency power facilities must be maintained and provided with necessary appurtenances to assure immediate and dependable operation in case of normal power interruption. A public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, must meet the requirements specified in subsection (h) or (i) of this section.

(i) The facilities must be serviced and maintained in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturers' recommendations if the affected utility serves 1,000 connections or greater, or in accordance with manufacturer's recommendations and as prescribed in §290.46(m)(8) of this title if the affected utility serves fewer than 1,000 connections.

(ii) The switching gear must be capable of bringing the emergency power generating equipment on-line during a power interruption such that the pressure in the distribution network does not fall below 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively.

(iii) The minimum on-site fuel storage capacity shall be determined by the fuel demand of the emergency power facilities and the frequency of fuel delivery. An amount of fuel equal to that required to operate the emergency power facilities during emergency operations for a period of at least 48 hours must always be maintained on site or made readily available.

(iv) Residential rated mufflers or other means of effective noise suppression must be provided on each emergency power motor.

(C) Battery-powered or uninterrupted power supply pressure monitors and chart recorders which are configured to activate immediately upon loss of normal power must be provided for pressure maintenance facilities. These records must be kept for a minimum of three years and made available for review by the executive director. Records must include chart recordings of all power interruptions including interruptions due to periodic emergency power under-load testing and maintenance.

(6) Any alternative capacity requirement granted under this subsection is subject to review and revocation or revision by the executive director. If permission to use an alternative capacity requirement is revoked, the public water system must meet the applicable minimum capacity requirements of this section.

(A) The following conditions, if attributable to the alternative capacity requirements, may constitute grounds for revocation or revision of established alternative capacity requirements or for denial of new requests, if the condition occurred within the last 36 months:

(i) documented pressure below 35 psi at any time not related to line repair, except during firefighting when it cannot be less than 20 psi;

(ii) water outages due to high water usage;

(iii) mandatory water rationing due to high customer demand or overtaxed water production or supply facilities;

(iv) failure to meet a minimum capacity requirement or an established alternative capacity requirement;

(v) changes in water supply conditions or usage patterns which create a potential threat to public health; or

(vi) any other condition where the executive director finds that the alternative capacity requirement has compromised public health or resulted in a degradation of service or water quality.

(B) If the executive director finds any of the conditions specified in subparagraph (A) of this paragraph, the process for revocation or revision of an alternative capacity requirement shall be as follows, unless the executive director finds that failure of the service or other threat to public health and safety is imminent under subparagraph (C) of this paragraph.

(i) The executive director must mail the public drinking water system written notice of the executive director's intent to revoke or revise an alternative capacity requirement identifying the specific reason(s) for the proposed action.

(ii) The public water system has 30 days from the date the written notice is mailed to respond to the proposed action.

(iii) The public water system has 30 days from the date the written notice is mailed to request a meeting with the agency's public drinking water program personnel to review the proposal. If requested, such a meeting must occur within 45 days of the date the written notice is mailed.

(iv) After considering any response from or after any requested meeting with the public drinking water system, the executive director must mail written notification to the public drinking water system of the executive director's final decision to continue, revoke, or revise an alternative capacity requirement identifying the specific reason(s) for the decision.

(C) If the executive director finds that failure of the service or other threat to public health and safety is imminent, the executive director may issue written notification of the executive director's final decision to revoke or revise an alternative capacity requirement at any time.

(h) Affected utilities as defined in TWC §13.1394. This subsection applies to all affected utilities, as defined in TWC §13.1394, and is in addition to any other requirements pertaining to emergency power found in this chapter.

(1) Affected utilities must provide one or more of the following options to ensure the emergency operation of its water system during an extended power outage at a minimum of 20 psi, or a pressure approved by the executive director, whichever is applicable, and in accordance with the affected utility's approved emergency preparedness plan:

(A) the maintenance of automatically starting auxiliary generators;

(B) the sharing of auxiliary generator capacity with one or more affected utilities, including through participation in a statewide mutual aid program;

(C) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers, or conveyers of potable water or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(D) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(E) the use of on-site electrical generation or electrical distribution generation facilities;

(F) hardening of the electric transmission and electric distribution system against damage from natural disasters during an extended power outage;

(G) the maintenance of direct engine or right-angle drives;

(H) designation of the water system as a critical load facility or redundant, isolated or dedicated electrical feeds;

(I) water storage capabilities with sufficient storage to provide water to customers during an extended power outage;

(J) water supplies can be delivered from outside the service area of the affected utility by opening an emergency interconnect or using a water hauler;

(K) affected utility has ability to provide water through artesian flows;

(L) affected utility has ability to open valves between pressure zones to provide redundant interconnectivity between pressure zones;

(M) affected utility will implement emergency water demand rules to maintain emergency operations; or

(N) any other alternative determined by the executive director to be acceptable.

(2) Each affected utility that supplies, provides, or conveys raw surface water shall include in its emergency preparedness plan, under paragraph (1) of this subsection, provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facility necessary to provide raw water service to its wholesale customers during emergencies. This does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(3) Emergency generators used as part of an approved emergency preparedness plan must be inspected, maintained, tested, and operated in accordance with the manufacturer's specifications and as outlined in 290.46(m)(8) of this title.

(4) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(5) As soon as safe and practicable following the occurrence of a natural disaster, an affected utility must operate in accordance with its approved emergency preparedness plan, which may include using elevated storage. An affected utility may meet the requirements of TWC §13.1394 including having a currently approved emergency preparedness plan, in lieu of any other rules regarding elevated storage requirements, provided that, under normal operating conditions, the affected utility continues to meet the pressure requirements of §290.46(r) of this title (related to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and the production, treatment, total storage, and service pump capacity requirements of this subchapter.

(6) An affected utility must maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any required emergency power equipment necessary to maintain emergency operations for at least 48 hours.

(7) Each affected utility must implement its emergency preparedness plan upon approval by the executive director.

(i) Affected utilities as defined by TWC §13.1395. This subsection applies to all affected utilities as defined by TWC §13.1395 and is in addition to any other requirements pertaining to emergency power found in this subchapter.

(1) Affected utilities must provide one of the following options of sufficient power to meet the capacity requirements of paragraph (1) or (2) of this subsection, whichever is applicable, and in accordance with the affected utility's approved emergency preparedness plan:

(A) the maintenance of automatically starting auxiliary generators;

(B) the sharing of auxiliary generator capacity with one or more affected utilities;

(C) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers, or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(D) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(E) the use of on-site electrical generation or electrical distributed generation facilities;

(F) hardening of the electric transmission and electric distribution system against damage from natural disasters during an extended power outage;

(G) the maintenance of direct engine or right-angle drives; or

(H) any other alternative determined by the executive director to be acceptable.

(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall install and maintain automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers. This does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(3) Emergency generators used as part of an approved emergency preparedness plan must be maintained, tested, and operated in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturers specifications if the affected utility serves 1,000 connections or greater, or the manufacturer's specifications and as outlined in §290.46(m)(8) of this title for affected utilities serving fewer than 1,000 connections.

(4) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(5) As soon as safe and practicable following the occurrence of a natural disaster, an affected utility must operate in accordance with its approved emergency preparedness plan, which may include using elevated storage. An affected utility may meet the requirements of TWC §13.1395, including having a currently approved emergency preparedness plan, in lieu of any other rules regarding elevated storage requirements, provided that, under normal operating conditions, the affected utility continues to meet the pressure requirements

of §290.46(r) of this title and the production, treatment, total storage and service pump capacity requirements of this subchapter.

(6) An affected utility must maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any required emergency power equipment necessary to maintain emergency operations for at least 48 hours.

(7) Each affected utility must implement their emergency preparedness plan upon approval by the executive director.

(j) Alternative recreational vehicle park connection equivalency. If the actual water usage of a recreational vehicle park that is a retail customer of a public water system is less than 90 percent of the average daily demand of 45.0 gallons per day per recreational vehicle site, the public water system may use an alternative recreational vehicle park connection equivalency calculated using the following figure. The alternative recreational vehicle park connection equivalency will be reviewed during on-site compliance inspections.
Figure: 30 TAC §290.45(j)

(1) To determine the alternative recreational vehicle park connection equivalency, the public water system must calculate the recreational vehicle park's actual average daily demand.

(2) For the purposes of this paragraph, the actual average daily demand is determined based upon at least 12 consecutive months of meter readings for the recreational vehicle park, divided by the total number of days in those months. The actual average daily demand is then divided by the number of recreational vehicle sites and cabin sites within the recreational vehicle park, whether occupied or not.

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

(a) General. When a public drinking water supply system is to be established, plans shall be submitted to the executive director for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with the requirements of this subchapter and maintained and operated in accordance with the following minimum acceptable operating practices. Owners and operators shall allow entry to members of the commission and employees and agents of the commission onto any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to public water systems in the state including the required elements of a sanitary survey as defined in §290.38 of this title (relating to Definitions). Members, employees, or agents acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials.

(b) Microbiological. Submission of samples for microbiological analysis shall be as required by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Microbiological samples may be required by the executive director for monitoring purposes in addition to the routine samples required by the drinking water standards. These samples shall be submitted to an accredited laboratory. (A list of the accredited laboratories can be obtained by contacting the executive director.) The samples shall be submitted to the executive director in a manner prescribed by the executive director.

(c) Chemical. Samples for chemical analysis shall be submitted as directed by the executive director.

(d) Disinfectant residuals and monitoring. A disinfectant residual must be continuously maintained during the treatment process and throughout the distribution system.

(1) Disinfection equipment shall be operated and monitored in a manner that will assure compliance with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) The disinfection equipment shall be operated to maintain the following minimum disinfectant residuals in each finished water storage tank and throughout the distribution system at all times:

(A) a free chlorine residual of 0.2 milligrams per liter (mg/L); or

(B) a chloramine residual of 0.5 mg/L (measured as total chlorine) for those systems that distribute chloraminated water.

(e) Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director. Except as provided in paragraph (1) of this subsection, all public water systems must use a water works operator who holds an applicable, valid license issued by the executive director to meet the requirements of this subsection. The licensed operator of a public water system may be an employee, contractor, or volunteer.

(1) Transient, noncommunity public water systems are exempt from the requirements of this subsection if they use only groundwater or purchase treated water from another public water system.

(2) All public water systems that are subject to the provisions of this subsection shall meet the following requirements.

(A) Public water systems shall not allow new or repaired production, treatment, storage, pressure maintenance, or distribution facilities to be placed into service without the prior guidance and approval of a licensed water works operator.

(B) Public water systems shall ensure that their operators are trained regarding the use of all chemicals used in the water treatment plant. Training programs shall meet applicable standards established by the Occupational Safety and Health Administration or the Texas Hazard Communication Act, Texas Health and Safety Code, Chapter 502.

(C) Public water systems using chlorine dioxide shall place the operation of the chlorine dioxide facilities under the direct supervision of a licensed operator who has a Class "C" or higher license.

(D) Effective September 1, 2016, reverse osmosis or nanofiltration membrane systems must have operators that have successfully completed at least one executive director-approved training course or event specific to the operations and maintenance of reverse osmosis or nanofiltration membrane treatment.

(3) Systems that only purchase treated water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Purchased water systems serving no more than 250 connections must use an operator who holds a Class "D" or higher license.

(B) Purchased water systems serving more than 250 connections, but no more than 1,000 connections, must use an operator who holds a Class "C" or higher license.

(C) Purchased water systems serving more than 1,000 connections must use at least two operators who hold a Class "C" or higher license and who each work at least 16 hours per month at the public water system's treatment or distribution facilities.

(4) Systems that treat groundwater and do not treat surface water or groundwater that is under the direct influence of surface water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Groundwater systems serving no more than 250 connections must use an operator with a Class "D" or higher license.

(B) Groundwater systems serving more than 250 connections, but no more than 1,000 connections, must use an operator with a Class "C" or higher groundwater license.

(C) Groundwater systems serving more than 1,000 connections must use at least two operators who hold a Class "C" or higher groundwater license and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities.

(5) Systems that treat groundwater that is under the direct influence of surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Systems which serve no more than 1,000 connections and utilize cartridge or membrane filters must use an operator who holds a Class "C" or higher groundwater license and has completed a four-hour training course on monitoring and reporting requirements or who holds a Class "C" or higher surface water license and has completed the Groundwater Production course.

(B) Systems which serve more than 1,000 connections and utilize cartridge or membrane filters must use at least two operators who meet the requirements of subparagraph (A) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities.

(C) Systems which serve no more than 1,000 connections and utilize coagulant addition and direct filtration must use an operator who holds a Class "C" or higher surface water license and has completed the Groundwater Production course or who holds a Class "C" or higher groundwater license and has completed a Surface Water Production course. Effective January 1, 2007, the public water system must use at least one operator who has completed the Surface Water Production I course and the Surface Water Production II course.

(D) Systems which serve more than 1,000 connections and utilize coagulant addition and direct filtration must use at least two operators who meet the requirements of subparagraph (C) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must use at least two operators who have completed the Surface Water Production I course and the Surface Water Production II course.

(E) Systems which utilize complete surface water treatment must comply with the requirements of paragraph (6) of this subsection.

(F) Each plant must have at least one Class "C" or higher operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(6) Systems that treat surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Surface water systems that serve no more than 1,000 connections must use at least one operator who holds a Class "B" or higher surface water license. Part-time operators may be used to meet the requirements of this subparagraph if the operator is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also uses an operator who holds a Class "C" or higher surface water license. Effective January 1, 2007, the public water system must use at least one operator who has completed the Surface Water Production I course and the Surface Water Production II course.

(B) Surface water systems that serve more than 1,000 connections must use at least two operators; one of the required operators must hold a Class "B" or higher surface water license and the other required operator must hold a Class "C" or higher surface water license. Each of the required operators must work at least 32 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must use at least two operators who have completed the Surface Water Production I course and the Surface Water Production II course.

(C) Each surface water treatment plant must have at least one Class "C" or higher surface water operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(D) Public water systems shall not allow Class "D" operators to adjust or modify the treatment processes at surface water treatment plant unless an operator who holds a Class "C" or higher surface license is present at the plant and has issued specific instructions regarding the proposed adjustment.

(f) Operating records and reports. All public water systems must maintain a record of water works operation and maintenance activities and submit periodic operating reports.

(1) The public water system's operating records must be organized, and copies must be kept on file or stored electronically.

(2) The public water system's operating records must be accessible for review during inspections and be available to the executive director upon request.

(3) All public water systems shall maintain a record of operations.

(A) The following records shall be retained for at least two years:

(i) the amount of chemicals used:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of each chemical used each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of each chemical used each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchased treated water shall maintain a record of the amount of each chemical used each week;

(ii) the volume of water treated and distributed:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of water treated and distributed each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of water distributed each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchase treated water shall maintain a record of the amount of water distributed each week.

(IV) Systems that serve 250 or more connections or serve 750 or more people and also add chemicals or provide pathogen or chemical removal shall maintain a record of the amount of water treated each day.

(V) Systems that serve fewer than 250 connections, serve fewer than 750 people, use only groundwater or purchase treated water, and also add chemicals or provide pathogen or chemical removal shall maintain a record of the amount of water treated each week;

(iii) the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation;

(iv) the dates that dead-end mains were flushed;

(v) the dates that storage tanks and other facilities were cleaned;

(vi) the maintenance records for water system equipment and facilities. For systems using reverse osmosis or nanofiltration, maintain records of each clean-in-place process including the date, duration, and procedure used for each event;

(vii) for systems that do not employ full-time operators to meet the requirements of subsection (e) of this section, a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators used to meet the requirements of subsection (e) of this section; and

(viii) the owner or manager of a public water system that is operated by a volunteer to meet the requirements of subsection (e) of this section, shall maintain a record of each volunteer operator indicating the name of the volunteer, contact information for the volunteer, and the time period for which the volunteer is responsible for operating the public water system. These requirements apply to full-time and part-time licensed volunteer operators. Part-time licensed volunteer operators are excluded from the requirements of clause (vii) of this subparagraph.

(B) The following records shall be retained for at least three years:

(i) copies of notices of violation and any resulting corrective actions. The records of the actions taken to correct violations of primary drinking water regulations must be retained for at least three years after the last action taken with respect to the particular violation involved;

(ii) copies of any public notice issued by the water system;

(iii) the disinfectant residual monitoring results from the distribution system;

(iv) the calibration records for laboratory equipment, flow meters, rate-of-flow controllers, on-line turbidimeters, and on-line disinfectant residual analyzers;

(v) the records of backflow prevention device programs;

(vi) the raw surface water monitoring results and source water monitoring plans required by §290.111 of this title (relating to Surface Water Treatment) must be retained for three years after bin classification required by §290.111 of this title;

(vii) notification to the executive director that a system will provide 5.5-log Cryptosporidium treatment in lieu of raw surface water monitoring;

(viii) except for those specified in subparagraphs (C)(iv) and (E)(i) of this paragraph, the results of all surface water treatment monitoring that are used to demonstrate log inactivation or removal;

(ix) free and total chlorine, monochloramine, ammonia, nitrite, and nitrate monitoring results if chloramines are used in the water system; and

(x) the records of treatment effectiveness monitoring for systems using reverse osmosis or nanofiltration membranes. Treatment effectiveness monitoring includes the parameters for determining when maintenance is required. Examples of parameters to be monitored include conductivity (or total dissolved solids) on each membrane unit, pressure differential across a membrane vessel, flow, flux, and water temperature. At a minimum, systems using reverse osmosis or nanofiltration membranes must monitor the conductivity (or total dissolved solids) of the feed and permeate water once per day.

(C) The following records shall be retained for a period of five years after they are no longer in effect:

(i) the records concerning a variance or exemption granted to the system;

(ii) Concentration Time (CT) studies for surface water treatment plants;

(iii) the Recycling Practices Report form and other records pertaining to site-specific recycle practices for treatment plants that recycle; and

(iv) the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title.

(D) The following records shall be retained for at least five years:

(i) the results of microbiological analyses;

(ii) the results of inspections (as required in subsection (m)(1) of this section) for all water storage and pressure maintenance facilities;

(iii) the results of inspections (as required by subsection (m)(2) of this section) for all pressure filters;

(iv) documentation of compliance with state approved corrective action plan and schedules required to be completed by groundwater systems that must take corrective actions;

(v) documentation of the reason for an invalidated fecal indicator source sample and documentation of a total coliform-positive sample collected at a location with conditions that could cause such positive samples in a distribution system;

(vi) notification to wholesale system(s) of a distribution coliform-positive sample for consecutive systems using groundwater;

(vii) Consumer Confidence Report compliance documentation;

(viii) records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the executive director-approved minimum specified disinfectant residual for a period of more than four hours for groundwater systems providing 4-log treatment;

(ix) records of executive director-specified compliance requirements for membrane filtration, records of parameters specified by the executive director for approved alternative treatment and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours for groundwater systems. Membrane filtration can only be used if it is approved by the executive director and if it can be properly validated;

(x) assessment forms, regardless of who conducts the assessment, and documentation of corrective actions completed or documentation of corrective actions required but not yet completed as a result of those assessments and any other available summary documentation of the sanitary defects and corrective actions taken in accordance with §290.109 of this title (relating to Microbial Contaminants) for executive director review;

(xi) seasonal public water systems shall maintain executive director-approved start-up procedures and certification documentation in accordance with §290.109 of this title for executive director review; and

(xii) records of any repeat sample taken that meets the criteria for an extension of the 24-hour period for collecting repeat samples under §290.109 of this title.

(E) The following records shall be retained for at least ten years:

(i) copies of Monthly Operating Reports and any supporting documentation including turbidity monitoring results of the combined filter effluent;

(ii) the results of chemical analyses;

(iii) any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the executive director shall be kept for a period not less than ten years after completion of the survey involved;

(iv) copies of the Customer Service Inspection reports required by subsection (j) of this section;

(v) copy of any Initial Distribution System Evaluation (IDSE) plan, report, approval letters, and other compliance documentation required by §290.115 of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5));

(vi) state notification of any modifications to an IDSE report;

(vii) copy of any 40/30 certification required by §290.115 of this title;

(viii) documentation of corrective actions taken by groundwater systems in accordance with §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques);

(ix) any Sample Siting Plans required by §290.109(d)(6) of this title and monitoring plans required by §290.121(b) of this title (relating to Monitoring Plans); and

(x) records of the executive director-approved minimum specified disinfectant residual and executive director-approved membrane system integrity monitoring results for groundwater systems providing 4-log treatment, including wholesale, and consecutive systems, regulated under §290.116(c) of this title.

(F) A public water system shall maintain records relating to lead and copper requirements under §290.117 of this title (relating to Regulation of Lead and Copper) for no less than 12 years. Any system subject to the requirements of §290.117 of this title shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, executive determinations, and any other information required by the executive director under §290.117 of this title. These records include, but are not limited to, the following items: tap water monitoring results including the location of each site and date of collection; certification of the volume and validity of first-draw-tap sample criteria via a copy of the laboratory analysis request form; where residents collected the sample; certification that the water system informed the resident of proper sampling procedures; the analytical results for lead and copper concentrations at each tap sample site; and designation of any substitute site not used in previous monitoring periods.

(G) A public water system shall maintain records relating to special studies and pilot projects, special monitoring, and other system-specific matters as directed by the executive director.

(4) Public water systems shall submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter.

(A) The reports must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(B) The reports must contain all the information required by the drinking water standards and the results of any special monitoring tests which have been required.

(C) The reports must be completed in ink, typed, or computer-printed and must be signed by the licensed water works operator.

(5) All public water systems that are affected utilities under TWC §13.1394 or §13.1395 must maintain the following records for as long as they are applicable to the system:

(A) An emergency preparedness plan approved by the executive director and a copy of the approval letter.

(B) All required operating, inspection, testing, and maintenance records for auxiliary power equipment, and associated components required to be maintained, or actions performed as prescribed in §290.46(m)(8) of this title.

(C) Copies of the manufacturer's specifications for all generators that are part of the approved emergency preparedness plan.

(g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with American Water Works Association (AWWA) requirements and water samples must be submitted to an accredited laboratory. The sample results must indicate that the facility is free of microbiological contamination before it is placed into service. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/L and the contact time reduced to 1/2 hour.

(h) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

(i) Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted (See §290.47(b) of this title (relating to Appendices)). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(j) Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in commission Form 20699 must be approved by the executive director prior to being placed in use.

(1) Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.

(A) Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners (TSBPE).

(B) Customer service inspectors who have completed a commission-approved course, passed an examination administered by the executive director, and hold current professional license as a customer service inspector.

(2) As potential contaminant hazards are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a health hazard, as identified in §290.47(f) of this title, shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the health hazard no longer exists, or until the health hazard has been isolated from the public water system in accordance with §290.44(h) of this title (relating to Water Distribution).

(3) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to General Applicability).

(4) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials. The customer service inspector has no authority or obligation beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the TSBPE. A customer service inspector is not permitted to perform plumbing inspections. State statutes and TSBPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns, and villages which have passed an ordinance adopting one of the plumbing codes recognized by TSBPE. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such entities permit customer service inspectors to perform customer service inspections, the customer service inspector shall report any violations immediately to the local entity's plumbing inspection department.

(k) Interconnection. No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.

(l) Flushing of mains. All dead-end mains must be flushed at monthly intervals. Dead-end lines and other mains shall be flushed as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels as specified in §290.110 of this title.

(m) Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the good working condition and general appearance of the system's facilities and equipment. The grounds and facilities shall be maintained in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.

(1) Each of the system's ground, elevated, and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service.

(A) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.

(B) Pressure tank inspections must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.

(C) All tanks shall be inspected annually to determine that instrumentation and controls are working properly.

(2) When pressure filters are used, a visual inspection of the filter media and internal filter surfaces shall be conducted annually to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces.

(3) When cartridge filters are used, filter cartridges shall be changed at the frequency required by the manufacturer, or more frequently if needed.

(4) All water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

(5) Basins used for water clarification shall be maintained free of excessive solids to prevent possible carryover of sludge and the formation of tastes and odors.

(6) Pumps, motors, valves, and other mechanical devices shall be maintained in good working condition.

(7) Reverse osmosis or nanofiltration membrane systems shall be cleaned, or replaced, in accordance with the allowable operating conditions of the manufacturer and shall be based on one or more of the following: increased salt passage, increased or decreased pressure differential, and/or change in normalized permeate flow.

(8) Emergency generators must be appropriately tested and maintained monthly under at least 30% load based on the manufacturer's name plate kilowatt (kW) rating for at least 30 minutes, or as recommended by the manufacturer, to ensure functionality during emergency situations.

(A) Emergency generators operated at water systems serving 1,000 connections or greater must be maintained in accordance with Level 2 maintenance requirements contained in the current National Fire Protection Association (NFPA) 110 Standard and manufacturer's recommendation. In addition, the water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components.

(B) Emergency generators operated at water systems serving fewer than 1,000 connections must be maintained according to clauses (i) - (x) of this subparagraph, supplemented with any additional requirements not listed below as prescribed in the manufacturer's specifications, or Level 2 maintenance requirements contained in NFPA 110 Standard. In addition, the public water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components.

(i) Prior to monthly generator start-up, inspect and perform any needed maintenance on the generator fuel system.

(I) Document tank levels and inspect fuel tanks for fuel contamination and condensation in the portion of the tank occupied by air. If contamination is suspected, replace or polish the contaminated fuel before use.

(II) Inspect fuel lines and fittings for breaks and degradation. Replace fuel lines if needed.

(III) Inspect fuel filters and water separators for water accumulation, clogging and sediment buildup. Replace fuel filters and separators at the frequency recommended by the manufacturer, or as needed.

(IV) Inspect fuel transfer pumps, float switches and valves, where provided, between holding tanks and the generator to verify that they are operating properly.

(V) Where provided, inspect fuel tank grounding rods, cathodic and generator lightning protection for damage that may render the protection ineffective.

(ii) While the generator is operating under load, inspect the fuel pump to verify that it is operating properly.

(iii) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator lubrication system.

(I) Inspect oil lines and oil reservoirs for adequate oil levels, leaks, breaks and degradation. Change oil at the frequency recommended by the manufacturer.

(II) Grease all bearing components and grease fittings at the frequency recommended by the manufacturer.

(iv) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator coolant system.

(I) Inspect the block heater, coolant lines and coolant reservoirs for adequate coolant levels, leaks, breaks and degradation; replace as needed.

(II) Inspect coolant filters for clogging and sediment buildup. Replace coolant filters at the frequency recommended by the manufacturer, or as needed.

(III) Inspect the radiator, fan system, belts and air intake and filters for obstruction, cracks, breaks, and leaks; replace as needed.

(v) While the generator is operating under load, inspect the exhaust manifold and muffler to verify that they are not obstructed or leaking, are in good working condition and that fumes are directed away from enclosed areas.

(vi) Where a generator is located inside an enclosed structure, a carbon monoxide monitor equipped with automatic alarms and generator shutdowns must be present and operational.

(vii) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator electrical system.

(I) Confirm that all batteries are mounted and properly secured. Inspect battery chargers, wiring and cables for damage, corrosion, connection continuity, and that all contacts are securely tightened onto battery terminals.

(II) Inspect each battery unit for adequate electrolyte levels, charge retention and appropriate discharge voltage.

(viii) While the generator is operating under load, inspect engine starters and alternators to verify that they are operating properly.

(ix) At least once per month, inspect Programmable Logic Controllers (PLC) and Uninterrupted Power Supplies (UPC), where applicable, to ensure that they are water-tight and not subject to floods, are properly ventilated, and that backup power supplies have adequate charge.

(x) At least once per month, inspect switch gears to ensure they are water-tight and in good, working condition.

(9) All critical components as described in the table in §290.47(c) associated to the source, treatment, storage, or other facilities necessary for the continued operations and distribution of water to customers must be protected from adverse weather conditions. Weatherization methods must be maintained in good condition and replaced as needed to ensure adequate protection.

(n) Engineering plans and maps. Plans, specifications, maps, and other pertinent information shall be maintained to facilitate the operation and maintenance of the system's facilities and equipment. The following records shall be maintained on file at the public water system and be available to the executive director upon request.

(1) Accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank shall be maintained at the public water system until the facility is decommissioned. As-built plans of individual projects may be used to fulfill this requirement if the plans are maintained in an organized manner.

(2) An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies.

(3) Copies of well completion data as defined in §290.41(c)(3)(A) of this title (relating to Water Sources) shall be kept on file for as long as the well remains in service.

(o) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges or when the turbidity level at the effluent of the filter reaches 1.0 nephelometric turbidity unit (NTU).

(p) Data on public water system ownership and management. The agency shall be provided with information regarding public water system ownership and management.

(1) When a public water system changes ownership, a written notice of the transaction must be provided to the executive director. The grantee shall notify the executive director of the change in ownership within 30 days after the effective date of the change in ownership by providing the name of the grantor, the effective date of the change in ownership, the physical and mailing address and phone number of the grantee, the public water system's drinking water supply identification number, and any other information necessary to identify the transaction.

(2) On an annual basis, the owner of a public water system shall provide the executive director with a list of all the operators and operating companies that the public water system uses. The notice shall contain the name, contact information, work status, license number, and license class of each operator and the name and registration number of each operating company. Public water systems may report the list of operators and operating companies to the executive director by utilizing the Texas Commission on Environmental Quality (TCEQ) online "Operator Notice" form. If reporting cannot be accomplished utilizing the TCEQ online "Operator Notice" form, then a public water system may report the list of operators and operating companies on the written "Operator Notice" form to the executive director by mail, email or facsimile. (See §290.47(d) of this title).

(q) Special precautions, protective measures, and boil water notices. Special precautions, protective measures, and boil water notices shall be instituted by the public water system as specified in this subsection in the event of low distribution pressures (below 20 pounds per square inch (psi)), water outages, microbiological samples found to contain Escherichia coli (E. coli) (or other approved fecal indicator), failure to maintain adequate disinfectant residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised. Special precautions, protective measures, and boil water notices are corrective or protective actions which shall be instituted by the public water system to comply with the requirements of this subsection.

(1) A public water system shall issue a boil water notice, special precaution, or protective measure to customers throughout the distribution system or in the affected area(s) of the distribution system as soon as possible, but in no case later than 24 hours after the public water system has met any of the criteria described in subparagraph (A) and (B) of this paragraph.

(A) Situations requiring boil water notices:

(i) The flowchart found in §290.47(e) of this title shall be used to determine if a boil water notice shall be issued by the public water system to customers in the event of a loss of distribution system pressure.

(ii) A public water system shall issue a boil water notice to customers for a violation of the MCL for E. coli (or other approved fecal indicator) as described in §290.109(b)(1) of this title.

(iii) A public water system shall issue a boil water notice to customers if the combined filter effluent turbidity of the finished water, produced by a treatment plant that is treating surface water or groundwater under the direct influence of surface water, is above the turbidity level requirements as described in §290.122(a)(1)(B) of this title.

(iv) A public water system shall issue a boil water notice to customers if the public water system has failed to maintain adequate disinfectant residuals as described in subsection (d) of this section and as described in §290.110 of this title (relating to Disinfectant Residuals) for more than 24 hours.

(v) A public water system shall issue a boil water notice to customers if a waterborne disease outbreak occurs as defined in 40 Code for Federal Regulations §141.2.

(B) Situations requiring special precautions or protective measures may be determined by the public water system or at the discretion of the executive director, as described in paragraph (5) of this subsection.

(2) Boil water notices, special precautions, or protective measures shall be issued to customers by using one or more of the Tier 1 delivery methods as described in §290.122(a)(2) of this title (relating to Public Notification) and shall be issued using the applicable language and format specified by the executive director.

(3) A copy of boil water notice, special precaution, or protective measure issued shall be provided to the executive director electronically, within 24 hours or no later than the next business day after the issuance by the public water system, and a signed Certificate of Delivery shall be provided to the executive director within ten days after issuance by the public water system in accordance with §290.122(f) of this title.

(4) Boil water notices, special precautions, or protective measures shall be multilingual where appropriate, based upon local demographics.

(5) Special precautions, protective measures, and boil water notices may be required at the discretion of the executive director and shall be instituted by the public water system, upon written notification to the public water system, and shall remain in effect until the public water system meets the requirements of subparagraph (C) of this paragraph and paragraph (6) of this subsection.

(A) Circumstances warranting the exercise of such discretion may include:

(i) the public water system has failed to provide any of the required compliance information to the executive director as described in §290.111(h)(2) of this title (relating to Surface Water Treatment) and the failure results in the inability of the executive director to determine compliance as described in §290.111(i) of this title or the existence of a potential or actual health hazard, as described in §290.38 of this title (relating to Definitions); or

(ii) waterborne emergencies for situations that do not meet the definition of waterborne disease outbreak as defined in 40 Code of Federal Regulations §141.2, but that still have the potential to have serious adverse health effects as a result of short-term exposure. These can include, but are not limited to, outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.

(B) The executive director will provide written notification to the public water system in the event a public water system is required to institute special precautions, protective measures, or issue boil water notices to customers at the discretion of the executive director. Upon written notification from the executive director, the public

water system shall implement special precautions, protective measures, or issue boil water notices to customers within 24 hours or within the time period specified by the executive director. The executive director may specify, in writing, additional required actions to the requirements described in paragraph (6) of this subsection for a public water system to rescind the notice.

(C) The public water system shall provide any required information to the executive director to document that the public water system has met the rescind requirements for special precautions, protective measures, and boil water notices required at the discretion of the executive director under this paragraph.

(6) Once the boil water notice, special precaution, or protective measure is no longer in effect, the public water system shall notify customers that the notice has been rescinded. A public water system shall not rescind a notice or notify customers that a notice has been rescinded until the public water system has met all the applicable requirements, as described in subparagraph (A) of this paragraph.

(A) Required actions prior to rescinding a boil water notice include:

(i) water distribution system pressures in excess of 20 psi are consistently being maintained throughout the distribution system in accordance with the flowchart found in §290.47(e) of this title (relating to Appendices);

(ii) a minimum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present and is consistently being maintained in each finished water storage tank and throughout the distribution system as described in subsection (d) of this section;

(iii) finished water entering the distribution system, produced by a treatment plant that is treating surface water or groundwater under the direct influence of surface water, has a turbidity level that is consistently below 1.0 NTU and the affected areas of the distribution system have been thoroughly flushed;

(iv) additional actions may be required by the executive director, in writing, and these additional actions shall be completed and documentation provided to the executive director for approval prior to the public water system rescinding the notice, and

(v) water samples for microbiological analysis, marked as "special" on the laboratory sample submission form, were collected from representative locations throughout the distribution system or in the affected area(s) of the distribution system after the public water system has met all other applicable requirements of this paragraph and the water samples collected for microbiological analysis are found negative for coliform organisms. The water samples described in this subparagraph shall be analyzed at laboratories in accordance with §290.119 of this title (relating to Analytical Procedures).

(B) A public water system shall notify customers that the notice has been rescinded within 24 hours or no later than the next business day, using language and format specified by the executive director once the public water system has met the requirements of this paragraph. The method of delivery of the rescind notice must be in a manner similar to the original notice.

(C) The public water system shall provide a copy of the rescind notice, a copy of the associated microbiological laboratory analysis results, as required by subparagraph (A) of this paragraph, and a signed Certificate of Delivery to the executive director within ten days after the public water system has issued the rescind notice to customers in accordance with §290.122(f) of this title.

(r) Minimum pressures. All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. The system shall also be operated to maintain a minimum pressure of 20 psi during emergencies such as firefighting. As soon as safe and practicable following the occurrence of a natural disaster, a public water system that is an affected utility, as defined in TWC §13.1394 or §13.1395, shall maintain a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, respectively, throughout the distribution system during an extended power outage.

(s) Testing equipment. Accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal processes must be used by the system.

(1) Flow-measuring devices and rate-of-flow controllers that are required by §290.42(b) and (d) of this title (relating to Water Treatment) shall be calibrated at least once every 12 months. Well meters required by §290.41(c)(3)(N) of this title shall be calibrated at least once every three years.

(2) Laboratory equipment used for compliance testing shall be properly calibrated.

(A) pH meters shall be properly calibrated.

(i) Benchtop pH meters shall be calibrated according to manufacturer specifications at least once each day.

(ii) The calibration of benchtop pH meters shall be checked with at least one buffer each time a series of samples is run, and if necessary, recalibrated according to manufacturer specifications.

(iii) On-line pH meters shall be calibrated according to manufacturer specifications at least once every 30 days.

(iv) The calibration of on-line pH meters shall be checked at least once each week with a primary standard or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(B) Turbidimeters shall be properly calibrated.

(i) Benchtop turbidimeters shall be calibrated with primary standards at least once every 90 days. Each time the turbidimeter is calibrated with primary standards, the secondary standards shall be restandardized.

(ii) The calibration of benchtop turbidimeters shall be checked with secondary standards each time a series of samples is tested, and if necessary, recalibrated with primary standards.

(iii) On-line turbidimeters shall be calibrated with primary standards at least once every 90 days.

(iv) The calibration of on-line turbidimeters shall be checked at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(C) Chemical disinfectant residual analyzers shall be properly calibrated.

(i) The accuracy of manual disinfectant residual analyzers shall be verified at least once every 90 days using chlorine solutions of known concentrations.

(ii) The accuracy of continuous disinfectant residual analyzers shall be checked at least once every seven days with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop method in accordance with §290.119 of this title.

(iii) If a disinfectant residual analyzer produces a result which is not within 15% of the expected value, the cause of the discrepancy must be determined and corrected and, if necessary, the instrument must be recalibrated.

(D) Analyzers used to determine the effectiveness of chloramination in §290.110(c)(5) of this title shall be properly verified in accordance with the manufacturer's recommendations every 90 days. These analyzers include monochloramine, ammonia, nitrite, and nitrate equipment used by the public water system.

(E) Ultraviolet (UV) light disinfection analyzers shall be properly calibrated.

(i) The accuracy of duty UV sensors shall be verified with a reference UV sensor monthly, according to the UV sensor manufacturer.

(ii) The reference UV sensor shall be calibrated by the UV sensor manufacturer on a yearly basis, or sooner if needed.

(iii) If used, the UV Transmittance (UVT) analyzer shall be calibrated weekly according to the UVT analyzer manufacturer specifications.

(F) Systems must verify the performance of direct integrity testing equipment in a manner and schedule approved by the executive director.

(G) Conductivity (or total dissolved solids) monitors and pressure instruments used for reverse osmosis and nanofiltration membrane systems shall be calibrated at least once every 12 months.

(H) Any temperature monitoring devices used for reverse osmosis and nanofiltration shall be verified and calibrated in accordance with the manufacturer's specifications.

(t) System ownership. All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted.

(u) Abandoned wells. Abandoned public water supply wells owned by the system must be plugged with cement according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Wells that are not in use and are non-deteriorated as defined in those rules must be tested every five years or as required by the executive director to prove that they are in a non-deteriorated condition. The test results shall be sent to the executive director for review and approval. Deteriorated wells must be either plugged with cement or repaired to a non-deteriorated condition.

(v) Electrical wiring. All water system electrical wiring must be securely installed in compliance with a local or national electrical code.

(w) Security. All systems shall maintain internal procedures to notify the executive director by methods provided by the executive director [~~a toll-free reporting phone number~~] immediately upon determining that one of the following events has occurred, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water system;

(2) an act of terrorism against the public water system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water system;

(4) a theft of property that supports the key activities of the public water system;

(5) a natural disaster, accident, or act that results in damage to the public water system; or

(6) a nonindustrial water system that experiences an unplanned condition that has caused the system to issue a special precaution under §290.47(e) of this title or issue a special precaution, protective measure, or boil water notice under subsection (q) of this section.

(A) For the purposes of this paragraph, a nonindustrial water system is defined as a public water system which does not exclusively serve industrial connections.

(B) For the purposes of this paragraph unplanned condition is defined as any condition where advance notice to water system customers has not been performed.

(x) Public safety standards. This subsection only applies to a municipality with a population of 1,000,000 or more, with a public utility within its corporate limits; a municipality with a population of more than 36,000 and less than 41,000 located in two counties, one of which is a county with a population of more than 1.8 million; a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction (ETJ), with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; or a municipality, including any industrial district within the municipality or its ETJ, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

(1) In this subsection:

(A) "Regulatory authority" means, in accordance with the context in which it is found, either the commission or the governing body of a municipality.

(B) "Public utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(C) "Residential area" means:

(i) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(ii) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75% of the front footage along the block face; or

(iii) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(D) "Industrial district" has the meaning assigned by Texas Local Government Code, §42.044, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(2) When the regulatory authority is a municipality, it shall by ordinance adopt standards for installing fire hydrants in residential areas in the municipality. These standards must, at a minimum, follow current AWWA standards pertaining to fire hydrants and the requirements of §290.44(e)(6) of this title.

(3) When the regulatory authority is a municipality, it shall by ordinance adopt standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in the municipality. The standards specified in paragraph (4) of this subsection are the minimum acceptable standards.

(4) A public utility shall deliver water to any fire hydrant connected to the public utility's water system located in a residential area so that the flow at the fire hydrant is at least 250 gallons per minute for a minimum period of two hours while maintaining a minimum pressure of 20 psi throughout the distribution system during emergencies such as firefighting. That flow is in addition to the public utility's maximum daily demand for purposes other than firefighting.

(5) When the regulatory authority is a municipality, it shall adopt the standards required by this subsection within one year of the effective date of this subsection or within one year of the date this subsection first applies to the municipality, whichever occurs later.

(6) A public utility shall comply with the standards established by a municipality under both paragraphs (2) and (3) of this subsection within one year of the date the standards first apply to the public utility. If a municipality has failed to comply with the deadline required by paragraph (5) of this subsection, then a public utility shall comply with the standards specified in paragraphs (2) and (4) of this subsection within two years of the effective date of this subsection or within one year of the date this subsection first applies to the public utility, whichever occurs later.

(y) Fire hydrant flow standards.

(1) In this subsection:

(A) "Municipal utility" means a retail public utility, as defined by Texas Water Code (TWC), §13.002, that is owned by a municipality.

(B) "Residential area" means an area used principally for private residences that is improved with at least 100 single-family homes and has an average density of one home per half acre.

(C) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by TWC §13.002.

(2) The governing body of a municipality by ordinance may adopt standards set by the executive director requiring a utility to maintain a minimum sufficient water flow and pressure to fire hydrants in a residential area located in the municipality or the municipality's ETJ. The municipality must submit a signed copy of the ordinance to the executive director within 60 days of the adoption of an ordinance by its governing body.

(3) In addition to a utility's maximum daily demand, the utility must provide, for purposes of emergency fire suppression:

(A) a minimum sufficient water flow of at least 250 gallons per minute for at least two hours; and

(B) a minimum sufficient water pressure of at least 20 psi.

(4) If a municipality adopts standards for a minimum sufficient water flow and pressure to fire hydrants, the municipality must require a utility to maintain at least the minimum sufficient water flow and pressure described by paragraph (3) of this subsection in fire hydrants in a residential area located within the municipality or the municipality's ETJ. If the municipality adopts a fire flow standard exceeding the minimum standards set in paragraph (3) of this subsection, the standard adopted by the municipality must be based on:

(A) the density of connections;

(B) service demands; and

(C) other relevant factors.

(5) If the municipality owns a municipal utility, it may not require another utility located in the municipality or the municipality's ETJ to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility as determined by the executive director.

(6) If the municipality does not own a municipal utility, it may not require a utility located in the municipality or the municipality's ETJ to provide a minimum sufficient water flow and pressure greater than the standard established by paragraph (3) of this subsection.

(7) An ordinance under paragraph (2) of this subsection may not require a utility to build, retrofit, or improve infrastructure in existence at the time the ordinance is adopted.

(8) A municipality with a population of less than 1.9 million that adopts standards under paragraph (2) of this subsection or that seeks to use a utility's water for emergency fire suppression shall enter into a written memorandum of understanding with the utility.

(A) The memorandum of understanding must provide for:

(i) the necessary testing of fire hydrants; and

(ii) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this subsection.

(B) The municipality must submit a signed copy of the memorandum of understanding to the executive director within 60 days of the execution of the memorandum of understanding between its governing body and the utility.

(9) A municipality may notify the executive director of a utility's failure to comply with a standard adopted under paragraph (3) of this subsection.

(10) On receiving the notice described by paragraph (9) of this subsection, the executive director shall require a utility in violation of a standard adopted under this subsection to comply within a reasonable time established by the executive director.

(z) Nitrification Action Plan (NAP). Any water system distributing chloraminated water must create a NAP. The system must create a written NAP that:

(1) contains the system-specific plan for monitoring free ammonia, monochloramine, total chlorine, nitrite, and nitrate levels;

(2) contains system-specific action levels of the above monitored chemicals where action must be taken;

(3) contains specific corrective actions to be taken if the action levels are exceeded; and

(4) is maintained as part of the system's monitoring plan in §290.121 of this title.

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

Filed with the Office of the Secretary of State on August 5, 2024.

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6087

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CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §291.143 and §291.161.

Background and Summary of the Factual Basis for the Proposed Rules

During the 88th Texas Legislative Session (2023), House Bill (HB) 1500 and HB 4559 passed, and require amendments to 30 Texas Administrative Code (TAC) Chapter 291 to implement the enacted legislation.

Texas Water Code (TWC), §13.4132, enacted in HB 1500, establishes the duration of an emergency order appointing a temporary manager to operate a utility that discontinues operation or is referred for appointment of a receiver.

This rulemaking reflects changes to TWC, §13.1395 enacted in HB 4559, which amended the definition of "affected utility" by changing county population. The amended population maintains the applicability of the counties required to have an Emergency Preparedness Plan (EPP) under TWC, §13.1395 or TWC, §13.1394.

Section by Section Discussion

§291.143 Operation of a Utility by a Temporary Manager.

The commission proposes to amend §291.143 to revise the term limit of a temporary manager from 180 to 360 days, based on the duration of an emergency order, and provide for renewal of the emergency order in accordance with TWC, §13.4132 as amended by HB 1500.

§291.161 Definitions.

The commission proposes to amend the definition of "affected utility" in §291.161(1)(B)(ii) to change the population from "550,000" to "800,000" in accordance with TWC, §13.1395 as amended by HB 4559. The amended population maintains the applicability of the counties required to have an Emergency Preparedness Plan (EPP) under TWC, §13.1395 or TWC, §13.1394.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be compliance and consistency with state law, specifically HB 4559 and HB 1500 from the 88th Texas Legislative Session (2023). The proposed rulemaking is not anticipated to result in significant fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225. A "major environmental rule" means a rule with a specific intent to protect the environment or reduce risks

to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to provide a duration for an emergency order issued under TWC, §13.4132 and to revise the county population in the definition of affected utility in TWC, §13.1395(a)(1), which applies to those affected utilities which are required to submit emergency preparedness plans to the commission for review and approval.

Second, the rulemaking does not meet the statutory definition of a "major environmental rule" because the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the rulemaking does not meet any of the four applicability requirements for a "major environmental rule" listed in Texas Government Code, §2001.0225(a). Section §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements because this rulemaking: does not exceed any standard set by federal law for public water systems; does not exceed any express requirement of state law; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government; and is not based solely under the general powers of the agency, but under THSC, §341.031 and §341.0315, which allows the commission to adopt and enforce rules related to public drinking water, as well as under the general powers of the commission.

The commission invites public comment regarding the draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes these rules to implement HB 1500 and 4559, 88th Texas Legislative session (2023). HB 1500 amended TWC, §13.4132 by establishing a duration of 360 days, with the possibility of renewal, for an emergency order issued to appoint a temporary manager of a water system that ceases operation or is referred for appointment of a receiver. HB 4559 amended TWC, §13.1394(a)(1) by changing the county population in the definition of "affected utility." An affected utility is required to file an emergency preparedness plan with the executive director for review and approval.

The Commission's analysis indicates that Texas Government Code, Chapter §2007, does not apply to these rules based upon exceptions to applicability in Texas Government Code, §2007.003(b). The rulemaking is an action that is taken to fulfill obligations mandated under state law for all of the proposed rules. The rulemaking related to emergency orders and emergency preparedness plans is also an action taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the public health and safety purpose, and that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code, §2007.003(b)(4) and (13).

First, the rulemaking is an action taken to fulfill obligations under state law. The duration of an emergency order appointing a temporary manager is now established under TWC, §13.4132(b-1), and the change to the county population in the definition of "affected utility" maintains those affected utilities requirements to submit emergency preparedness plans to the commission under TWC, §13.1395a)(1) in the counties where the population has increased passed 500,000.

Second, the rulemaking is related to the duration of emergency orders and to the submission of emergency preparedness plans by affected utilities, which are actions that are taken in response to a real and substantial threat to public health and safety. The proposed rules would ensure the continuity of operation of public water systems by temporary managers appointed pursuant to emergency orders with a duration established by the legislature and by ensuring that emergency preparedness plans are submitted by affected utilities in appropriate counties designated by the legislature. The proposed rules would significantly advance the public health and safety purpose; and does not impose a greater burden than is necessary to achieve the public health and safety purpose. These rules advance the public health and safety by ensuring appropriate governmental regulation and do so in a way that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code, §2007.003(b)(13).

Further, the commission has determined that promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. The rules require compliance regarding the duration of an emergency order appointing a temporary manager as now established under state law, and compliance regarding submission by an affected utility to the commission of its emergency preparedness plan, which is meant to ensure public health and safety. Therefore, the rules would not constitute a taking under Texas Government Code, Chapter §2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the sections proposed for amendments are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on September 12, 2024 at 10:00 a.m. in building F; room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing starting at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by September 10, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on September 11, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://events.teams.microsoft.com/event/1edc845c-d424-4035-9209-3f5b3eaa3880@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2024-015-290-OW. The comment period closes at 11:59 p.m. on September 17, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Rheaa Miller, Emergency Preparedness and Response Section, at 512-239-5728 or by email at rheaa.miller@tceq.texas.gov.

SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

30 TAC §291.143

Statutory Authority

The rulemaking is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC, §5.103 and TWC, §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC), §341.031, which requires drinking water supplies to meet standards established by the commission; and THSC, §341.0315, which requires public drinking water systems to comply with commission standards established to ensure the supply of safe drinking water.

The proposed rulemaking implements legislation enacted by the 88th Texas Legislature in 2023: TWC, §13.4132 in House Bill (HB) 1500 and TWC, §13.1395(a)(1) in HB 4559.

§291.143. Operation of a Utility by a Temporary Manager.

(a) By emergency order under Texas Water Code (TWC), §5.507 and §13.4132, the commission or the executive director may appoint a person under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of services, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC, §13.412.

(b) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

(9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(d) The term of an emergency order issued to appoint a temporary manager may not exceed 360 days. The emergency order may be renewed:

(1) once for a period not to exceed 360 days, or

(2) if the utility is undergoing a sale, transfer, merger, consolidation, or acquisition required to be reported to the Public Utility Commission under Tex. Water Code §13.301, until the sale, transfer, merger, consolidation, or acquisition process is complete.

(e) [~~(d)~~] The temporary manager shall serve a term not to exceed 360 [~~of 180~~] days, unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the executive director or the temporary manager and granted by the commission under subsection (d) of this section;

(3) the temporary manager is discharged from his responsibilities by the commission; or

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the attorney general.

(f) [~~(e)~~] Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(g) [~~(f)~~] Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.

(h) [~~(g)~~] The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(i) [~~(h)~~] The temporary manager shall report to the executive director on a monthly basis. This report shall include:

(1) an income statement for the reporting period;

(2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and

(3) any other information required by the executive director.

(j) [~~(i)~~] During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

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

Filed with the Office of the Secretary of State on August 5, 2024.

TRD-202403570
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 239-6087

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SUBCHAPTER L. STANDARDS OF EMERGENCY OPERATIONS

30 TAC §291.161

Statutory Authority

The rulemaking is proposed under Texas Water Code (TWC) §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC §5.103 and TWC §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; Texas Health and Safety Code (THSC) §341.031, which requires drinking water supplies to meet standards established by the commission; and THSC §341.0315, which requires public drinking water systems to comply with commission standards established to ensure the supply of safe drinking water.

The proposed rulemaking implements legislation enacted by the 88th Texas Legislature in 2023: TWC §13.4132 in House Bill (HB) 1500 and TWC §13.1395(a)(1) in HB 4559.

§291.161. Definitions.

For the purposes of this subchapter, the following definitions apply.

(1) Affected utility -

(A) Any retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility as defined in TWC, §13.1394; or

(B) Any retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility as defined in TWC, §13.1395 in a county with a population of:

(i) 3.3 million or more; or

(ii) 800,000 [~~550,000~~] or more adjacent to a county with a population of 3.3 million or more.

(2) Emergency operations--The operation of an affected utility during an extended power outage at a minimum water pressure of 20 pounds per square inch (psi), or a water pressure approved by the executive director as required under TWC, §13.1394 or 35 psi as required under TWC, §13.1395.

(3) Extended power outage--A power outage lasting for more than 24 hours.

(4) Population--The population shown by the most recent federal decennial census.

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

Filed with the Office of the Secretary of State on August 5, 2024.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 4. TREASURY ADMINISTRATION

SUBCHAPTER A. POOLED COLLATERAL PROGRAM

34 TAC §4.121

The Comptroller of Public Accounts proposes the repeal of §4.121, concerning notification. The proposal removes §4.121 from Subchapter A because it is unnecessary for the implementation of Government Code, Chapter 2257, Subchapter F, concerning pooled collateral to secure deposits of certain public funds.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed rule repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed rule repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rule repeal would benefit the public by improving the clarity and organization of the chapter. There would be no significant anticipated economic cost to the public. The proposed rule repeal would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Macy Douglas, Director, Treasury Operations Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: Macy.Douglas@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under Government Code, §2257.102(a), which requires the comptroller to adopt rules to administer Government Code, Chapter 2257, Subchapter F, concerning pooled collateral to secure deposits of certain public funds..

The repeal implements Government Code, Chapter 2257, Subchapter F, concerning pooled collateral to secure deposits of certain public funds.

§4.121. Notification.

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

Filed with the Office of the Secretary of State on August 5, 2024.

TRD-202403582
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 475-2220

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4001

The Comptroller of Public Accounts proposes amendments to §9.4001, concerning valuation of open-space and agricultural lands. These amendments are to reflect updates and revisions to the manual for the appraisal of agricultural land. The proposed updated manual may be viewed at

https://comptroller.texas.gov/taxes/property-tax/docs/96-300p.pdf.

The amendments update and revise the February 2022 manual for the appraisal of agricultural land. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising land used for agriculture and open-space land under Tax Code, Chapter 23, Subchapters C and D.

Generally, the substantive changes to the manual reflect statutory changes and changes dictated by case law. The manual is updated throughout, as well as adding a subsection for 1-d-1, to address that ownership of land is not considered to have changed if ownership of the land is transferred from the former owner to the surviving spouse of the former owner, based on changes made in House Bill 2354, 88th Legislature, R.S., 2023. In addition, the updated manual removes the requirement that agricultural advisory board members be residents of the district in response to House Bill 3207, 88th Legislature, R.S., 2023.

The proposed manual adds a subsection for 1-d-1 to address the requirement that a chief appraiser shall take into consideration the effect (if any) that the presence of any applicable disease or pest or the designation of the area may have on the net income, based on changes made in House Bill 260, 88th Legislature, R.S., 2023. In addition, in response to SB 1191, 88th Legislature, R.S., 2023, the proposed manual adds a paragraph to explain situations where the chief appraiser shall accept and approve or deny an application for appraisal after the deadline for filing the applications. The footnotes, years, values and figures were updated to be more recent.

Pursuant to Tax Code, §23.52(d), these rules have been approved by the comptroller with the review and counsel of the Department of Agriculture.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These amendments are proposed under Tax Code, §§5.05 (Appraisal Manuals and Other Materials); 23.41 (Appraisal); and 23.52 (Appraisal of Qualified Agricultural Land), which provide the comptroller with the authority to prepare and issue publica-

tions relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising qualified agricultural and open-space land for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapters C and D.

§9.4001. Valuation of Open-Space and Agricultural Lands.

Adoption of the "Manual for the Appraisal of Agricultural Land." This manual specifies the methods to apply and the procedures to use in qualifying and appraising land used for agriculture and open-space land under Tax Code, Chapter 23, Subchapters C and D. Appraisal districts are required to use this manual in qualifying and appraising open-space land. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Agricultural Land dated January 2024 [~~February~~ ~~2022~~]. The manual is accessible on the Property Tax Assistance Division website. Copies of the manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

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

Filed with the Office of the Secretary of State on August 5, 2024.

TRD-202403579
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 475-2220

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34 TAC §9.4011

The Comptroller of Public Accounts proposes amendments to §9.4011, concerning valuation of timberland. These amendments are to reflect updates and revisions to the manual for the appraisal of timberland. The proposed updated manual may be viewed at https://comptroller.texas.gov/taxes/property-tax/docs/96-357p.pdf.

The amendments update and revise the March 2022 manual for the appraisal of timberland. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising timberland and restricted-use timberland under Tax Code, Chapter 23, Subchapters E and H.

Generally, the substantive changes to the manual reflect statutory changes. The manual is updated to reflect the changes to the qualification criteria of the agricultural advisory board members in response to House Bill 3207, 88th Legislature, R.S., 2023 by eliminating the requirement that a member must have been a resident of the district for at least five years. Changes are made to reference more current prices, expenses and values throughout the manual.

Pursuant to Tax Code, §23.73(b), these rules have been approved by the comptroller with the review and counsel of the Texas A&M Forest Service.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These amendments are proposed under Tax Code, §§5.05 (Appraisal Manuals and Other Materials); 23.73 (Appraisal of Qualified Timber Land); and 23.9803 (Appraisal of Qualified Restricted-Use Timber Land), which authorize the comptroller to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising timberland and restricted-use timberland for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapters E and H.

§9.4011. Appraisal of Timberlands.

Adoption of the Manual for the Appraisal of Timberland. This manual sets out both the eligibility requirements for timberland to qualify for productivity appraisal and the methodology for appraising qualified timberland and restricted use timberland. Appraisal districts are required by law to follow the procedures and methodology set out in this manual. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Timberland dated January 2024 [~~March 2022~~]. Copies of this manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528 or from the Property Tax Assistance Division website. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. This manual and those that have been superseded are available from the Comptroller's office as well as the State Archives.

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

Filed with the Office of the Secretary of State on August 5, 2024.

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: September 15, 2024
For further information, please call: (512) 475-2220

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

The Texas Animal Health Commission withdraws proposed amendments to §40.6 which appeared in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1372).

Filed with the Office of the Secretary of State on July 31, 2024.

TRD-202403545
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Effective date: July 31, 2024
For further information, please call: (512) 839-0511

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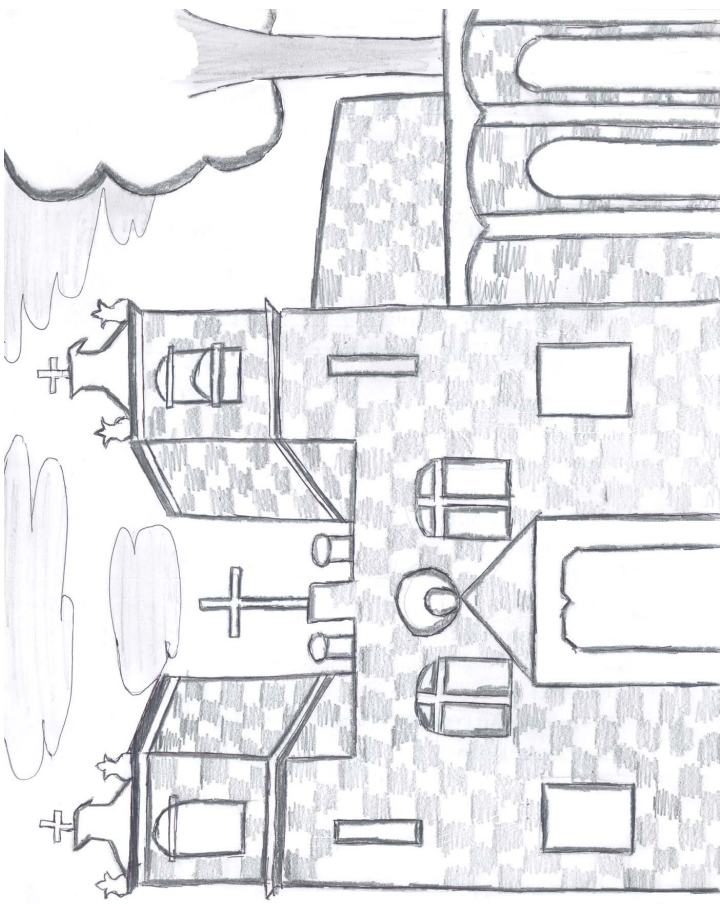

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). 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.

TRD-202403497
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

♦ ♦ ♦

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.

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

TRD-202403498
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

♦ ♦ ♦


Texas

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) will review all sections in 28 Texas Administrative Code:

-Chapter 126 (General Provisions Applicable to All Benefits);

-Chapter 127 (Designated Doctor Procedures and Requirements); and

-Chapter 128 (Benefits--Calculation of Average Weekly Wage).

This review complies with the requirements for periodic rule review under Texas Government Code §2001.039.

DWC will consider whether the reasons for initially adopting these rules continue to exist, and whether these rules should be repealed, readopted, or readopted with amendments.

Comments

To comment on this review, you must:

-Submit your written comments by 5:00 p.m., Central time, on September 16, 2024.

-Specify the rule to which your comment applies.

-Include any proposed alternative language.

Send your written comments or hearing request to RuleComments@tdi.texas.gov or to:

Legal Services, MC-LS

Texas Department of Insurance, Division of Workers' Compensation

P.O. Box 12050

Austin, Texas 78711-2050

DWC may consider any suggested repeals or amendments identified during this rule review in future rulemaking under Texas Government Code Chapter 2001 (Administrative Procedure).

TRD-202403620
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: August 7, 2024

♦ ♦ ♦

Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas files this notice of intent to review 34 Texas Administrative Code Chapter 75, concerning Hazardous Profession Death Benefits, in accordance with Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current provisions related to the governance of the Board, and is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing, within 30 days following the publication of this notice of intent to review in the *Texas Register,* to Cynthia C. Hamilton, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at General.Counsel@ers.texas.gov. The deadline for receiving comments is Monday, September 16, 2024, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be subject to an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202403575
Cynthia Hamilton
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: August 5, 2024

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The Employees Retirement System of Texas files this notice of intent to review 34 Texas Administrative Code Chapter 85, concerning Flexible Benefits, in accordance with Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current provisions related to the governance of the Board, and is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing, within 30 days following the publication of this notice of intent to review in the *Texas Register,* to Cynthia C. Hamilton, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at General.Counsel@ers.texas.gov. The deadline for receiving comments is Monday, September 16, 2024, at 10:00 a.m. Any proposed changes to

the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be subject to an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202403578
Cynthia Hamilton
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: August 5, 2024

♦ ♦ ♦

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice (board) files this notice of intent to review §161.21, concerning Role of the Judicial Advisory Council. This review is conducted pursuant to Texas Government Code §2001.039.

An assessment will be made by the board as to whether the reasons for readopting the rule continue to exist. The rule will be reviewed to determine whether to readopt, readopt with amendments, or repeal the rule.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-202403618
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Filed: August 7, 2024

♦ ♦ ♦

Adopted Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (1 TAC):

Chapter 355, Reimbursement Rates

Notice of the review of this chapter was published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4065). HHSC received four comments from the Children's Hospital Association of Texas concerning this chapter. A summary of comments and HHSC's responses follows.

Comment: A commenter noted that HHSC defines a "children's hospital" as a Medicaid hospital designated by Medicare as a children's hospital and exempted by the federal government from the Medicare prospective payment system. In addition, the commenter noted that they are specialized facilities, as care for children differs from that of adults which makes them experts in identifying and treating children's conditions quickly.

Response: HHSC acknowledges this comment and the current definition. HHSC declines to make any changes to the rule in response to this comment.

Comment: A commenter provided comment in support of the readoption of 1 TAC §355.8058 Inpatient Direct Graduate Medical Education (GME) Reimbursement, explaining the importance of this rule in ensuring access to care for children due to it strengthening the pediatric medical workforce.

Response: HHSC acknowledges this comment in support of the readoption of 1 TAC §355.8058 Inpatient Direct Graduate Medical Education (GME) Reimbursement.

Comment: A commenter provided comment in support of the readoption of 1 TAC §355.8070 Hospital Augmented Reimbursement Program because of the critical support the program provides that allows children's hospitals to continue to provide care to children across the state of Texas.

Response: HHSC acknowledges this comment in support of the readoption of 1 TAC §355.8070 Hospital Augmented Reimbursement Program.

Comment: A commenter proposes that if updates to the rule are made to allow for an Outpatient Prospective Payment System (OPPS), stakeholder input should be considered. Additional recommendations are given regarding what to do if an OPPS is proposed.

Response: HHSC receives this comment related to 1 TAC §355.8061 Outpatient Hospital Reimbursement. HHSC values this input as HHSC places a high priority on ensuring access to care. These comments are outside the scope of this project. HHSC will retain these comments for consideration in future rule projects.

HHSC has reviewed Chapter 355 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 355 except for:

§355.309, Performance-based Add-on Payment Methodology; and

§355.314, Supplemental Payments to Non-State Government-Owned Nursing Facilities.

The repeals identified by HHSC in the rule review and any amendments, if applicable, to Chapter 355 will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 1 TAC Chapter 355 as required by the Texas Government Code §2001.039.

TRD-202403613
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: August 6, 2024

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 358, Medicaid Eligibility for the Elderly and People with Disabilities

Notice of the review of this chapter was published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 3021). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 358 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every

four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 358 except for §358.402, Transfer of Assets before February 8, 2006.

The repeal identified by HHSC in the rule review and any amendments, if applicable, to Chapter 358 will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 358 as required by the Texas Government Code §2001.039.

TRD-202403544
Jessica Miller
Director, Rules Coordination office
Texas Health and Human Services Commission
Filed: July 31, 2024

♦ ♦ ♦

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 84, Preventive Health and Health Services Block Grant

Notice of the review of this chapter was published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 1106). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 84 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 84. Any amendments, if applicable, to Chapter 84 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 25 TAC Chapter 84 as required by the Texas Government Code §2001.039.

TRD-202403610
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: August 6, 2024

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Council on Cardiovascular Disease and Stroke

Title 25, Part 15

The Texas Council on Cardiovascular Disease and Stroke adopts the review of the chapter listed below, in its entirety, contained in Title 25, Part 15, of the Texas Administrative Code:

Chapter 1051, Rules

Notice of review of this chapter was published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3819). The Texas Council on Cardiovascular Disease and Stroke received no comments concerning this chapter.

The Texas Council on Cardiovascular Disease and Stroke has reviewed Chapter **1051** in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The Texas Council on Cardiovascular Disease and Stroke determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter **1051**. Any amendments, if applicable, to Chapter **1051** identified by the Texas Council on Cardiovascular Disease and Stroke in the rule review will be proposed in a future issue of the *Texas Register*.

TRD-202403601
Jessica Miller
Director, Rules Coordination Office
Council on Cardiovascular Disease and Stroke
Filed: August 5, 2024

♦ ♦ ♦

Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 349, Purchase of Goods and Services for Rehabilitation, Independence, and Early Childhood Intervention

Notice of the review of this chapter was published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4439). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 349 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 349. Any amendments, if applicable, to Chapter 349 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 26 TAC Chapter 349 as required by the Texas Government Code §2001.039.

TRD-202403561
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: August 2, 2024

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 351, Children with Special Health Care Needs Services Program

Notice of the review of this chapter was published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4440). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 351 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 351. Any amend-

ments, if applicable, to Chapter 351 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 26 TAC Chapter 351 as required by the Texas Government Code §2001.039.

TRD-202403560
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: August 2, 2024

♦ ♦ ♦

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 217, Design Criteria for Domestic Wastewater Systems, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6922).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 217 are required because the rules provide design standards for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of domestic wastewater. The rules also provide the standards that TCEQ uses in its review and approval of design plans and specifications. The rules are necessary to ensure that domestic wastewater systems are designed and operated to be protective of human health and the environment.

Public Comment

The public comment period closed on January 3, 2024. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 217 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202403548
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 1, 2024

♦ ♦ ♦

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 222, Subsurface Area Drip Dispersal Systems, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6922).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. A subsurface area drip dispersal system (SADDS) is a waste disposal system that injects processed commercial, industrial, or municipal wastewater into the ground at a depth of not more than 48 inches and spreads the waste over a large enough area that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded. Chapter 222 is necessary as it implements Chapter 32 of the Texas Water Code by establishing a permit application process for SADDSs thereby setting standards for the design, construction, location, operation, and maintenance of SADDSs.

Public Comment

The public comment period closed on December 28, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 222 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202403549
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 1, 2024

♦ ♦ ♦

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 324, Used Oil Standards, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the May 3, 2024, issue of the *Texas Register* (49 TexReg 3022).

The review assessed whether the initial reasons for adopting the rules continue to exist, and the TCEQ has determined that those reasons exist. The rules in Chapter 324 implement Texas Health and Safety Code Chapter 371 and 40 Code of Federal Regulations Part 279. The rules in Chapter 324 provide requirements for the management of used oil and include the requirements for TCEQ to issue registrations for Used Oil Handlers who transport, process, re-refine, and market used oil to meet federal requirements. In addition, the rules also include the requirements for the registration of Used Oil Collection Centers that accept used oil from household do-it-yourselfers and other generators to reduce oil-related environmental pollution in a manner that complies with state and federal requirements to protect human health and the environment.

Public Comment

The public comment period closed on June 4, 2024. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 324 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202403550
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 1, 2024

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §290.45(j)

Alternative Recreational Vehicle Park Connection Equivalency Values.

Average Daily Demand (gallons per day per recreational vehicle site)	Alternative Recreational Vehicle Park Connection Equivalency[1]
40.6 and higher	8
36.1 to 40.5	8.9
31.6 to 36.0	10.0
27.1 to 31.5	11.4
22.6 to 27.0	13.3
18.1 to 22.5	16.0
13.6 to 18.0	20.0
9.1 to 13.5	26.7
4.6 to 9.0	40.0
0.1 to 4.5	80.0

[1]The calculated connection count for the recreational vehicle park must be at least 1.0.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, §303.005, and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/12/24 - 08/18/24 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/12/24 - 08/18/24 is 18.00% for commercial[2] credit.

The monthly ceiling as prescribed by §303.005[3] and §303.009 for the period of 08/01/24 - 08/31/24 is 18.00%.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

[3] Only for variable rate commercial transactions, as provided by §303.004(a).

TRD-202403619
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 7, 2024

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Commission on State Emergency Communications

Notice of Annual Review of Rule 255.4, Definition of Local Exchange Access Line or an Equivalent Local Exchange Access Line

The Commission on State Emergency Communications (CSEC) is conducting its annual review of the definitions of the terms "local exchange access line" and "equivalent local exchange access line" as required by Health and Safety Code §771.063(c). Due to the potentially disruptive changes resulting from advancements in technology, including mobile Internet Protocol-enabled services, CSEC takes no position on whether current §255.4 sufficiently defines the foregoing terms.

Persons wishing to comment, including proposing amendments to §255.4 for consideration, may do so by submitting written comments within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 1801 Congress Avenue, Suite 11.100, Austin, Texas 78701; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov. Please include "Comments on Rule 255.4" in the subject line of your letter, fax, or email.

TRD-202403552
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: August 1, 2024

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 17, 2024.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **September 17, 2024.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Bushland Investments, LLC; DOCKET NUMBER: 2024-0029-PWS-E; IDENTIFIER: RN111021556; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the Executive Director and receive approval prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance; 30 TAC §290.41(c)(3)(J), by failing to provide the facility's well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches, and slopes to drain away from the wellhead at not less than 0.25 inches per foot; and 30 TAC §290.41(c)(3)(O), by failing to protect all well units with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house to exclude possible contamination or damage to the facilities by trespassers; PENALTY: $2,000; ENFORCEMENT COORDINATOR:

Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(2) COMPANY: CAMPBELL INSPECTIONS, INCORPORATED; DOCKET NUMBER: 2024-0026-WQ-E; IDENTIFIER: RN109491415; LOCATION: New Caney, Montgomery County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §311.103(h)(1), by failing to develop a written Mine Plan; PENALTY: $2,375; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(3) COMPANY: City of Edmonson; DOCKET NUMBER: 2023-1312-PWS-E; IDENTIFIER: RN101205375; LOCATION: Edmonson, Hale County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report (DLQOR) to the executive director (ED) by the tenth day of the month following the end of each quarter for the third and fourth quarters of 2022 and the first quarter of 2023; 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the July 1, 2022 - December 31, 2022, monitoring period during which the lead action level was exceeded; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the July 1, 2022 - December 31, 2022, monitoring period during which the lead action level was exceeded; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to submit a DLQOR to the ED by the tenth day of the month following the end of each quarter for the first quarter of 2022; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar years 2020 and 2021; PENALTY: $5,050; ENFORCEMENT COORDINATOR: Rachel Vulk, (512) 239-6730; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(4) COMPANY: City of Portland; DOCKET NUMBER: 2022-0129-MWD-E; IDENTIFIER: RN103016416; LOCATION: Portland, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010478001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(18) and TPDES Permit Number WQ0010478001, Chronic Biomonitoring Requirements: Marine, Number 5.a, by failing to submit the proposed Toxicity Reduction Evaluation outline within 45 days of significant lethality being demonstrated; PENALTY: $279,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $279,625; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: Diamondback E&P LLC; DOCKET NUMBER: 2023-1081-AIR-E; IDENTIFIER: RN110127271; LOCATION: Knott, Howard County; TYPE OF FACILITY: tank battery; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 161851, Special Conditions Number (h), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,201; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,080; ENFORCEMENT COORDINATOR: Christina Ferrara, (512) 239-5081; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: ECOLAB INCORPORATED; DOCKET NUMBER: 2022-0751-WQ-E; IDENTIFIER: RN100594852; LOCATION: Garland, Dallas County; TYPE OF FACILITY: chemical manufacturing facility; RULES VIOLATED: 30 TAC §327.5(c), by failing to submit written information, describing the details of the discharge or spill and supporting the adequacy of the response action within 30 working days of the discovery of the reportable discharge or spill; and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of pollutants into or adjacent to any water in the state; PENALTY: $9,750; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: INZI, INCORPORATED dba One Star Food Mart 2; DOCKET NUMBER: 2023-1001-PST-E; IDENTIFIER: RN101549020; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Danielle Fishbeck, (512) 239-5083; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: JAMES LAKE MIDSTREAM LLC; DOCKET NUMBER: 2023-1648-AIR-E; IDENTIFIER: RN107088759; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: natural gas processing facility; RULES VIOLATED: 30 TAC §116.615(2) and §122.143(4), Standard Permit Registration Number 116553, Federal Operating Permit Number O4398/General Operating Permit Number 514, Site-wide Requirements Numbers (b)(2) and (9)(E)(ii), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $14,400; ENFORCEMENT COORDINATOR: Krystina Sepulveda, (956) 430-6045; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Jim Hogg County Water Control and Improvement District 2; DOCKET NUMBER: 2024-0086-PWS-E; IDENTIFIER: RN101415925; LOCATION: Hebbronville, Jim Hogg County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: MILLER GROVE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2023-1479-PWS-E; IDENTIFIER: RN101456978; LOCATION: Crumby, Hopkins County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(c), by failing to ensure all waterlines within the distribution system meet the minimum waterline size, measured in inches in diameter, based on the number of connections; and 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and 20 psi during emergencies such as firefighting; PENALTY: $983; ENFORCEMENT COORDINATOR:

Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2023-1659-AIR-E; IDENTIFIER: RN100224674; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 3855B, Special Conditions Number 1, Federal Operating Permit O1324, General Terms and Conditions and Special Terms and Conditions Number 23, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: $10,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $4,350; ENFORCEMENT COORDINATOR: Christina Ferrara, (512) 239-5081; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2021-1545-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: petroleum refinery and petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), and 122.143(4), New Source Review Permit Numbers 5920A, 7467A, 30513, 49140, 118699, N292, and PSDTX103M4, Special Condition Numbers 1 and 2, Federal Operating Permit (FOP) Number O1626, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A. and 29, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and §122.143(4), FOP Number O1626, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; PENALTY: $93,729; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $46,864; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: Quality Readymix, Ltd., L.L.P.; DOCKET NUMBER: 2022-0792-WQ-E; IDENTIFIER: RN102802766; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) Number TXG113019, Part II.C.3, by failing to submit a copy of the Notice of Intent to the local Municipal Separate Storm Sewer System to seek authorization to discharge; 30 TAC §305.125(1) and §319.5(b) and TPDES GP Number TXG113019, Part III.A.1., by failing to collect and analyze conventional pollutant samples at the intervals specified in the permit; 30 TAC §305.125(1) and §319.5(b) and TPDES GP Number TXG113019, Part III.A.5., by failing to collect and analyze whole effluent toxicity samples at the intervals specified in the permit; 30 TAC §305.125(1) and §319.11(b) and (c), and TPDES GP Number TXG113019, Part IV.7.c., by failing to properly analyze effluent samples according to the permit; 30 TAC §305.125(1) and (12) and TPDES GP Number TXG113019, Part IV. 7. f., by failing to accurately report monitoring activities; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES GP Number TXG113019, Part IV.7.f., by failing to timely submit monitoring results at intervals specified in the permit; PENALTY: $10,850; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(14) COMPANY: River Rim Resort, LLC; DOCKET NUMBER: 2023-1747-PWS-E; IDENTIFIER: RN110951761; LOCATION: Concan, Uvalde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(B), by failing to provide a well casing a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.41(c)(3)(J), by failing to provide the facility's well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away from the wellhead at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder-resistant fence or well house around each well unit and potable water storage tank or enclose the well in a locked and ventilated well house to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.43(c)(5), by failing to ensure the ground storage tank (GST) inlet and outlet connections are properly located so as to prevent short-circuiting or the stagnation of water; 30 TAC §290.43(c)(7), by failing to provide an adequate drain on the GST's for removal of accumulated silt and deposits at all low points in the bottom of the tank; 30 TAC §290.45(c)(1)(B)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of at least 0.6 gallons per minute (gpm) per unit; 30 TAC §290.45(c)(1)(B)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 1.0 gpm per unit; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $6,275; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: SR Aus, LLC; DOCKET NUMBER: 2023-0728-MWD-E; IDENTIFIER: RN107988586; LOCATION: Del Valle, Travis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015418001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: $32,937; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: TEXAS CONCRETE SAND AND GRAVEL ENTERPRISE INCORPORATED; DOCKET NUMBER: 2024-0064-WQ-E; IDENTIFIER: RN110863560; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: sand mining operation; RULES VIOLATED: 30 TAC §311.103(b) and (j), by failing to maintain structural controls; and 30 TAC §311.103(h)(1), by failing to develop a written Mine Plan; PENALTY: $7,812; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(17) COMPANY: TEXAS FRAC SAND MATERIALS INCORPORATED; DOCKET NUMBER: 2024-0790-WQ-E; IDENTIFIER: RN106418817; LOCATION: Porter, Montgomery County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §311.103(b), by failing to install and maintain structural best management practices; and 30 TAC §311.103(h)(1), by failing to develop a written Mine Plan; PENALTY: $3,687; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2023-1629-PWS-E; IDENTIFIER: RN101259885; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director

(ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.43(e), by failing to protect all potable water storage tanks and pressure maintenance facilities in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a total well production capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), (iii) and (iv), (B)(ii), (iii) and (iv), (D)(ii), and (E)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; and 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: $8,191; ENFORCEMENT COORDINATOR: Tessa Bond, (512) 239-1269; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(19) COMPANY: Veolia ES Technical Solutions, L.L.C.; DOCKET NUMBER: 2022-0445-AIR-E; IDENTIFIER: RN102599719; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: hazardous waste treatment and disposal facility; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.13(c)(2), New Source Review (NSR) Permit Number 42450, Special Conditions (SC) Number 26.B., Federal Operating Permit (FOP) Number O1509, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 15, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the Relative Accuracy Test Audit results within 60 days after the testing is completed; 30 TAC §§101.20(2), 113.100, 116.115(c), and 122.143(4), 40 CFR §63.6(e)(1)(i) and (ii), NSR Permit Number 42450, SC Number 1, FOP Number O1509, GTC and STC Number 15, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§101.20(2), 113.620, 116.115(c), and 122.143(4), 40 CFR §63.1219(a)(4), NSR Permit Number 42450, SC Number 12.F., FOP Number O1509, GTC and STC Number 15, and THSC, §382.085(b), by failing to comply with the emissions limit; 30 TAC §§101.20(2), 113.1090, and 122.143(4), 40 CFR §§63.9(b)(2), 63.6590(b)(1), and 63.6645(f), FOP Number O1509, GTC and STC Number 1.A., and THSC, §382.085(b), by failing to submit a notification for a reciprocating internal combustion engine within 120 calendar days after an initial startup; 30 TAC §§101.20(2), 113.1090, and 122.143(4), 40 CFR §63.6640(a), FOP Number O1509, GTC and STC Number 1.A., and THSC, §382.085(b), by failing to inspect the air cleaner every 1,000 hours of operation or annually, change the oil and filter, and inspect all hoses and belts every 500 hours of operation or annually for each emergency stationary reciprocating internal combustion engine; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 42450, SC Number 1, FOP Number O1509, GTC and STC Number 15, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1509, GTC, and THSC, §382.085(b), by failing to report all instances of deviations, failing to submit the notification for the actual startup date for the Incinerator Emergency Backup Engine, and failing to conduct maintenance on the Waste Treatment Plant Fire Pump Engine and Basin Emergency Pump Engine 3; PENALTY: $42,269; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $16,908; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Webb County Consolidated Independent School District; DOCKET NUMBER: 2023-0391-PWS-E; IDENTIFIER: RN101693596; LOCATION: Bruni, Webb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: $1,275; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202403606
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 6, 2024

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Enforcement Order

An agreed order was adopted regarding Arroyo Bravo Water Supply, LLC, Docket No. 2022-1134-UTL-E on August 6, 2024 assessing $610 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Misty James, Staff Attorney at (512) 239 3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202403632
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 7, 2024

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Notice of District Petition

Notice issued August 2, 2024

TCEQ Internal Control No. D-07012024-012; Old WR Ranch I Hacker, LTD., a Texas limited partnership (Petitioner), filed a petition for the creation of Furst Ranch Municipal Utility District No. 1 of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority of land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 461.859 acres located within Denton County, Texas; and (4) the land within the proposed District is located within the extraterritorial jurisdiction of the City of Bartonville, Texas (City). The petition further states that the proposed District will: (1) purchase, design, construct, acquire, improve, extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall

be consonant with the purposes for which the proposed District is organized. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $63,820,000 ($49,000,000 for water, wastewater, and drainage plus $14,820,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202403629
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 7, 2024

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Notice of District Petition

Notice issued August 2, 2024

TCEQ Internal Control No. D-06172024-030; Lakshmi Land Group, LLC, (Petitioner) filed a petition for creation of Lakshmi Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Capital Farm Credit, ACA, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 244.579 acres located within Williamson County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to: (1) provide a water supply for municipal uses, domestic uses, and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or commercial wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in the proposed District and the payment of organization expenses, operational expenses during construction and interest during construction; (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, extend and develop park and recreational facilities for the inhabitants of the proposed District; (5) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (6) provide such other facilities systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $67,760,000. The financial analysis in the application was based on an estimated $66,520,000 ($60,600,000 for water, wastewater, and drainage plus $4,820,000 for roads plus $1,100,000 for recreation) at the time of submittal.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202403630
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 7, 2024

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Notice of District Petition

Notice issued August 02, 2024

TCEQ Internal Control No. D-06172024-033 Maple Meadows Development, LLC., a Texas limited partnership (Petitioner), filed a petition for the creation of Waller County Municipal Utility District No. 59 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority of land to be included in the proposed District; (2) there are lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 248.176 acres located within Waller County, Texas; and (4) the land within the proposed District is located within the extraterritorial jurisdiction of the City of Waller (City). The petition further states that the proposed District will: (1) purchase, design, construct, acquire, improve, extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is organized. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $97,510,000 ($66,830,000 for water, wastewater, and drainage plus $25,000,000 for roads and districts park and $5,680,000 for recreation).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202403631
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 7, 2024

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 17, 2024.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 17, 2024.** The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: ARCH-CON CORPORATION; DOCKET NUMBER: 2022-0374-WQ-E; TCEQ ID NUMBER: RN111329280; LOCATION: 36488 Farm-to-Market Road 1736, Hempstead, Waller

County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR1518GM, Part III, Section F.6.(a), by failing to maintain best management practices in effective operating condition; and 30 TAC §305.125(1) and TPDES General Permit Number TXR1518GM, Part III, Section F.6.(d), by failing to remove accumulations of sediment at a frequency that minimizes off-site impacts; PENALTY: $4,725; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202403609
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 6, 2024

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Notice of Opportunity to Comment on a Shutdown/Default Order of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill, and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 17, 2024**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 17, 2024**. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: 646 Food Mart, Inc.; DOCKET NUMBER: 2022-1150-PST-E; TCEQ ID NUMBER: RN101199354; LOCATION: 1105 Farm-to-Market Road 646 North, Dickinson, Galveston County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(c)(2) and 30 TAC §334.48(h)(1)(A)(i), by failing to conduct a walkthrough inspection for the spill prevention equipment at least once every 30 days; TWC, §26.3475(c)(2) and 30 TAC §334.48(h)(1)(B)(ii), by failing to conduct the annual inspections of the containment sumps; and 30 TAC §334.602(a), by failing to designate, train, and certify for each UST facility at least one named individual for each class of operator - Class A, B, and C; PENALTY: $5,750; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202403607
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 6, 2024

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 17, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 17, 2024**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Barry Baker dba Farmersville Tire; DOCKET NUMBER: 2021-0807-MSW-E; TCEQ ID NUMBER: RN108832890; LO-

CATION: 1010 Old McKinney Road, Farmersville, Collin County; TYPE OF FACILITY: automotive repair and tire shop; RULES VIOLATED: Texas Health and Safety Code, §361.112(a) and 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for the site, prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; 30 TAC §328.56(d)(4), by failing to monitor tires stored outside for vectors and utilize appropriate vector control measures at least once every two weeks; and 30 TAC §328.58(a), (d), and (e), by failing to accurately and fully complete all required information on scrap tire manifests, to obtain completed manifests within 60 days after the scrap tires were transported off-site by the transporter, and to notify TCEQ of the transporter's failure to return completed manifests within three months after the off-site transportation of the scrap tires; PENALTY: $23,039; STAFF ATTORNEY: Benjamin Pence, Litigation, MC 175, (512) 239-2157; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Brian Frazier dba SHENANDOAH ESTATES WATER CO., INC.; DOCKET NUMBER: 2022-0528-PWS-E; TCEQ ID NUMBER: RN101244408; LOCATION: approximately 0.7 miles north of West Lone Oak Road on County Road 2131 near Valley View, Cooke County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages; and 30 TAC §290.46(q)(6)(F), by failing to rescind a boil water notice (BWN) within 24 hours or no later than the next business day once the PWS has met the requirements for rescinding the BWN; PENALTY: $1,275; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Glenn R. Conner dba G & S FISH MARKET; DOCKET NUMBER: 2023-1264-MSW-E; TCEQ ID NUMBER: RN111584710; LOCATION: 454 Farm-to-Market Road 2246, Evadale, Jasper County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a)(2) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW in such a manner to cause the creation and maintenance of a nuisance; PENALTY: $3,750; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Layne Properties, LLC; DOCKET NUMBER: 2022-0307-PWS-E; TCEQ ID NUMBER: RN106492234; LOCATION: 1391 Northwest Parkway, Azle, Parker County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(1)(F) and TCEQ Agreed Order Docket Number 2019-0941-PWS-E, Ordering Provision Number 2.a.i., by failing to obtain a sanitary control easement covering land within 150 feet of the facility's well; and 30 TAC §290.46(n)(3) and TCEQ Agreed Order Docket Number 2019-0941-PWS-E, Ordering Provision Number 2.a.ii., by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $7,248; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: SLOTT CONSTRUCTION COMPANY, INC.; DOCKET NUMBER: 2022-0287-WQ-E; TCEQ ID NUMBER: RN107948721; LOCATION: five miles west of Interstate 45 on Farm-to-Market Road 1374, Huntsville, Walker County; TYPE OF FACILITY: large construction site; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System General Permit Number TXR15210K, Section F.6(a), (c), and (d), by failing to install and maintain best management practices at the site which resulted in a discharge of pollutants into or adjacent to any water in the state; PENALTY: $14,375; STAFF ATTORNEY: Taylor Pack Ellis, Litigation, MC 175, (512) 239-6860; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202403608
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 6, 2024

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Notice of Public Hearing and Comment Period on Proposed Renewal and Revision of Municipal Solid Waste Landfill General Operating Permit

The Texas Commission on Environmental Quality (TCEQ) is proposing the renewal and revision of the Municipal Solid Waste Landfill (MSWL) General Operating Permit (GOP) Number 517. TCEQ is providing an opportunity for public comment and notice of comment hearing (hearing) on the draft MSWL GOP Number 517. The draft GOP contains revisions based on recent federal and state rule changes, which include updates to the Statement of Basis, requirements tables, the addition of new requirements tables, and updates to the terms. This renewal also corrects typographical errors and updates language for administrative preferences.

The draft GOP is subject to a 30-day comment period. During the comment period, any person may submit written comments on the draft GOP.

TCEQ will hold a hybrid virtual and in-person public hearing in Austin, Texas on September 16, 2024, at 2:00 p.m. in building F, room 2210, at TCEQ's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the draft GOP 30 minutes prior to the hearing, at 1:30 p.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Friday, September 13, 2024. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Monday, September 16, 2024, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODIxNTg2M2UtMTQ4Yy00OGY1LWJiOTgtN2U4YzYzMmQ0ODc1%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Gwen Ricco, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: *https://tceq.commentinput.com/.* File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-134-OTH-NR.

The comment period closes at 11:59 p.m. on September 17, 2024.

Copies of the draft GOP may be obtained from the commission website at

https://www.tceq.texas.gov/permitting/air/nav/air_genoppermits.html

For further information, please contact Mr. David Munzenmaier, at (512) 239-6092. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202403554
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 1, 2024

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Notice of Public Hearing on Proposed Revisions to 30 Texas Administrative Code Chapters 290 and 291

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 290, Public Drinking Water, §§290.38, 290.45, and 290.46, and Chapter 291, Utility Regulations, §291.143 and §291.161 under the requirements of Texas Water Code (TWC), §13.4132 and §13.1395, Texas Health and Safety Code, §341.033 and §341.0315.

The proposed rulemaking would implement amendments to 30 TAC §291.143 by changing the term for a temporary utility manager from 180 days to no more than 360 days, based on the 360-day duration of the emergency order appointing the temporary manager. The proposed rulemaking also includes the basis for renewing the emergency order under TWC §13.4132. The proposed rulemaking would amend 30 TAC §290.46(w) and propose new §290.46(w)(6) by adding requirements of notification by a nonindustrial public water supply system of an unplanned condition that causes a system outage or issuance of a drinking water advisory or boil water notice. Additionally, the proposed rulemaking would amend 30 TAC §290.38(3)(B)(ii) and 30 TAC §291.161(1)(B)(ii) by revising the definition of "affected utility" with the new population of 800,000. Finally, the proposed rulemaking would amend 30 TAC §§290.38(18) and propose new 290.45(j) to establish both a connection equivalency value, and alternative to the equivalency value, for the allowable recreational vehicle site to connection ratio to use for recreational vehicle parks served by the public water system when determining the number of connections.

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on September 12, 2024 at 10:00 AM in Building F, Room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by September 10, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on September 11, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing, you may do so at no cost at:

https://events.teams.microsoft.com/event/1edc845c-d424-4035-9209-3f5b3eaa3880@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/*. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference **Rule Project Number 2024-015-290-OW**. The comment period closes September 17, 2024. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Rheaa Miller, Emergency Preparedness and Response Section, (512) 239-5728.

TRD-202403572
Charmaine Backens
Deputy Director, Environmental Law DIvision
Texas Commission on Environmental Quality
Filed: August 5, 2024

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Notice of Public Meeting Air Quality Standard Permit for Concrete Batch Plants Proposed Registration No. 176138

Notice issued August 02, 2024

TCEQ Internal Control No. D-06172024-033 Maple Meadows Development, LLC., a Texas limited partnership (Petitioner), filed a petition for the creation of Waller County Municipal Utility District No. 59 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority of land to be included in the proposed District; (2) there are lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 248.176 acres located within Waller County, Texas; and (4) the land within the proposed District is located within the extraterritorial jurisdiction of the City of Waller (City). The petition further states that the proposed District will: (1) purchase, design, construct, acquire, improve, extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase,

construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is organized. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $97,510,000 ($66,830,000 for water, wastewater, and drainage plus $25,000,000 for roads and districts park and $5,680,000 for recreation).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202403634
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 7, 2024

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Notice of Public Meeting for Air Quality Permits Proposed Air Quality Permit Numbers 174275, PSDTX1628, and GHGPSDTX234

APPLICATION. Ingleside Clean Ammonia Partners, LLC, 915 North Eldridge Parkway Suite 1100, Houston, Texas 77079-2703, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of proposed State Air Quality Permit 174275, issuance of Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX1628, and issuance of Greenhouse Gas (GHG) PSD Air Quality Permit GHGPSDTX234 for emissions of GHGs, which would authorize construction of the Blue Ammonia Production Trains 1 and 2 located at 1450 Lexington Boulevard, Ingleside, San Patricio County, Texas 78362. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en espanol está disponible en https://www.tceq.texas.gov/permitting/air/newsourcereview/airpermits-pendingpermit-apps. The proposed facility will emit the following air contaminants in a significant amount: carbon monoxide, nitrogen oxides, and particulate matter including particulate matter with diameters of 2.5 microns or less. In addition, the facility will emit the following air contaminants: hazardous air pollutants, organic compounds, sulfur dioxide, particulate matter including particulate matter with diameters of 10 microns or less, ammonia, and hydrogen sulfide.

This application was submitted to the TCEQ on October 12, 2023.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, September 5, 2024 at 7:00 p.m.

Portland Community Center

2000 Billy G. Webb Drive

Portland, Texas 78374

INFORMATION. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the link, enter the permit number at the top of this form.

The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination sum-

mary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, and at the Sinton Public Library, 1000 North Pirate Boulevard, Sinton, San Patricio County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas.

Further information may also be obtained from Ingleside Clean Ammonia Partners LLC at the address stated above or by calling Mr. Clayton Curtis, Director Regulatory Affairs USGC Terminals, Enbridge, Inc., at (855) 385-6645.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: August 2, 2024

TRD-202403633
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 7, 2024

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Texas Ethics Commission

List of Delinquent Filers

LIST OF LATE FILERS

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Dave Guilianelli at (512) 463-5800.

Deadline: Personal Financial Statement due February 12, 2020

#00084675 - Forrest Jon Hampton, 1300 Winding Hollow Ln, Plano, Texas 75093

Deadline: Personal Financial Statement due February 14, 2022

#00086465 - Meredith Chacon, 110 Broadway St. #380, San Antonio, Texas 78205

#00065745 - James Gregory Glass, 1744 Norfolk St., Houston, Texas 77098

#00065781 - Shawn Nicole Thierry, 3359 Charleston, Houston, Texas 77021

#00086410 - Stephen A. Missick, 611 Thomas Castleberry Dr., Shepard, Texas 77371

#00086501 - Jason Eric Withers, 1009 B Ruthven Street, Houston, Texas 77019

#00086439 - Charlotte Valdez, 535 Humbolt, San Antonio, Texas 78211

#00085291 - Zachary A. Vance, P.O. Box 4713, Lago Vista, Texas 78645

#00084332 - Christopher L. Taylor, 100 Calhoun St. 4th Floor, Fort Worth, Texas 76102

#00032066 - Norma P. Chavez, 824 Bolivia, El Paso, Texas 79903

#00085945 - Mike Hendrix, 4843 Mexicana Rd., Dallas, Texas 75212

#00083944 - Aurelia J. Wagner, 3100 Cleburne 1568, Houston, Texas 77004

#00069780 - Sanda Crenshaw, P.O. Box 224123, Dallas, Texas 75222

Deadline: Personal Financial Statement due May 1, 2023

#00085523 - Clyde D. Loll, 1388 Elkins Lake, Huntsville, Texas 77340

#00065203 - Bernard J. Thiel Jr, 3113 76th Street, Lubbock, Texas 79423

#00086639 - Lacy Wolf, 7220 Sims Drive, Houston, Texas 77061

#00067251 - Carlos O. Garcia, P.O. Box 510, Alice, Texas 78333

#00059787 - Raymond J. Graham, 10142 Stoneway, El Paso, Texas 79925

#00086082 - Amy Thomas Ward, P.O. Box 111, Mexia, Texas 76667

#00082450 - Andria Bender, 270 FM 149 West, Anderson, Texas 77830

#00083726 - Charles Ring, 15410 CR 600, Sinton, Texas 78387

#00084754 - Viridiana Fernandez, 501 Starling Creek Lp, Laredo, Texas 78045

Deadline: Personal Financial Statement due June 30, 2021

#00084206 - Joshua A. McAdams, P.O. Box 189, Center, Texas 75935

#00082910 - Amy Welborn, 2705 Bee Caves Rd, Ste. 220, Austin, Texas 78746

Deadline: Personal Financial Statement due May 2, 2022

#00085914 - Rebecca A. Contreras, 221 Gabriel Woods Drive, Georgetown, Texas 78633

#00083589 - Janet Hoffman, 2907 Beluche Dr., Galveston, Texas 77551

#00067826 - Diane Rosaura Navarrete, 500 E. San Antonio, Rm 469, El Paso, Texas 79901

#00082654 - Nathan Priefert, P.O. Box 1540, Mt. Pleasant, Texas 75456

#00081580 - Bobby Wilkinson, P.O. Box 13941, Austin, Texas 78711

#00083645 - Albert H. Myres, 288 FM 770 N, Liberty, Texas 77575

#00084754 - Viridiana Fernandez, 501 Starling Creek Lp, Laredo, Texas 78045

#00070738 - Anumeha Kumar, 11521 Lakestone Dr., Bee Cave, Texas 78738

Deadline: Personal Financial Statement due June 30, 2023

#00080065 - Victoria Neave Criado, P.O. Box 472773, Garland, Texas 75047

Deadline: Lobby Activities Report due June 12, 2023

#00053200 - Michael R. Hunsucker, 208 W 14th Street, Suite 103, Austin, Texas 78701

#00087043 - William S. Byerly, 1604 San Antonio St., Austin, Texas 78701

#00087267 - Jaclyn J. Uresti, P.O. Box 13506, Capitol Station, Austin, Texas 78711

Deadline: Lobby Activities Report due May 10, 2023

#00053200 - Michael R. Hunsucker, 208 W 14th Street, Suite 103, Austin, Texas 78701

Deadline: Lobby Activities Report due October 12, 2021

#00070514 - Dallas S. Jones, 5445 Almeda, Suite 307, Houston, Texas 77004

#00085610 - Aron Pena, P.O. Box 162195, Austin, Texas 78716

#00085214 - Nicholas Allen Tuccio, 7917 Comfort Cove, Austin, Texas 78731

Deadline: Lobby Activities Report due September 10, 2021

#00070514 - Dallas S. Jones, 5445 Almeda, Suite 307, Houston, Texas 77004

#00085610 - Aron Pena, P.O. Box 162195, Austin, Texas 78716

#00085214 - Nicholas Allen Tuccio, 7917 Comfort Cove, Austin, Texas 78731

Deadline: Lobby Activities Report due July 12, 2021

#00070514 - Dallas S. Jones, 5445 Almeda, Suite 307, Houston, Texas 77004

#00085214 - Nicholas Allen Tuccio, 7917 Comfort Cove, Austin, Texas 78731

Deadline: Lobby Activities Report due June 10, 2021

#00070514 - Dallas S. Jones, 5445 Almeda, Suite 307, Houston, Texas 77004

Deadline: Lobby Activities Report due May 10, 2021

#00070514 - Dallas S. Jones, 5445 Almeda, Suite 307, Houston, Texas 77004

Deadline: Lobby Activities Report due August 10, 2021

#00070514 - Dallas S. Jones, 5445 Almeda, Suite 307, Houston, Texas 77004

#00013547 - Chuck Rice Jr, 4205 Wild Iris Lane, Austin, Texas 78727

Deadline: Lobby Activities Report due November 10, 2021

#00085610 - Aron Pena, P.O. Box 162195, Austin, Texas 78716

#00085214 - Nicholas Allen Tuccio, 7917 Comfort Cove, Austin, Texas 78731

Deadline: Lobby Activities Report due October 10, 2023

#00087043 - William S. Byerly, 1604 San Antonio St., Austin, Texas 78701

Deadline: Lobby Activities Report due March 10, 2023

#00080891 - Jordan Williford, 7 Heartleaf Court, Spring, Texas 77381

Deadline: Lobby Activities Report due April 10, 2023

#00080891 - Jordan Williford, 7 Heartleaf Court, Spring, Texas 77381

#00050816 - Hans Klingler, 101 Cheerful Court, Austin, Texas 78734

Deadline: Lobby Activities Report due July 10, 2023

#00085748 - Katherine S. Strandberg, 314 E. Highland Mall Blvd. #400, Austin, Texas 7875

Deadline: Lobby Activities Report due November 13, 2023

#00013547 - Chuck Rice Jr., 4205 Wild Iris Lane, Austin, Texas 78727

Deadline: Lobby Activities Report due January 10, 2023

#00084743 - John Culberson, 7911 Emerald Bluff Court, Houston, Texas 77095

Deadline: Lobby Activities Report due September 11, 2023

#00087277 - Nicholas A. Hanetho, 3855 Tulsa Way, Fort Worth, Texas 76107

Deadline: Lobby Activities Report due August 10, 2023

#00087296 - Gregory B. Cox, 306 W. 7th Street, Suite 506, Fort Worth, Texas 76102

#00087645 - Moises Murillo, 700 Milam Street, Suite 1900, Houston, Texas 77002

Deadline: Lobby Activities Report due May 10, 2022

#00086001 - Richard J. Ybarra, 2616 University Blvd., Houston, Texas 77005

Deadline: Lobby Activities Report due August 10, 2022

#00085149 - Dustin Cox, 1115 San Jacinto Blvd., Suite 110, Austin, Texas 78701

TRD-202403551
J.R. Johnson
Executive Director
Texas Ethics Commission
Filed: August 1, 2024

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List of Delinquent Filers

LIST OF LATE FILERS

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Dave Guilianelli at (512) 463-5800.

Deadline: 8 day pre-election report due October 26, 2020 for Committees

#00082469 - Britt J. Garner, Blue Action Democrats - Southwest Austin, 9532 Colebrook St., Austin, Texas 78749

#00052939 - Benjamin A. Bradshaw, UA Plumbers & Pipefitters Local 100 PAC Fund, 3010 Interstate 30, Mesquite, Texas 75150

#00067217 - Patricia L. Dawson, Llano Tea Party, 8315 C.R. 113, Llano, Texas 78643

#00082714 - Nicole M. DeLoach, Run Sister Run Political Action Committee, P.O. Box 66470, Houston, Texas 77266

Deadline: 8 day pre-election report due October 31, 2022 for Committees

#00066429 - Lisa A. Sturgeon, Committee to Inform Voters on Business Issues, 8675 Freeport Pkwy N, Bldg. E5, Irving, Texas 75063

#00082400 - Whitney Tymas, Texas Justice & Public Safety PAC, 1032 15th St., NW Ste. 247, Washington, DC 20005

#00023800 - Pat Daniel, Caldwell County Republican Party, P.O. Box 262, Canyon Lake, Texas 78133

#00031950 - Jimmy V. Thurmond III, Texas Wildlife Assn. PAC, 6644 FM 1102, New Braunfels, Texas 78132

#00082714 - Nicole M. DeLoach, Run Sister Run Political Action Committee, P.O. Box 66470, Houston, Texas 77266

#00087084 - Brandy K. Chambers, Truth by Texas, 2028 E. Ben White Blvd., Austin, Texas 78741

#00031918 - Kenneth Zarifis, Education Austin PAC, P.O. Box 26459, Austin, Texas 78755

Deadline: 8 day pre-election report due February 24, 2020 for Committees

#00015507 - Lillie J. Schechter, Harris County Democratic Party (CEC), 1 Greenway Pl., Ste. 740, Houston, Texas 77046

Deadline: 8 day pre-election report due September 20, 2021 for Committees

#00016515 - Elizabaeth Graham, Texas Right To Life PAC, 9800 Centre Pkwy, Ste. 200, Houston, Texas 77036

Deadline: 8 day pre-election report due April 23, 2021 for Committees

#00083675 - Amer Shakil, American United PAC, 4609 Blackshear Tr, Plano, Texas 75093

#00055453 - Glenda Macal, Fort Bend Employee Federation Committee on Political Education, 12621 W Airport Blvd, Ste. 400, Missouri City, Texas 77489

Deadline: 8 day pre-election report due April 28, 2023 for Committees

#00083134 - Jill L. Tuggle, Texas Autobody Political Action Committee, 717 Tradonna Lane, Hurst, Texas 76054

#00087526 - Anne Stone, Elevate Dallas Political Action Committee, 4308 Alta Vista Lane, Dallas, Texas 75229

#00087559 - Kerry Simmons, YES for G-PISD 2023, 312 Fifth St., Portland, Texas 78374

#00086533 - John L. Montes, Red Wave Texas, 15922 Eldorado Pkwy., Ste. 500, Box 547, Frisco, Texas 75035

Deadline: 8 day pre-election report due April 26, 2024 for Committees

#00088599 - Shannon O'Leary, Greater Solutions for Tomorrow, P.O. Box 341016, Austin, Texas 78734

Deadline: Monthly report due June 5, 2023 for Committees

#00017039 - Teri Jackson, Concho Valley Republican Women's Club PAC, P.O. Box 60583, San Angelo, Texas 76906

Deadline: Semiannual report due January 16, 2024 for Committees

#00023748 - DeLane C. Cagle, Pecos County Republican Party, P.O. Box 1795, Fort Stockton, Texas 79735

#00085911 - Rene O. Garza, Rio Forward PAC, 404 N. Britton Ave., Rio Grande City, Texas 78582

Deadline: 30 day pre-election report due October 4, 2021 for Committees

#00043489 - Steven L. Scheinthal, Landry's Seafood Restaurants, Inc. PAC, 1510 West Loop South, Houston, Texas 77027

Deadline: Semiannual report due July 15, 2021 for Committees

#00053142 - David Robles, Senate District 6 PAC, 517 Hahlo, Houston, Texas 77020

#00081645 - William L. Worsham, Travis County Taxpayers Union S-PAC, 1105 Norwalk Ln, Austin, Texas 78703

Deadline: Semiannual report due January 18, 2022 for Committees

#00054064 - Logan Workman, Texas Stonewall Democratic Caucus, 3809 S Congress Ave, Austin, Texas 78704

#00085924 - Robin Sparks, Vote For GISD Kids, P.O. Box 255, Gainesville, Texas 76241

#00082065 - Rachel A. Smith, College Station Association of Neighborhoods, 1203 Marsteller Avenue, College Station, Texas 77840

#00058243 - Bryan Hughes, Texas Legislative Tourism Caucus, P.O. Box 12068 Capitol Station, Austin, Texas 78711

#00023811 - Luis F. De La Garza Jr., Webb County Republican Party, 10601 Cabo Wabo, Laredo, Texas 78045

Deadline: Semiannual report due January 15, 2021 for Committees

#00081645 - William L. Worsham, Travis County Taxpayers Union S-PAC, 1105 Norwalk Ln, Austin, Texas 78703

Deadline: 8 day pre-election report due February 22, 2022 for Committees

#00082714 - Nicole M. DeLoach, Run Sister Run Political Action Committee, P.O. Box 66470, Houston, Texas 77266

#00085251 - Jorge L. Lozano, Future Texas, 1317 Orange Blossom, Weslaco, Texas 78596

#00023811 - Luis F. De La Garza Jr., Webb County Republican Party, 10601 Cabo Wabo, Laredo, Texas 78045

Deadline: Semiannual report due July 15, 2022 for Committees

#00085911 - Rene O. Garza, Rio Forward PAC, 404 N. Britton Ave., Rio Grande City, Texas 78582

#00058243 - Bryan Hughes, Texas Legislative Tourism Caucus, P.O. Box 12068 Capitol Station, Austin, Texas 78711

#00023811 - Luis F. De La Garza Jr., Webb County Republican Party, 10601 Cabo Wabo, Laredo, Texas 78045

Deadline: 8 day pre-election report due October 25, 2021 for Committees

#00085924 - Robin Sparks, Vote For GISD Kids, P.O. Box 255, Gainesville, Texas 76241

Deadline: Monthly report due June 5, 2023 for Committees

#00086641 - Colin Leyden, Environmental Defense Action Fund Texas PAC, 301 Congress Ave., Suite 1300, Austin, Texas 78701

Deadline: Monthly report due July 5, 2023 for Committees

#00086641 - Colin Leyden, Environmental Defense Action Fund Texas PAC, 301 Congress Ave., Suite 1300, Austin, Texas 78701

Deadline: 8 day pre-election report due October 30, 2023 for Committees

#00086835 - Jason A. Moore, Citizens for Responsible Government, 4920 Gee Road, Granbury, Texas 76049

#00087542 - Troy A. Hatler, Edminster, Hinshaw, Russ & Associates Engineering PAC, 10011 Meadowglen Lane, Houston, Texas 77042

#00015975 - Jennifer L. Hoff, International Bank Of Commerce Committee for Improvement and Betterment of the Country, 1200 San Bernardo Ave, Laredo, Texas 78040

Deadline: Semiannual report due January 17, 2023 for Committees

#00086827 - Terri Winter Majors, Stop TX Vouchers, 3025 Eula Morgan Road, Katy, Texas 77493

#00023811 - Luis F. De La Garza Jr., Webb County Republican Party, 10601 Cabo Wabo, Laredo, Texas 78045

Deadline: Semiannual report due July 17, 2023 for Committees

#00058243 - Bryan Hughes, Texas Legislative Tourism Caucus, P.O. Box 12068 Capitol Station, Austin, Texas 78711

Deadline: 8 day pre-election report due October 25, 2021 for Committees

#00068897 - Jennifer Brown, Battleground Texas, P.O. Box 11525, Austin, Texas 78711

#00085913 - Gina Bouvier, Santa Fe Students First, P.O. Box 588, Santa Fe, Texas 77517

Deadline: 50 day pre-election report due September 19, 2022 for Committees

#00023811 - Luis F. De La Garza Jr., Webb County Republican Party, 10601 Cabo Wabo, Laredo, Texas 78045

Deadline: 30 day pre-election report due October 5, 2020 for Committees

#00055453 - Karrie C. Washenfelder, Fort Bend Employee Federation Committee on Political Education, 12621 W Airport Blvd., Ste. 400, Sugar Land, Texas 77478

Deadline: 8 day pre-election report due April 29, 2022 for Committees

#00055453 - Glenda Macal, Fort Bend Employee Federation Committee on Political Education, 12621 W Airport Blvd., Ste. 400, Missouri City, Texas 77489

TRD-202403553
J.R. Johnson
Executive Director
Texas Ethics Commission
Filed: August 1, 2024

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Texas Facilities Commission

Request for Proposals #303-5-20766 League City

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) # 303-5-20766. TFC seeks a five (5) or ten (10) year lease of approximately 12,936 square feet of office space and 195 square feet of outdoor lounge space in League City, Texas.

The deadline for questions is August 27, 2024, and the deadline for proposals is September 10, 2024 at 3:00 p.m. The award date is October 17, 2024. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Ayra Matthews at ayra.matthews@tfc.texas.gov. A copy of the RFP may be downloaded from the Electronic State Business Daily at https://www.txsmartbuy.gov/esbd/303-5-20766.

TRD-202403611
Gayla Davis
State Leasing Services Director
Texas Facilities Commission
Filed: August 6, 2024

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Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments will be effective September 1, 2024.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Physicians and Other Practitioners;

Clinical Diagnostic Labs;

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS);

Vision Care Services;

Rural Health Clinics (RHCs);

Federally Qualified Health Center (FQHC);

Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT); and

Renal Dialysis.

The proposed amendment is estimated to result in an annual aggregate expenditure of $136,155 for federal fiscal year (FFY) 2024, consisting of $81,897 in federal funds and $54,258 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is $1,617,315, consisting of $970,389 in federal funds and $646,926 in state general revenue. For FFY 2026, the estimated annual aggregate expenditure is $1,600,266, consisting of $960,160 in federal funds and $640,106 in state general revenue.

Further detail on specific reimbursement rates and percentage changes will be made available on the HHSC Provider Finance website under the proposed effective date at: https://pfd.hhs.texas.gov/rate-packets.

Rate Hearing.

A rate hearing was conducted in person and online on May 21, 2024. Information about the proposed rate changes and the hearing was published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2829). Additional information and the notice of hearings can be found at https://www.sos.state.tx.us/texreg/index.shtml. Archived recordings of the hearings can be found at https://www.hhs.texas.gov/about/meetings-events.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Nicole Hotchkiss, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFDAcuteCare@hhs.texas.gov

Preferred Communication.

For quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

TRD-202403589
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 5, 2024

♦ ♦ ♦

Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of June 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
HUMBLE	MEHTA MEDICAL GROUP PLLC DBA WELLSPIRE MEDICAL GROUP	L07229	HUMBLE	00	06/20/24

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
AUSTIN	ST DAVIDS HEART & VASCULAR PLLC AUSTIN HEART	L04623	AUSTIN	108	06/20/24
AUSTIN	ARA ST DAVIDS IMAGING LP	L05862	AUSTIN	125	06/24/24
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER	L00740	AUSTIN	187	06/27/24
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	254	06/17/24
BAY CITY	EQUISTAR CHEMICALS LP	L03938	BAY CITY	37	06/18/24
BEAUMONT	BAPTIST HOSPITALS OF SOUTHEAST TEXAS	L00358	BEAUMONT	162	06/18/24
BIG SPRING	ALON USA LP	L04950	BIG SPRING	19	06/28/24
BISHOP	BASF CORPORATION	L06855	BISHOP	17	06/25/24
CORPUS CHRISTI	CORPUS CHRISTI HEART CLINIC PLLC	L06774	CORPUS CHRISTI	03	06/25/24
DEER PARK	OXY VINYLS LP	L03200	DEER PARK	23	06/28/24
DENTON	NUMED INC	L02129	DENTON	86	06/26/24

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

FORT WORTH	UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER AT FORT WORTH	L06123	FORT WORTH	11	06/17/24
FORT WORTH	TEXAS CHRISTIAN UNIVERSITY	L01096	FORT WORTH	54	06/20/24
FREEPORT	BRASKEM AMERICA INC	L06443	FREEPORT	12	06/27/24
HOUSTON	HOUSTON POLICE DEPARTMENT	L06809	HOUSTON	5	06/18/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN TEXAS MEDICAL CENTER	L06439	HOUSTON	25	06/25/24
HOUSTON	MEMORIAL HERMANN MEDICAL GROUP	L06430	HOUSTON	53	06/20/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L02412	HOUSTON	157	06/25/24
HUMBLE	CARDIOVASCULAR ASSOCIATION PLLC	L05421	HUMBLE	38	06/25/24
KERRVILLE	SID PETERSON MEMORIAL HOSPITAL DBA PETERSON HEALTH	L01722	KERRVILLE	49	06/18/24
KILLEEN	LOCKHEED MARTIN CORPORATION	L06653	KILLEEN	04	06/17/24
MIDLAND	MIDLAND COUNTY HOSPITAL DISTRICT DBA MIDLAND MEMORIAL HOSPITAL	L00728	MIDLAND	129	06/27/24

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

ORANGE	BAPTIST HOSPITALS OF SOUTHEAST TEXAS DBA BAPTIST BEAUMONT HOSPITAL	L01597	ORANGE	41	06/18/24
PLANO	PHYSICIANS MEDICAL CENTER LLC DBA TEXAS HEALTH CENTER FOR DIAGNOSTICS & SURGERY PLANO	L06328	PLANO	05	06/17/24
ROUND ROCK	TEXAS ONCOLOGY PA	L06240	ROUND ROCK	11	06/27/24
ROUND ROCK	SCOTT & WHITE HOSPITAL – ROUND ROCK DBA BAYLOR SCOTT & WHITE MEDICAL CENTER – ROUND ROCK	L06085	ROUND ROCK	39	06/26/24
SAN ANGELO	SHANNON MEDICAL CENTER	L02174	SAN ANGELO	86	06/17/24
SAN ANTONIO	CHRISTUS SANTA ROSA HEALTH CARE	L02237	SAN ANTONIO	180	06/18/24
SAN ANTONIO	VHS SAN ANTONIO PARTNERS LLC DBA BAPTIST HEALTH SYSTEM	L00455	SAN ANTONIO	275	06/28/24
SAN ANTONIO	METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO LTD LLP	L00594	SAN ANTONIO	391	06/18/24
SHERMAN	NORTH TEXAS COMPREHENSIVE CARDIOLOGY PLLC	L06797	SHERMAN	08	06/25/24
TEXAS CITY	INEOS STYROLUTION AMERICA LLC	L00354	TEXAS CITY	46	06/17/24
THE WOODLANDS	BAYLOR ST LUKES MEDICAL GROUP	L06875	THE WOODLANDS	09	06/25/24

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

THROUGHOU T TX	AMERICAN PIPING INSPECTION INC	L06835	LONGVIEW	23	06/20/24
THROUGHOUT TX	0BTEAM INDUSTRIAL SERVICES INC	L00087	ALVIN	11	06/25/24
THROUGHOUT TX	HVJ SOUTH CENTRAL TEXAS – M&J INC	L06858	AUSTIN	10	06/28/24
THROUGHOUT TX	HVJ NORTH TEXAS – CHELLIAH CONSULTANTS INC	L06807	DALLAS	11	06/21/24
THROUGHOUT TX	TEXAS CMT INC	L04766	DALLAS	13	06/26/24
THROUGHOUT TX	SENTINEL INTEGRITY SOLUTIONS INC	L06735	HOUSTON	14	06/28/24
THROUGHOUT TX	TERRACON CONSULTANTS INC	L05268	HOUSTON	77	06/25/24
THROUGHOUT TX	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	169	06/20/24
THROUGHOUT TX	KIEWIT ENERGY GROUP	L07053	INGLESIDE	03	06/21/24
THROUGHOUT TX	FIXED EQUIPMENT RELIABILITY LLC	L07168	INGLESIDE	5	06/17/24
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L06338	ODESSA	06	06/17/24
THROUGHOUT TX	ARIAS & ASSOCIATES INC	L04964	SAN ANTONIO	67	06/27/24
WEBSTER	TEXAS ONCOLOGY PA DBA DEKE SLAYTON MEMORIAL CENCER CENTER	L06465	WEBSTER	13	06/18/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
DALLAS	UROLOGY CLINICS OF NORTH TEXAS PLLC DBA CANCER CLINICS OF NORTH TEXAS	L06645	DALLAS	13	06/24/24
LA PORTE	CLEAN HARBORS DEER PARK LLC	L02870	LA PORTE	30	06/28/24
MCKINNEY	COLUMBIA MEDICAL CENTER OF MCKINNEY SUBSIDIARY LP DBA MEDICAL CENTER OF MCKINNEY	L02415	MCKINNEY	53	06/24/24
NASSAU BAY	HOUSTON METHODIST ST JOHN HOSPITAL DBA HOUSTON METHODIST CLEAR LAKE HOSPITAL	L06650	NASSAU BAY	13	06/25/24
ODESSA	PERMIAN PREMIER HEALTH SERVICES INC	L05628	ODESSA	07	06/18/24

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
CARROLLTON	GEOTEL ENGINEERING INC	L05674	CAROLLTON	12	06/26/24
THROUGHOUT TX	WSP USA INC	L04645	HOUSTON	18	06/28/24

TRD-202403621
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: August 7, 2024

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Licensing Actions for Radioactive Materials

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NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
FORT WORTH	BEDABOX LLC	L07230	FORT WORTH	00	07/03/24

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
ALLEN	TEXAS HEALTH PRESBYTERIAN HOSPITAL ALLEN	L05765	ALLEN	43	07/12/24
AMARILLO	TEXAS ONCOLOGY PA	L06149	AMARILLO	14	07/08/24
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	255	07/05/24
BELLAIRE	HOUSTON THYROID AND ENDOCRINE SPECIALIST PLLC	L06464	BELLAIRE	05	07/02/24
CORPUS CHRISTI	COASTAL CARDIOLOGY PLLC	L06694	CORPUS CHRISTI	02	07/02/24
DALLAS	THE CENTER FOR MOLECULAR IMAGING LP DBA SOUTHWEST DIAGNOSTIC CENTER FOR MOLECULAR IMAGING	L05715	DALLAS	17	07/08/24
DALLAS	PETNET SOLUTIONS INC	L05193	DALLAS	66	07/02/24
FORT WORTH	COOK CHILDRENS MEDICAL CENTER	L04518	FORT WORTH	40	07/08/24
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L06366	HOUSTON	26	07/02/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L03772	HOUSTON	179	07/02/24
IRVING	HEALTHTEXAS PROVIDER NETWORK DBA BAYLOR SCOTT & WHITE COTTONWOOD CARDIOLOGY	L06414	IRVING	06	07/09/24

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

LONGVIEW	TEXAS ONCOLOGY PA DBA LONGVIEW CANCER CENTER	L05017	LONGVIEW	31	07/02/24
NORTH RICHLAND HILLS	HEART360 SPECIALISTS PC	L07205	NORTH RICHLAND HILLS	01	07/11/24
SACHSE	COLUMBIA MEDICAL CENTER OF PLANO SUBSIDIARY LP DBA MEDICAL CITY SACHSE A CAMPUS OF MEDICAL CITY PLANO	L07140	SACHSE	05	07/11/24
SEGUIN	CRAIG CARDIOVASCULAR CENTER	L06623	SEGUIN	06	07/09/24
SHERMAN	NORTH TEXAS COMPREHENSIVE CARDIOLOGY PLLC	L06797	SHERMAN	09	07/09/24
THE WOODLANDS	METHODIST HEALTH CENTER DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL	L06861	THE WOODLANDS	21	07/12/24
THROUGHOUT TX	SPEESOIL INC	L05619	EL PASO	7	07/03/24
THROUGHOUT TX	NEXTIER COMPLETION SOLUTIONS INC	L06712	HOUSTON	27	07/02/24
THROUGHOUT TX	HEALTHSCAN IMAGING LLC	L06856	MANSFIELD	28	07/08/24
THROUGHOUT TX	ALLENS NUTECH INC DBA NUTECH INC	L04274	TYLER	109	07/03/24
THROUGHOUT TX	EVOLUTION WELL SERVICES OPERATING LLC	L06748	WOODLANDS	7	07/02/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
AUSTIN	ASCENSION TEXAS CARDIOVASCULAR	L06598	AUSTIN	16	07/02/24
BAYTOWN	SARMA S CHALLA MD PA	L05040	BAYTOWN	19	07/09/24
DALLAS	CARDINAL HEALTH	L05610	DALLAS	54	07/08/24
SAN ANTONIO	WORLDWIDE CLINICAL TRIALS EARLY PHASE SERVICES/BIOANALYTICAL SCIENCES LLC	L05723	SAN ANTONIO	13	07/09/24

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
ABILENE	TEXAS ONCOLOGY PA	L06853	ABILENE	03	07/11/24
LA GRANGE	ST MARKS MEDICAL CENTER	L03572	LA GRANGE	33	07/10/24
SAN ANTONIO	M REZA MIZANI MD PA	L06873	SAN ANTONIO	02	07/02/24
TEXARKANA	RED RIVER PHARMACY SERVICES INC DBA RED RIVER NUCLEAR PHARMACY	L05077	TEXARKANA	42	07/11/24
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L03642	SPRING	33	07/03/24
WEATHERFORD	MEDICAL AND HEART CENTER PA	L05573	WEATHERFORD	08	07/11/24

TRD-202403622

Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: August 7, 2024

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for WellCare Health Insurance Company of Oklahoma, Inc., a foreign life, accident and/or health company. The home office is in Tampa, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202403623
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: August 7, 2024

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Texas Department of Insurance, Division of Workers' Compensation

Proposed Fiscal Year 2025 Research Agenda

Workers Compensation Research and Evaluation Group

Introduction

Texas Labor Code §405.0026 requires the commissioner of workers' compensation to adopt a research agenda each year for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (TDI).

Labor Code §405.0026 requires the REG to prepare a research agenda each year for the commissioner to review, approve, and publish in the *Texas Register*.

Labor Code §405.0025 requires the REG to conduct professional studies and research related to how effectively the workers' compensation system operates.

Texas Insurance Code §1305.502 requires the REG to develop and issue an informational report card each even-numbered year that objectively identifies and compares certified health care networks with each other and with claims outside of those networks.

Proposed Fiscal Year 2025 Research Agenda

The REG proposes the following research projects:

1. A study to evaluate the feasibility and impact of adopting a more current version of the *American Medical Association Guides to the Evaluation of Permanent Impairment*. The REG will complete the project with the assistance of the Medical Quality Review Panel. This study is contingent on the American Medical Association's publication of the 2024 revisions to the musculoskeletal chapters 15-17.

2. An update of medical costs and utilization in the Texas workers' compensation system.

3. An analysis of designated doctors and scheduling companies in the Texas workers' compensation system by evaluating the performance of designated doctors and scheduling companies using metrics such as rescheduled exams, timeliness of reports, and timeliness of payments.

The REG will consider expanding the scope of the research projects or conducting more projects to accommodate stakeholder suggestions, subject to the resources and data available.

Request for Comments or Public Hearing

You may submit comments on the Proposed Fiscal Year 2025 Research Agenda or request a public hearing in writing no later than 5:00 p.m., Central time, on September 16, 2024. A hearing request must be on a separate page from any written comments.

Email your comments or hearing request to RuleComments@tdi.texas.gov or mail them to DWC Legal Services, MC-LS, Texas Department of Insurance, Division of Workers' Compensation, P.O. Box 12050, Austin, Texas 78711-2050.

Copies of the proposed research agenda are on the TDI website. Please email any questions about this agenda to Botao Shi at wcresearch@tdi.texas.gov.

TRD-202403559
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: August 2, 2024

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Texas Lottery Commission

Scratch Ticket Game Number 2601 "VETERANS CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2601 is "VETERANS CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2601 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2601.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 2X SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Scratch Ticket Game "VETERANS CASH" does not have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2601 - 1.2D

PLAY SYMBOL	CAPTION
01	
03	
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14	
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22	
23	
24	
25	
26	
27	
28	

29	
30	
2X SYMBOL	
$2.00	
$4.00	
$5.00	
$10.00	
$20.00	
$50.00	
$100	
$1,000	
$30,000	

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2601), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2601-0000001-001.

H. Pack - A Pack of the "VETERANS CASH" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "VETERANS CASH" Scratch Ticket Game No. 2601.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "VETERANS CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. Scratch Ticket Game "VETERANS CASH" does not have Play Symbol captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "2X" Play Symbol will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "2X" Play Symbol will only appear on winning Tickets as dictated by the approved prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 04 and $4).

2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "VETERANS CASH" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VETERANS CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "VETERANS CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "VETERANS CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2601. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2601 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	624,000	9.62
$4.00	480,000	12.50
$5.00	96,000	62.50
$10.00	72,000	83.33
$20.00	48,000	125.00
$50.00	40,000	150.00
$100	2,725	2,201.83
$1,000	50	120,000.00
$30,000	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.40. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2601 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2601, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202403626
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 7, 2024

♦ ♦ ♦

Scratch Ticket Game Number 2602 "WILD SIDE"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2602 is "WILD SIDE". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2602 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2602.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, $5.00, $10.00, $20.00, $50.00, $100, $250, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2602 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$250	TOFF
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2602), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2602-0000001-001.

H. Pack - A Pack of the "WILD SIDE" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "WILD SIDE" Scratch Ticket Game No. 2602.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "WILD SIDE" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-one (51) Play Symbols. WILD BONUS PLAY INSTRUCTIONS: If a player reveals 2 matching prize amounts in the same WILD BONUS play area, the player wins that amount. WILD SIDE PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to any of the LUCKY NUMBERS Play Symbols, the player wins the prize for that number. If a player matches any of the YOUR WILD NUMBERS Play Symbols to any of the LUCKY NUMBERS Play Symbols, the player wins 5 TIMES the prize for that number. No portion of the Display Printing nor any ex-

traneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-one (51) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-one (51) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-one (51) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-one (51) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to twenty-three (23) times.

D. WILD BONUS: A Ticket can win up to one (1) time in each of the three (3) WILD BONUS play areas.

E. WILD BONUS: A Ticket will not have matching, non-winning Prize Symbols across the three (3) WILD BONUS play areas.

F. WILD BONUS: Non-winning Prize Symbols in a WILD BONUS play area will not be the same as winning Prize Symbols from another WILD BONUS play area.

G. WILD BONUS: A non-winning WILD BONUS play area will have two (2) different Prize Symbols.

H. WILD SIDE: A Ticket can win up to twenty (20) times in the main play area.

I. WILD SIDE: All non-winning YOUR NUMBERS and YOUR WILD NUMBERS Play Symbols will be different.

J. WILD SIDE: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

K. WILD SIDE: All LUCKY NUMBERS Play Symbols will be different.

L. WILD SIDE: Tickets winning more than one (1) time will use as many LUCKY NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

M. WILD SIDE: On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

N. WILD SIDE: On Non-Winning Tickets, a LUCKY NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

O. WILD SIDE: On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $100,000 will each appear at least one (1) time, except on Tickets winning twenty-three (23) times and with respect to other parameters, play action or prize structure.

P. WILD SIDE: All YOUR NUMBERS and YOUR WILD NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 05 and $5, 10 and $10 and 20 and $20).

Q. WILD SIDE: On Non-Winning Tickets, a LUCKY NUMBERS Play Symbol will never match a YOUR WILD NUMBERS Play Symbol.

R. WILD SIDE: On all Tickets, the $250, $500, $1,000 and $100,000 Prize Symbols will never appear with a YOUR WILD NUMBERS Play Symbol since these prizes cannot be multiplied 5 TIMES as per the prize structure.

S. WILD SIDE: A LUCKY NUMBERS Play Symbol will match a YOUR WILD NUMBERS Play Symbol for a win that is multiplied 5 TIMES per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD SIDE" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILD SIDE" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILD SIDE" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "WILD SIDE" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "WILD SIDE" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2602. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2602 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	752,000	9.57
$10.00	672,000	10.71
$20.00	208,000	34.62
$50.00	96,000	75.00
$100	27,000	266.67
$250	2,560	2,812.50
$500	2,100	3,428.57
$1,000	50	144,000.00
$100,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.09. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2602 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2602, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202403573
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 5, 2024

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Scratch Ticket Game Number 2603 "LUCKY MILLIONS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2603 is "LUCKY MILLIONS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2603 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2603.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $20.00, $25.00, $50.00, $75.00, $100, $200, $500, $1,000, $20,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2603 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
$20.00	TWY$

$25.00	TWFV$
$50.00	FFTY$
$75.00	SVFV$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$20,000	20TH
$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2603), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2603-0000001-001.

H. Pack - A Pack of the "LUCKY MILLIONS" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LUCKY MILLIONS" Scratch Ticket Game No. 2603.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LUCKY MILLIONS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-six (66) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the LUCKY NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-six (66) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-six (66) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty-six (66) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-six (66) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to thirty (30) times.

D. A non-winning Prize Symbol will never match a winning Prize Symbol.

E. On winning and Non-Winning Tickets, the top cash prizes of $1,000, $20,000 and $1,000,000 will each appear at least one (1) time, except on Tickets winning thirty (30) times and with respect to other parameters, play action or prize structure.

F. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

G. Tickets winning more than one (1) time will use as many LUCKY NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching LUCKY NUMBERS Play Symbols will appear on a Ticket.

I. All YOUR NUMBERS Play Symbols, excluding the "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols, will never equal the corresponding Prize Symbol (i.e., 25 and $25 and 50 and $50).

J. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

K. On Non-Winning Tickets, a LUCKY NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "5X" (WINX5) Play Symbol will never appear more than one (1) time on a Ticket.

M. The "5X" (WINX5) Play Symbol will win 5 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.

N. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

O. The "5X" (WINX5) Play Symbol will never appear as a LUCKY NUMBERS Play Symbol.

P. The "10X" (WINX10) Play Symbol will never appear more than one (1) time on a Ticket.

Q. The "10X" (WINX10) Play Symbol will win 10 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.

R. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

S. The "10X" (WINX10) Play Symbol will never appear as a LUCKY NUMBERS Play Symbol.

T. The "20X" (WINX20) Play Symbol will never appear more than one (1) time on a Ticket.

U. The "20X" (WINX20) Play Symbol will win 20 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.

V. The "20X" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

W. The "20X" (WINX20) Play Symbol will never appear as a LUCKY NUMBERS Play Symbol.

X. No two (2) different multiplier Play Symbols can appear on the same Ticket, with the exception of the "10X" (WINX10) and "20X" (WINX20) Play Symbols, which can only appear together as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY MILLIONS" Scratch Ticket Game prize of $20.00, $50.00, $75.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $75.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the

procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY MILLIONS" Scratch Ticket Game prize of $1,000, $20,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY MILLIONS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "LUCKY MILLIONS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "LUCKY MILLIONS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,480,000 Scratch Tickets in Scratch Ticket Game No. 2603. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2603 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20.00	622,080	10.42
$50.00	518,400	12.50
$75.00	103,680	62.50
$100	311,040	20.83
$200	66,150	97.96
$500	4,320	1,500.00
$1,000	270	24,000.00
$20,000	15	432,000.00
$1,000,000	4	1,620,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2603 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2603, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202403628
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 7, 2024

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Panhandle Regional Planning Commission

Carson County Courthouse Request for Qualifications - Public Notice

ARCHITECHTURAL SERVICES

PUBLIC NOTICE

Carson County is intent upon historically repairing the Carson County Courthouse in Panhandle, Texas. The County desires to complete repairs to the Courthouse and is now seeking to contract with a qualified architectural firm or individual (registered to practice in the State of Texas) to prepare the preliminary/final project design plans, write the project specifications, conduct all necessary interim/final inspections, and perform other services, as appropriate, to ensure the successful completion of the project.

A copy of the County's Request for Qualifications may be obtained from the County Judge's Office at 501 Main Street, Panhandle, Texas 79068 or Panhandle Regional Planning Commission, P.O. Box 9257, Amarillo, Texas 79105, ATTN: Jarian Fred, (806) 372-3381.

Statements of Qualifications should be submitted to the Carson County Judge, Dan Looten.

Completed responses must be received by the County no later than **9:00 a.m. on Friday, August 23rd, 2024,** to be considered. Carson County reserves the right to negotiate with any and all architects or firms that submit a response, as per the Texas Professional Services Procurement Act and Office of Management and Budget Circular No.

A-102. All engineers/firms must not be debarred or suspended from the Excluded Parties List System (EPLS) of the System for Award Management (SAM) *www.sam.gov.*

Carson County is an Affirmative Action/Equal Opportunity Employer.

TRD-202403614
Jarian Fred
Local Government Services Program Coordinator
Panhandle Regional Planning Commission
Filed: August 6, 2024

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Public Utility Commission of Texas

Notice of Application for True-Up of 2021 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 1, 2024, for true-up of 2021 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Blossom Telephone Company for True-Up of 2021 Federal Universal Service Fund Impacts to Texas Universal Service Fund, Docket Number 56906.

The Application: Blossom Telephone Company filed a true-up in accordance with findings of fact 18 and 19 and ordering paragraphs 2, 3, and 4 of the Notice of Approval issued in Docket No. 52887, *Application of Blossom Telephone Company to Recover Funds from the TUSF Under PURA § 56.025 and 16 TAC §26.406 for 2021.* In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Blossom received in Federal Universal Service Fund (FUSF) revenue by $232,313.50 for calendar year 2021. It was also estimated that Blossom would recover $55,271.15 of the projected FUSF revenue impact from rate increases implemented for the same time period. Blossom's request to recover the remaining $177,042.35 from the Texas Universal Service Fund (TUSF) for 2021 was approved. Ordering paragraphs 2, 3, and 4 require Blossom to file its final and actual FUSF impacts for 2021 by August 1, 2024, with detailed supporting documentation, and contain the requirements for potential over or under recovery from the TUSF. Blossom states that the realized FUSF losses for 2021 were $158,427 (rounded to the nearest dollar). Therefore, Blossom states that it is due to refund to the TUSF the amount of $18,615 in this true-up proceeding.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 56906.

TRD-202403605
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2024

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Supreme Court of Texas

Preliminary Approval of Rules Governing Licensed Legal Paraprofessionals and Licensed Court-Access Assistants

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included in the print version of the Texas Register. The order is available in the on-line version of the August 16, 2024, issue of the Texas Register.)

TRD-202403604
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: August 6, 2024

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "49 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 49 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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