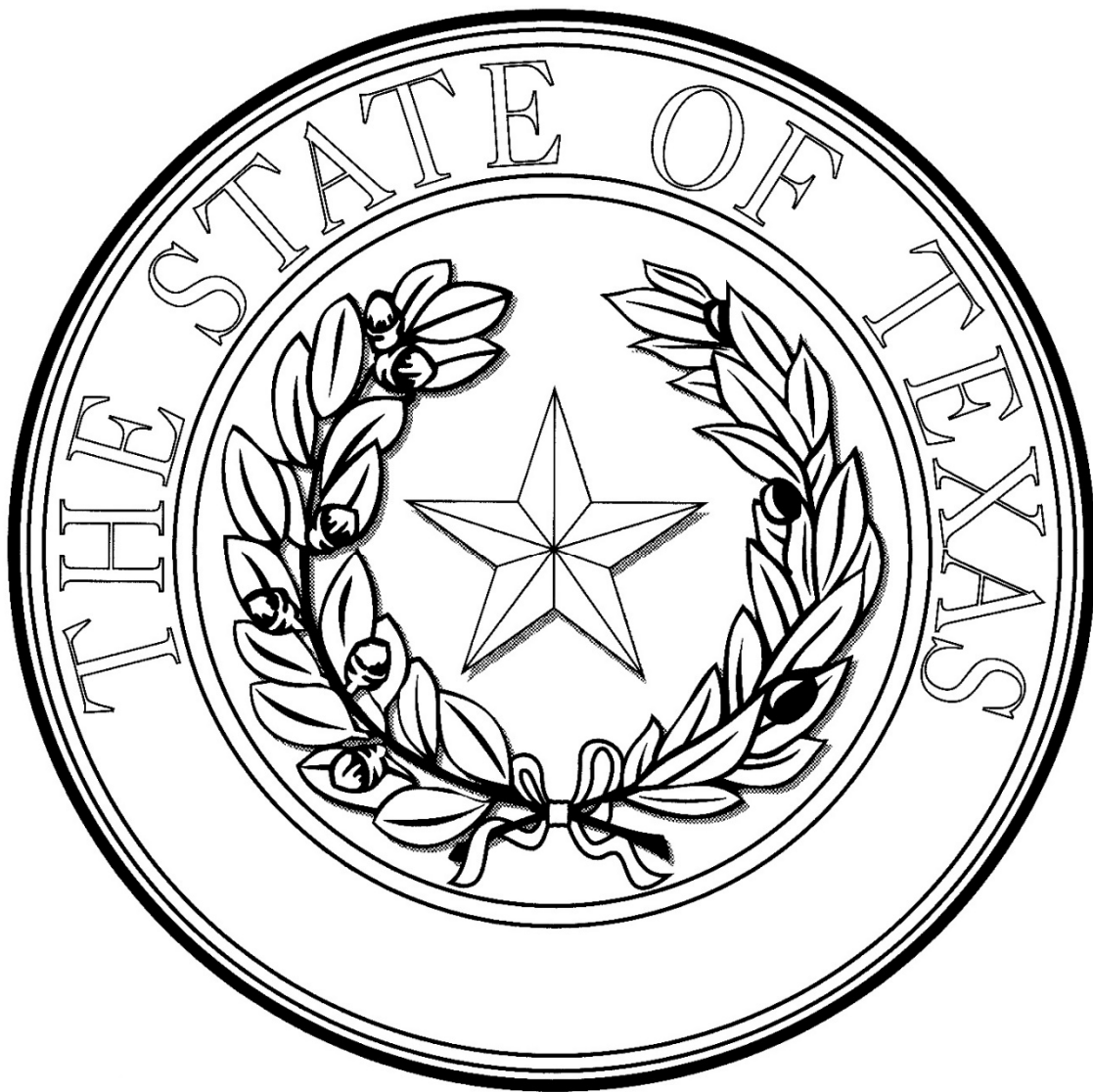

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Secretary of State - Jane Nelson

Director - Je T'aime Swindell

Editor-in-Chief - Jill S. Ledbetter

Editors

Leti Benavides

Jay Davidson

Briana Franklin

Belinda Kirk

Laura Levack

Joy L. Morgan

Matthew Muir

Breanna Mutschler

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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 March 28, 2024

Appointed to the Texas County and District Retirement System Board of Trustees for a term to expire December 31, 2029, Susan H. Fletcher of Frisco, Texas (Commissioner Fletcher is being reappointed).

Appointed to the Texas County and District Retirement System Board of Trustees for a term to expire December 31, 2029, Ronald "Ronnie" Keister, Jr. of Lubbock, Texas (replacing Kara Sands of Corpus Christi, whose term expired).

Appointed to the Texas County and District Retirement System Board of Trustees for a term to expire December 31, 2029, Mary Louise Nicholson of Mansfield, Texas (Ms. Nicholson is being reappointed).

Appointed to the Texas Veterans Commission for a term to expire December 31, 2029, Laura G. Koerner of Fair Oaks Ranch, Texas (Ms. Koerner is being reappointed).

Appointed to the Texas Veterans Commission for a term to expire December 31, 2029, Charles W. "Chuck" Wright of Frisco, Texas (replacing Kimberlee P. "Kim" Shaneyfelt of Argyle, whose term expired).

Appointments for April 1, 2024

Appointed to the Statewide Health Coordinating Council for a term to expire August 31, 2029, David V. Lewis of Austin, Texas (replacing Chelsea L. Elliott of Austin, whose term expired).

Appointed to the Texas Public Finance Authority for a term to expire February 1, 2029, Jay A. Riskind of Austin, Texas (Mr. Riskind is being reappointed).

Greg Abbott, Governor

TRD-202401387



Executive Order GA-44

Relating to addressing acts of antisemitism in institutions of higher education.

WHEREAS, on October 7th of last year, the terrorist group Hamas committed unspeakable and heinous acts when they launched a surprise attack on Israel; and

WHEREAS, this attack killed over 1,200 innocent civilians including women, children, and approximately 30 American citizens, and Hamas took over 250 individuals hostage, including at least 10 Americans; and

WHEREAS, immediately after the October 7th attack, Governor Abbott reiterated his longstanding support for Israel and the Texas Jewish community and took initial steps to address acts of antisemitism in Texas, including authorizing \$4 million in additional grant funds to protect synagogues and Jewish schools, prohibiting state agencies from purchasing goods from the Gaza Strip or entities that support Hamas, and directing the Texas Education Agency and the Texas Holocaust,

Genocide, and Antisemitism Advisory Commission to educate Texans about the Israel-Hamas War and antisemitism; and

WHEREAS, Texas will continue to stand with Israel and support our Jewish neighbors in Texas; and

WHEREAS, incidents of antisemitism have increased since Hamas' attack, and the proliferation of antisemitism at public universities is particularly concerning; and

WHEREAS, while many Texas universities have acted quickly to condemn antisemitism and foster appropriate discourse on the terrorist attacks against Israel and the ensuing Israel-Hamas War, some radical organizations have engaged in unacceptable actions on university campuses; and

WHEREAS, protected free speech areas on Texas university campuses, as well as the buildings and parking lots of Jewish student organizations, have been covered in antisemitic graffiti; and

WHEREAS, multiple protests and walkouts have been staged by universities' student organizations, with students chanting antisemitic phrases such as "from the river to the sea, Palestine will be free," which has long been used by Hamas supporters to call for the violent dismantling of the State of Israel and the destruction of the Jewish people who live there; and

WHEREAS, Texas supports free speech, especially on university campuses, but that freedom comes with responsibilities for both students and the institutions themselves; and

WHEREAS, such speech can never incite violence, encourage people to violate the law, harass other students or other Texans, or disrupt the core educational purpose of a university; and

WHEREAS, Section 51.9315(f) of the Texas Education Code requires all higher education institutions to adopt policies detailing students' responsibilities regarding free expression on campus; and

WHEREAS, Section 51.9315(c)(2) of the Texas Education Code provides that students should not participate in, and higher education institutions should not allow, expression that is unlawful or disrupts the operations of the institution; and

WHEREAS, antisemitism and the harassment of Jewish students have no place on Texas university campuses and will not be tolerated by my administration;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, hereby direct all Texas higher education institutions to do the following:

1. Review and update free speech policies to address the sharp rise in antisemitic speech and acts on university campuses and establish appropriate punishments, including expulsion from the institution.
2. Ensure that these policies are being enforced on campuses and that groups such as the Palestine Solidarity Committee and Students for Justice in Palestine are disciplined for violating these policies.

3. Include the definition of antisemitism, adopted by the State of Texas in Section 448.001 of the Texas Government Code, in university free speech policies to guide university personnel and students on what constitutes antisemitic speech.

Within 90 days of this executive order, the chair of the board of regents for each Texas public university system shall report to the Office of the Governor, Budget and Policy Division, that the above actions were taken by each institution of higher education overseen by that board of regents. The report shall include documentation verifying revisions made to free speech policies and evidence that those policies are being enforced.

This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.

Given under my hand this the 27th day of March, 2024.

Greg Abbott, Governor

TRD-202401318



Proclamation 41-4101

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on February 27, 2024, certifying that wildfires posed an imminent threat of widespread or severe damage, injury, or loss of life or property in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that the same wildfire conditions continue to exist in those counties in Texas;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster in

Archer, Armstrong, Bailey, Baylor, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fannin, Floyd, Foard, Garza, Gray, Gregg, Hale, Hall, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Hockley, Hutchinson, Kent, King, Knox, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Nacogdoches, Newton, Ochiltrie, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Stonewall, Swisher, Terry, Throckmorton, Upshur, Wheeler, Wichita, Wilbarger, Yoakum, and Young Counties.

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 28th day of March, 2024.

Greg Abbott, Governor

TRD-202401324



PROPOSED RULES

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

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

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER BB. COMMISSIONER RULES

CONCERNING THE RURAL PATHWAY

EXCELLENCE PARTNERSHIP (R-PEP)

PROGRAM

19 TAC §102.1021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §29.912, as added by House Bill (HB) 2209, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish and administer the R-PEP program to incentivize and support multi-district, cross-sector, rural college and career pathway partner-

ships that expand opportunities for underserved students to succeed in school and life while promoting economic development in rural areas; TEC, §29.912(k), which requires the commissioner to adopt rules as necessary to implement the program; and TEC, §48.118, as added by HB 2209, 88th Texas Legislature, Regular Session, 2023, which establishes an additional average daily attendance allotment, an outcomes bonus, and a grant program to support R-PEPs.

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

§102.1021. Rural Pathway Excellence Partnership Program.

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

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

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

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

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

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

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

(B) incorporates:

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

(ii) college and career advising; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) determining scheduling;

(B) adding or removing a pathway;

(C) selecting and assigning pathway-specific personnel;

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

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

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

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

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

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

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

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

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

(i) an application form;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Application review.

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

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

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

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

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

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

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

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

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

(f) Performance standards for R-PEP renewal.

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

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

(A) a renewal form;

(B) assurance from the R-PEP coordinating entity and school board of trustees for each participating R-PEP district that the

performance agreement continues to meet TEA criteria and is being implemented in accordance with TEC, §29.912, and this section;

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

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

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

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

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

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

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

(g) R-PEP grants.

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

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

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

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

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

TRD-202401325

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 12, 2024

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.83

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

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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

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

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

Advisory Board Recommendations

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

SECTION-BY-SECTION SUMMARY

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

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

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

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

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do create a new regulation.

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

6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rules are proposed under the authority of Texas Occupations Code, Chapters 51 and 801, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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

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

§573.83. Price Transparency for Emergency Care.

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

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

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

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

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

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

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

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

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

TRD-202401311

Doug Jennings

General Counsel

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: May 12, 2024

For further information, please call: (512) 475-4879

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

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.143

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this

rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

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

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

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

§801.143. Supervisor Requirements.

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

(1) an application and applicable fee;

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

(3) documentation of one of following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Supervisor status expires with the LMFT license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRD-202401320

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: May 12, 2024

For further information, please call: (512) 305-7706



22 TAC §801.261

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

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

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

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

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

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

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

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

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

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

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

individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

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

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

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

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

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

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

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

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

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

§801.261. *Requirements for Continuing Education.*

- (a) Minimum Continuing Education Hours Required

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Acceptable Continuing Education Activities.

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

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

(3) Except for hours claimed under subsection (h) of this section, all continuing education hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the

licensee's name, topic covered, date(s) of training, and hours of credit earned.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRD-202401284

Darrell D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: May 12, 2024

For further information, please call: (512) 305-7706



PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER A. LICENSE APPLICATIONS

22 TAC §882.2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§882.2. *General Application File Requirements.*

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

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

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

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

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

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

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

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

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

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

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

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

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

TRD-202401281

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Earliest possible date of adoption: May 12, 2024

For further information, please call: (512) 305-7706

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§4.1. Transportation of Hazardous Materials.

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

(b) Explanations and Exceptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRD-202401290

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: May 12, 2024

For further information, please call: (512) 424-5848



SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.15

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

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

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

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

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

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

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

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

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

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

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

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

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

§4.15. *Compliance Review and Safety Audit Programs.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Compliance Reviews.

(1) Inspection of Premises.

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

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

(i) at a reasonable time;

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

(iii) by presenting to the motor carrier:

(I) appropriate credentials; and

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

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

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

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

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

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

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

(A) unsatisfactory safety assessment factor evaluations;

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

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

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

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

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

(3) Safety Fitness Rating.

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

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

- (i) satisfactory safety rating;
- (ii) conditional safety rating; or
- (iii) unsatisfactory safety rating.

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

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

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

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

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

review more than 15 days after the notice of proposed unsatisfactory safety rating, the unsatisfactory safety rating may become final before the department can complete its review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

business day period may prevent the department from issuing a final decision before such prohibitions take effect.

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

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

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

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

(c) Safety Audits.

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

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

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

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

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

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

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

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

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

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

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

(d) Imminent Hazard.

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

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

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

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

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

(e) Release of Safety Rating Information.

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

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

(f) Foreign Commercial Driver License Holder Requirements.

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

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

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

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

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

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

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

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §1.2

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

EXPLANATION OF PROPOSED AMENDMENTS

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

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

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

FISCAL NOTE

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFIT

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

COSTS ON REGULATED PERSONS

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

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;

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

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

TAKINGS IMPACT ASSESSMENT

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

SUBMITTAL OF COMMENTS

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

STATUTORY AUTHORITY

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

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

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §201.105, Transportation Code.

§1.2. *Texas Department of Transportation.*

(a) Executive director.

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

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

(3) The executive director shall:

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

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

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

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

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

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

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

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

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

(A) formulating and applying operating procedures; and

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

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

(A) assigning staff to assist commissioners;

(B) providing necessary office space and equipment;

(C) furnishing in-house legal counsel;

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

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

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

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

(d) Districts.

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

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

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

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

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

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

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

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

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

TRD-202401313

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 12, 2024

For further information, please call: (512) 463-8630



CHAPTER 21. RIGHT OF WAY

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

EXPLANATION OF PROPOSED REPEALS, AMENDMENTS, AND NEW SECTIONS

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

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

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

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

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

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

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

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

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

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

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

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

The changes align with Transportation Code, §391.063 and will reduce administrative work for the industry and the department and reduce late fees assessed on renewals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Finally, this rulemaking does not contain a provision similar to the provision of existing §21.179(h) because it is no longer nec-

essary. The conformity of signs built before July 1, 2011, will not be affected by this new section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New §21.177, Prohibited Sign Locations, contains the substance in existing §§21.145 and 21.183 and removes language that allows signs to be built in publicly owned railroad, utility, or road

right of way that is owned by the state or a political subdivision. The section complies with Transportation Code, §393.002, which prohibits a person placing a sign on the right-of-way of a public road or state highway system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To ensure compliance with state and federal requirements that unlawful signs be ultimately removed, this section still provides a mechanism by which the department can request injunctive

relief for an unlawful sign if a violation has been confirmed by a final order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Additionally, tracking individual permit renewals is a difficult task for the department and regulated persons. The new approach

will reduce 15,000 permit renewals to one license renewal per regulated person.

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

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

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

This rulemaking will take effect September 1, 2024.

FISCAL NOTE

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFIT

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

COSTS ON REGULATED PERSONS

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

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

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

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on May 3, 2024, in the Duro Canyon Lecture Hall, First Floor, Stassney Headquarters, 6230 East Stassney Lane, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present

them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the General Counsel Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8630 at least five working days before the date of the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

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

SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY HIGHWAYS

43 TAC §§21.142 - 21.200

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.142. *Definitions.*

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

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

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

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

(2) Commission--The Texas Transportation Commission.

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

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

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

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

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

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

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

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

(9) [(44)] 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) [(42)] 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) [(43)] License--A commercial sign license issued by the department.

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

~~[(15) Military Service Member--A person who is currently serving in the Armed Forces of the United States, in a reserve compo-~~

~~ment of the United States, including the National Guard, or in the state military service of any servicee.]~~

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

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

(13) [(48)] 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) [(49)] Nonconforming sign--A sign that was lawfully erected but does not meet all of the current requirements of state and federal law, including rules and regulations [that no longer complies with a law or rule because of changed conditions or because the law or rule was amended after the sign was erected or that fails to comply with a law enacted or rule adopted after the sign was erected. Examples of changed conditions are discontinuance of a commercial or industrial activity, decrease in the limits of an incorporated area, reclassification of a roadway, decertification of certified city, and amendment of a comprehensive local zoning ordinance from commercial to residential].

(15) [(20)] Permit--Written authorization to erect or maintain [granted for the erection of] a commercial sign structure at a specified location [, subject to this subchapter and Transportation Code, Chapter 394].

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

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

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

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

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

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

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

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

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

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

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

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

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

§21.143. License Required.

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

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

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

§21.144. License Application.

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

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

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

(b) The application must be accompanied by:

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

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

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

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

(c) A commercial sign surety bond must be:

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

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

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

§21.145. License Issuance; Amendment.

(a) The department will issue a license if:

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

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

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

§21.146. License Not Transferable.

A license issued under this subchapter is not transferable.

§21.147. License Renewals.

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

(1) an electronic application;

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

(3) proof of current surety bond coverage.

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

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

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

§21.148. License Fees.

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

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

(1) \$75; plus

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

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

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

§21.149. Notice of Removal.

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

§21.150. Notice of Surety Bond Cancellation.

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

§21.151. Suspension of License.

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

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

§21.152. License Revocation.

(a) The department will revoke a license if:

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

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

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

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

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

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

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

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

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

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

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

(1) the reasons for the action;

(2) the effective date of the action;

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

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

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

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

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

§21.153. Permit Required.

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

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

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

§21.154. Permit Application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§21.156. Site Owner's Consent.

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

§21.157. Permit Application for Certain Preexisting Commercial Signs.

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

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

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

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

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

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

§21.158. Permit Application Review.

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

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

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

(1) the date the application is approved; or

(2) if the application is denied:

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

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

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

§21.159. Decision on Application.

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

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

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

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

§21.160. Commercial Sign Location Requirements.

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

- (1) an unzoned commercial, governmental, or industrial area; or
- (2) a zoned commercial or industrial area.

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

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

- (1) within a parcel that when the application was received had been identified for acquisition on a schematic or plan as part of a transportation project; or
- (2) within the prohibited spacing distance of planned facilities, as determined under §21.178 of this subchapter (relating to Location of Commercial Signs Near Public Spaces).

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

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

§21.161. Zoned Commercial or Industrial Area.

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

- (1) is centered on the location of a sign and measured 800 feet in each direction along the highway right of way and on the same side of the highway as the sign, to a depth of 660 feet, and that:
- (2) is designated, through a comprehensive zoning action, for general commercial or industrial use by a political subdivision with legal authority to zone regardless of the specific label used by the zoning authority; and
- (3) contains any portion of a commercial or industrial activity, as defined in §21.163 of this subchapter (relating to Commercial or Industrial Activity).

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

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

§21.162. Unzoned Commercial or Industrial Area.

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

- (1) contains any portion of a regularly used area of two recognized governmental, commercial, or industrial activities, as defined

by §21.163 of this subchapter (relating to Commercial or Industrial Activity); or

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

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

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

§21.163. Commercial or Industrial Activity.

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

- (1) that is customarily allowed only in a zoned commercial or industrial area;
- (2) that is conducted in a permanent building or structure that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (2) an activity that is conducted only seasonally;
 - (3) the operation or maintenance of:
 - (A) a commercial sign;
 - (B) an apartment house or residential condominium; or
 - (C) a public or private school, other than a trade school or corporate training campus;
 - (D) a cemetery; or
 - (E) a place that is primarily used for worship;
 - (4) an activity that is conducted on a railroad right of way;
- or
- (5) an activity that is created primarily or exclusively to qualify an area as a commercial or industrial area.

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

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

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

- (1) a permitted driveway on a state-maintained roadway;
- (2) a roadway that is not state maintained; or
- (3) documented legal access through adjoining private property.

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

- (1) crossing the state's right of way line is the only available access to the sign; and
- (2) the permit holder notifies and obtains approval of the department before accessing the sign for maintenance.

§21.165. Conversion of Certain Authorization to Permit.

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

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

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

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

(a) The department will send notice by certified mail to the owner of a commercial sign that becomes subject to Transportation

Code, Chapter 391. If the owner of the sign cannot be identified from the information on file with the department, the department will give notice to the landowner of record of the land on which the sign is located.

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

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

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

§21.167. Appeal Process for Application Denials.

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

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

(c) The request must:

- (1) contain a statement of why the denial is believed to be in error;
- (2) provide evidence that supports the issuance of the application approval, such as documents, drawings, surveys, or photographs; and
- (3) be received not later than the 90th day after the date the notice of denial is sent.

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

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

§21.168. Continuance of Nonconforming Commercial Signs.

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

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

(c) A nonconforming sign may not be:

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

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

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

§21.169. Transfer of Permit.

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

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

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

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

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

- (1) documents showing the sign has been sold;
- (2) documents that indicate that the transferor is deceased or cannot be located; or
- (3) a court order demonstrating the new ownership of the sign permit.

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

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

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

§21.170. Amended Permit.

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

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

(c) The department will not approve an amended permit application to change the location of a permitted sign structure.

(d) If an amended permit application is denied, the applicant may file a request for an appeal with the executive director using the process provided by §21.167 of this subchapter (relating to Appeal Process for Application Denials).

(e) An amended permit is valid for one year after the date of the department's approval of the amended permit application. The date of the department's approval of the amended permit application is considered to be the amended permit's date of issuance.

(f) If any of the changes approved in the amended permit application are not completed within one year after the date of the department's approval, the license holder must reapply to make those changes and must pay the prescribed fee. The provisions of this subchapter relating to a permit apply to the amended permit.

§21.171. Permit Application Fee.

(a) The amounts of the fees related to permits under this subchapter are:

- (1) \$100 for a new or amended permit application for a sign;
- (2) \$25 for the transfer of a permit; and
- (3) \$10 for a new or amended permit application for a non-profit sign.

(b) A fee prescribed by this section is payable by credit card or electronic check. If payment is dishonored upon presentment, the permit, amended permit, or transfer is void.

§21.172. Fees for Certain Nonprofit Organizations.

(a) Notwithstanding the amounts of the fees set by §21.148 of this subchapter (relating to License Fees) and §21.171 of this subchapter (relating to Permit Application Fee), the combined license and permit application fees may not exceed \$10 for a commercial sign that is erected and maintained by a nonprofit organization in a municipality or a municipality's extraterritorial jurisdiction and that only relates to that municipality or a political subdivision that is wholly or partly concurrent in that municipality.

(b) The nonprofit organization is not required to file a surety bond under §21.144 of this subchapter (relating to License Application) with an application for a sign described by subsection (a) of this section.

§21.173. Void Permit.

(a) A permit does not expire, but it becomes void on the date that the license under which it is maintained is terminated under §21.147 of this subchapter (relating to License Renewals) or is revoked by the department under §21.152 of this subchapter (relating to License Revocation).

(b) A permit holder may voluntarily void a permit by submitting a request in writing to the department after the sign that is subject to the permit has been removed.

§21.174. Cancellation of Permit.

(a) The department will cancel a permit for a commercial sign if the sign:

- (1) is not maintained in compliance with this subchapter or Transportation Code, Chapter 391;
- (2) is destroyed, as determined under §21.185 of this subchapter (relating to Damage to or Destruction of a Commercial Sign);
- (3) is abandoned, as determined under §21.175 of this subchapter (relating to Abandonment of Sign);

(4) is erected, maintained, or substantially changed in violation of this subchapter, including under §21.164 of this subchapter (relating to Erection and Maintenance of Commercial Sign from Private Property), §21.170 of this subchapter (relating to Amended Permit), or §21.188 of this subchapter (relating to Destruction of Vegetation and Access from Right of Way Prohibited), or in violation of Transportation Code, Chapter 391;

(5) is erected by an applicant who provides false or misleading information in the permit application;

(6) is located in an unzoned commercial or industrial area in which the activity supporting the area's recognition as an unzoned commercial or industrial area was created primarily or exclusively to qualify the area as an unzoned commercial or industrial area; or

(7) is located in violation of §21.177 of this subchapter (relating to Prohibited Sign Locations).

(b) The department will cancel a permit for a commercial sign if the sign owner fails to pay an administrative penalty imposed under §21.191 of this subchapter, (relating to Administrative Penalties for Commercial Signs).

(c) The department will cancel a permit for a commercial sign immediately on the discovery that the department had erroneously issued a permit for a sign that violates Transportation Code, Chapter 391, or this subchapter.

(d) On the determination that a permit should be canceled, the department will send by certified mail the notice of cancellation to the address of the record permit holder. The notice must state:

(1) the reason for the cancellation;

(2) the effective date of the cancellation;

(3) the right of the permit holder to request an administrative hearing on the cancellation; and

(4) the procedure for requesting a hearing and the period for filing the request.

(e) If after sending a notice of cancellation under subsection (d) of this section the department finds additional reasons for the permit's cancellation, the department may send an amended notice of cancellation that includes those additional reasons.

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

(g) If timely requested, an administrative hearing will be conducted in compliance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case) and the cancellation is abated until the cancellation is affirmed by order of the commission.

(h) If the basis for the cancellation of a permit is cured not later than the 90th day after the date on which the permit holder sent the notice of cancellation, the department will rescind the cancellation and penalties if:

(1) the permit is for a conforming sign; or

(2) the permit is for a nonconforming sign that was cancelled under §21.164(b) of this subchapter (relating to Erection and Maintenance of Commercial Sign from Private Property) or under §21.175(a)(1) of this subchapter (relating to Abandonment of Sign).

(i) To show that the basis for cancellation has been cured, a permit holder must provide to the department evidence that the sign meets all requirements of this subchapter and that, if required, the

license holder has obtained an amended permit for the sign under §21.170 of this subchapter (relating to Amended Permit) to make changes or to register unauthorized changes.

§21.175. Abandonment of Sign.

The department may consider a sign abandoned and cancel the sign's permit if:

(1) all sign faces are blank or without legible content;

(2) the sign structure requires more than customary maintenance to be repaired; or

(3) the sign structure is overgrown by trees or other vegetation.

§21.176. Commercial Sign Face Size and Positioning.

(a) A sign face may not exceed:

(1) 672 square feet in area;

(2) 25 feet in height; and

(3) 60 feet in length.

(b) For the purposes of this subsection (a) of this section, border and trim are included as part of the sign face, and the base, apron, supports, and other structural members, are excluded as part of the sign face.

(c) Notwithstanding the area limitation provided by subsection (a)(1) of this section, one or more temporary protrusions may be added to a sign, provided that the sign face, including the protrusions, meets the height and length limitations of subsection (a) of this section and:

(1) the area of a protrusion is located exclusively inside of the sign face border and trim; or

(2) the area of the protrusion is outside of the sign face border and trim, as indicated on the sign permit, and does not exceed 10 percent of the permitted area.

(d) Except as provided in subsection (g) of this section, a sign may have two or more sign faces that are placed back-to-back, side-by-side, stacked, or in "V" type construction with not more than two faces visible in each direction. Two sign faces which together exceed 700 square feet in area may not face in the same direction.

(e) Two sign faces that face in the same direction may be presented as one face by covering both faces and the area between the faces with an advertisement, as long as the size limitations of subsection (a) of this section are not exceeded.

(f) A sign may not have a moveable protrusion.

(g) Two electronic sign faces may be located on the same sign structure if each sign face is visible only from a different direction of travel.

(h) To change the sign face of an existing permitted sign to an electronic sign under this subchapter, a permit holder must obtain an amended permit under §21.170 of this subchapter (relating to Amended Permit).

§21.177. Prohibited Sign Locations.

(a) A sign may not be erected or maintained on the real property of another without the property owner's permission.

(b) A sign may not be erected or maintained within the right of way of a public roadway, as prohibited by Transportation Code, §393.002, or an area that would be within the right of way if the right of way boundary lines were projected across an area of railroad right of way, utility right of way, or road right of way that is not owned by the state or a political subdivision.

(c) A sign may not be erected or maintained on a highway or part of a highway designated under Transportation Code, §391.252.

(d) A sign may not be located in a place that creates a safety hazard, including a location that:

(1) causes a driver to be unduly distracted;

(2) obscures or interferes with the effectiveness of an official traffic sign, signal, or device; or

(3) obscures or interferes with the driver's view of approaching, merging, or intersecting traffic.

(e) A sign may not be erected or maintained in a location that violates Health and Safety Code, Chapter 752.

§21.178. Location of Commercial Signs Near Public Spaces.

(a) The center of a sign may not be located within 250 feet of the nearest point of the boundary of a public space.

(b) This subsection applies only if a public space boundary abuts the right of way of a regulated highway. A sign may not be located within 1,500 feet of the boundary of the public space, as measured along the right of way line from the nearest common point of the space's boundary and the right of way. This limitation applies:

(1) on both sides of a highway that is on a nonfreeway primary system; and

(2) on the side of a highway on which the public space is located if the highway is on an interstate or freeway primary system.

(c) In this section, "public space" means publicly owned land that is designated by a governmental entity as a park, forest, playground, scenic area, recreation area, wildlife or waterfowl refuge, historic site, or similar public space.

§21.179. Location of Commercial Signs Near Certain Highway Facilities.

(a) A sign may not be erected along a regulated highway that is outside an incorporated municipality in an area that is adjacent to or within 1,000 feet of:

(1) an interchange or intersection; or

(2) a rest area, ramp, or the highway's acceleration or deceleration lanes.

(b) The distance from a ramp or acceleration or deceleration lane is measured from the theoretical gore at the beginning of the entrance or exit ramp and from the theoretical gore at the conclusion of the entrance or exit ramp. If a theoretical gore is not present, the physical gore is used for the measurement.

(c) The distance from a rest area is measured along the right of way line from the outer edges of the rest area boundary abutting the right of way.

(d) An area is adjacent to a rest area or a highway's acceleration or deceleration lane if the area is between the two points of measurement listed in subsection (b) or (c), as appropriate.

(e) For a sign erected before September 1, 2024, the part of the sign face nearest a highway may not be within five feet of the highway's right of way line.

(f) For a sign erected after September 1, 2024, the part of the sign face nearest a highway may not be within either:

(1) 5 feet of the highway's right of way line; or

(2) 10 feet of overhead transmission or distribution lines.

(g) All measurements related to the right of way are taken from a point perpendicular to the highway and along the highway right of way.

(h) In this section the following words have the associated meanings:

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

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

(3) Physical gore--The point at which the pavement of the ramp separates from or joins with the pavement of the roadway.

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

(5) Theoretical gore--The point at which the painted lane line of the ramp separates from or joins with the painted lane line of the roadway.

§21.180. Spacing of Commercial Signs.

(a) Permitted signs on the same side of a regulated freeway, including freeway frontage roads, may not be erected closer than 1,500 feet apart.

(b) For a highway on a non-freeway primary system and outside the incorporated boundaries of a municipality, permitted signs on the same side of the highway may not be erected closer than 750 feet apart.

(c) For a highway on a non-freeway primary system highway and within the incorporated boundaries of a municipality, permitted signs on the same side of the highway may not be erected closer than 300 feet apart.

(d) A permitted sign that is located within the incorporated boundaries of a certified city on a highway on a freeway primary system may not be erected closer than:

(1) 1,500 feet to another sign that is on the same side of the highway and outside the incorporated boundaries of a municipality; or

(2) 500 feet to another sign that is on the same side of the highway and inside the incorporated boundaries of a municipality.

(e) A permitted sign that is located within the incorporated boundaries of a municipality on a highway that is on a non-freeway primary system may not be erected closer than 750 feet to another sign that is on the same side of the highway and outside the incorporated boundaries of a municipality.

(f) For the purposes of this section, the space between commercial signs is measured between points along the right of way of the highway perpendicular to the center of the signs.

(g) For the purposes of this section, a municipality's extraterritorial jurisdiction is not considered to be included within the boundaries of the municipality.

(h) The spacing requirements of this section do not apply to commercial signs separated by buildings, natural surroundings, or other obstructions in a manner that causes only one of the signs to be visible within the specified spacing area.

(i) A permitted sign that is being displaced by a highway construction project will not be considered in determining the spacing for a new sign application.

§21.181. Commercial Sign Height Restrictions.

(a) Except as provided by this section, a commercial sign may not be erected or maintained that exceeds an overall height of 60 feet.

(b) A roof sign that has a solid sign face surface may not at any point exceed 24 feet above the roof level.

(c) A roof sign that has an open sign face in which the uniform open area between individual letter or shapes is not less than 40 percent of the total gross area of the sign face may not at any point exceed 40 feet above the roof level.

(d) The lowest point of a projecting roof sign or a wall sign must be at least 14 feet above grade.

(e) For the purposes of this section, height is measured from the department's determination of grade level of the centerline of the main-traveled way closest to the sign face, at a point perpendicular to the sign location. A frontage road of a controlled access highway or freeway is not considered the main-traveled way for purposes of this subsection. In the event that the main-traveled way that is perpendicular to the sign structure is below grade, sign height will be measured from the base of the sign structure.

(f) The height measurement does not include any renewable energy device such as solar panels or wind turbines that are attached to the sign structure above the sign face to improve the energy efficiency of the sign structure.

(g) This subsection applies only to a sign lawfully erected before and existing on March 1, 2017. The height of the sign, excluding a cutout that extends above the rectangular border of the sign, may not exceed the height of the sign on March 1, 2017, or 85 feet. After a new or amended permit is obtained from the department, the sign may be rebuilt, at the location where the sign existed on March 1, 2017, and at a height that does not exceed the maximum height specified in this subsection for the sign on that date. A sign structure described by this subsection must otherwise comply with this subchapter.

§21.182. Effect of Sign Height Violations on Certain Persons.

(a) This section applies only to a license holder that has 100 or more permitted signs.

(b) If a permit of the license holder has been cancelled under §21.174 of this subchapter (relating to Cancellation of Permit) for a violation of §21.181 of this subchapter (relating to Commercial Sign Height Restrictions) and the cancellation was not contested or was affirmed under §21.174(g) of this subchapter (relating to Cancellation of Permit), the department will forward to the commission all permit applications received from the license holder under §21.154 of this subchapter (relating to Permit Application) or §21.170 of this subchapter (relating to Amended Permit) after the date of the cancellation or order affirming the cancellation, as appropriate, and until all signs for which the license holder has a permit comply with §21.181 of this subchapter (relating to Commercial Sign Height Restrictions).

(c) The commission, after notice and a hearing in compliance with Transportation Code, §391.0381, may deny an application forwarded to it under this section.

§21.183. Lighting of and Movement on Commercial Signs.

(a) A sign may not contain or be illuminated by flashing, intermittent, or moving lights, including any type of screen using animated or scrolling displays, unless the permit for the sign specifies that the sign is an electronic sign.

(b) A conforming sign may be illuminated. The illumination must be by upward or downward lighting of no more than 4 luminaires per direction of the sign face or faces of the structure.

(c) Lights that are a part of or illuminate a sign:

(1) must be shielded, directed, and positioned to prevent beams or rays of light from being directed at any portion of the traveled ways of a regulated highway;

(2) may not be of an intensity or brilliance that causes vision impairment of a driver of any motor vehicle on a regulated highway or otherwise interferes with such a driver's operation of a motor vehicle; and

(3) may not obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(d) A temporary protrusion may not be illuminated by flashing or moving lights or enhanced by reflective material that creates the illusion of flashing or moving lights.

(e) Reflective paint or reflective disks may be used on a sign face only if the paint or disks do not:

(1) create the illusion of flashing or moving lights; or

(2) cause an undue distraction to the traveling public.

(f) A neon light may be used on a sign face only if:

(1) the light does not flash;

(2) the light does not cause an undue distraction to the traveling public; and

(3) the permit for the sign specifies that the sign is an illuminated sign.

(g) A sign, including an electronic sign, may contain a temporary protrusion area of the sign face that displays only numerical characters and that satisfies this subsection and the requirements of §21.176 of this subchapter (relating to Commercial Sign Face Size and Positioning). The display on the temporary protrusion may be a digital or other electronic display, but if so:

(1) it must consist of a stationary image;

(2) it may not change more frequently than four times in any 24-hour period; and

(3) the process of any change of display must be completed within two minutes.

(h) If the department finds that an electronic sign causes glare or otherwise impairs the vision of the driver of a motor vehicle or otherwise interferes with the operation of a motor vehicle, the owner of the sign, within 12 hours of a request by the department, shall reduce the intensity of the sign to a level acceptable to the department.

§21.184. Repair and Maintenance of Commercial Signs.

(a) The following maintenance activities do not require an amended permit:

(1) the replacement of nuts and bolts;

(2) nailing, riveting, or welding;

(3) cleaning and painting;

(4) manipulation of the sign structure to level or plumb it;

(5) changing of the advertising message;

(6) upgrading existing lighting for an energy efficient lighting system; and

(7) replacing components of the structure, other than poles, with like materials.

(b) The following are considered to be customary maintenance activities that may be made but require an amended permit under §21.170 of this subchapter (related to Amended Permit) before the initiation of such an activity:

(1) replacement of poles, but only if not more than one-half of the total number of poles of the sign structure are replaced in any 12-month period and the replacement pole is made of the same material as the pole being replaced; and

(2) adding a catwalk that meets Occupational Safety and Health Administration guidelines to the sign structure.

(c) An activity that is not described by subsection (a) or (b) of this section is a substantial change that may be made only if the sign is a conforming sign and the license holder obtains an amended permit before the initiation of the activity.

(d) The holder of a permit for a nonconforming sign may apply for an amended permit to:

(1) perform eligible customary maintenance under subsection (b) of this section; or

(2) conform the sign structure to both applicable location and structure requirements.

§21.185. Damage to or Destruction of Commercial Sign.

(a) If a sign is damaged and an activity to be used for its repair requires an amended permit under §21.184 of this subchapter (relating to Repair and Maintenance of Commercial Signs), the license holder must obtain the amended permit under §21.170 of this subchapter (related to Amended Permit) before beginning the repair.

(b) The department will deny the application for an amended permit to repair a sign if the department determines that the sign has been destroyed under §21.186 of this subchapter (relating to Determination that Sign is Destroyed).

§21.186. Determination That Sign is Destroyed.

(a) The department will determine that a damaged sign has been destroyed if:

(1) one-half or more of the total number of poles of the sign structure require repair or replacement; or

(2) the pole of a monopole structure is bent or broken, its support is twisted, or its footing is damaged.

(b) To dispute the department's determination that a sign has been destroyed, the sign owner must file with the department documentation before the 90th day after the date that the notice of the determination was sent. Documentation provided by a person licensed to practice engineering in this state that demonstrates that the sign meets the requirements of the International Building Code, Appendix H, §H105, Design and Construction.

(c) If a permit is canceled under §21.174(a)(2) of this subchapter (relating to Cancellation of Permit), the remaining sign structure must be dismantled and removed without cost to the state.

(d) If a decision to cancel a permit is appealed, the sign may not be rebuilt or repaired during the appeal process.

(e) If a sign is rebuilt or repaired in violation of this section, the department may take one or more of the following actions:

- (1) cancel the sign's permit;
- (2) require removal of the sign; or

(3) impose penalties on the license holder.

§21.187. Authority to Rebuild a Commercial Sign.

(a) Unless the department determines under §21.186 of this subchapter (relating to Determination That Sign is Destroyed) that a damaged sign has been destroyed, an amended permit is not required to rebuild a conforming sign that has been damaged by a motor vehicle collision or an act of God, including wind or a natural disaster.

(b) Before a permit holder may begin rebuilding a sign under subsection (a) of this section, the permit holder must obtain from the department, within one year after the date that the damage to the sign occurred, written confirmation that the sign qualifies for the exception provided by that subsection.

(c) In this section, "rebuild" means to re-erect a sign at its permitted location without any changes from the sign as it existed before being damaged.

§21.188. Destruction of Vegetation and Access from Right of Way Prohibited.

(a) A person may not:

(1) trim or destroy a tree or other vegetation on the right of way for any purpose related to this subchapter; or

(2) erect or maintain a sign from the right of way.

(b) The department will deny a permit application or cancel an existing permit under §21.174 of this subchapter (relating to Cancellation of Permit) if the permit holder, or someone acting on behalf of the permit holder, violates this section.

(c) Subsection (a)(2) of this section does not apply to the maintenance of a sign if:

(1) the state right of way is the only available access for a sign on railroad right of way to which §21.168(b) of this subchapter (relating to Continuance of Nonconforming Commercial Signs) applies; and

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

(d) It is not a violation to trim the portion of the tree or vegetation that encroaches onto private property at the private property line as long as the trimming occurs from the private property.

§21.189. Fraudulent Activity.

(a) If the department believes that a person has performed an act involving fraud to obtain or amend a permit, to obtain or renew a license, or to cure a violation under this subchapter, the department will request an investigation by the department's Compliance Division for a determination.

(b) If the investigation under subsection (a) of this section results in a finding of fraud, the department will, as appropriate:

(1) immediately cancel the permit;

(2) immediately cancel any approved changes to a sign resulting from an amended permit application;

(3) resume any enforcement actions related to the permit or sign; or

(4) immediately revoke the license under §21.152 of this subchapter (relating to License Revocation).

(c) In addition to an action under subsection (b) of this section and any other penalties assessed under this subchapter, the department will impose an administrative penalty under Transportation Code,

§391.0355, in the amount of \$1,000 on a person that the investigation under subsection (b) of this section finds submitted a fraudulent document to the department. The penalty imposition will be added to any ongoing contested case involving the fraud claim or if there is not a contested case, the department will impose the administrative penalties under the procedure set out in §21.191(d)-(f) of this subchapter (relating to Administrative Penalties for Commercial Signs).

§21.190. Unlawful Sign.

(a) An unlawful sign is a commercial sign that:

(1) is erected or maintained without obtaining a permit required under §21.153 of this subchapter (relating to Permit Required);

(2) is not removed after its permit is canceled under §21.173 of this subchapter (relating to Void Permit) or §21.174 of this subchapter (relating to Cancellation of a Permit); or

(3) is not erected in compliance with §21.159 of this subchapter (relating to Decision on Application).

(b) The department will issue a notice by certified mail to the person that the department identifies as being responsible for an unlawful sign. The notice will state:

(1) the reason the sign has been determined to be unlawful; and

(2) the date by which the person is required to obtain a permit for or remove the sign if it is not eligible for a permit.

(c) If the person responsible for the sign does not obtain a permit or remove the sign before the date specified under subsection (b)(2) of this section, the department will:

(1) demand the sign's removal at no cost to the state; and

(2) impose administrative penalties under §21.191 of this subchapter (relating to Administrative Penalties for Commercial Signs).

(d) If the sign is not removed before the 46th day after the date that the demand is sent under this subsection (c)(1) of this section, the department will seek an injunction for the sign to be removed. The department will rescind the removal demand if the department determines the demand was issued incorrectly.

§21.191. Administrative Penalties for Commercial Signs.

(a) The department will impose administrative penalties, as authorized under Transportation Code, §391.0355, against a person who violates Transportation Code, Chapter 391 or this subchapter. Penalties accrue beginning on the day that the notice of administrative penalty is sent to a person.

(b) The amount of the administrative penalty may not exceed \$1,000 for each violation. A separate penalty may be collected for each day a continuing violation occurs.

(c) In addition to the penalties assessed under subsection (b) of this section, the department may seek to recover the cost of repairing any damage to the right of way done by the sign owner or on the sign owner's behalf.

(d) On the determination to seek administrative penalties, the department will mail a notice of the administrative penalties to the last known address of the person. The notice will clearly state:

(1) the reasons for the administrative penalty;

(2) the amount of the administrative penalty; and

(3) the right of the holder of the permit to request an administrative hearing.

(e) A request for an administrative hearing under this section must be made in writing and received by the department not later than the 90th day after the date the notice of administrative penalties is sent.

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

§21.192. Local Control of Commercial Signs.

(a) The department may authorize a political subdivision, as a certified city, to exercise control over commercial signs in its jurisdiction. If the political subdivision receives approval under this section, it will be listed as a certified city and a permit issued by that political subdivision is acceptable instead of a permit issued by the department within the approved area.

(b) To be considered for authorization under this section, the political subdivision must submit to the department:

(1) a copy of its sign regulations;

(2) a copy of its zoning regulations;

(3) information about the number of personnel who will be dedicated to the program and what type of records will be maintained, including whether the political subdivision maintains an inventory of signs that can be provided to the department in an electronic format that is acceptable to the department; and

(4) an enforcement plan that includes the removal of unlawful signs.

(c) The department, after consulting with the Federal Highway Administration, will determine whether a political subdivision has established and will enforce within its corporate limits standards that are consistent with the purposes of the Highway Beautification Act of 1965, 23 United States Code §131, federal regulations adopted under that act, and the Texas Federal-State Agreement on Outdoor Advertising, including the federal requirements for size, lighting, and spacing. The authorization under this section does not include the area in a municipality's extraterritorial jurisdiction.

(d) The department may meet with a political subdivision to ensure that it is enforcing the standards and criteria in compliance with subsection (c) of this section.

(e) After approval under this section, the political subdivision shall:

(1) provide to the department:

(A) a copy of each amendment to its sign and zoning regulations when the amendment is proposed and adopted; and

(B) a copy of any change to its corporate limits and its extraterritorial jurisdiction, if covered by the approval;

(2) annually provide to the department:

(A) an electronic copy of the sign inventory; and

(B) report of the number of sign permits issued and the status of all pending enforcement actions; and

(3) participate in at least one video conference or teleconference sponsored by the department each year.

(f) The political subdivision may:

(1) set and retain the fees for issuing a sign permit; and

(2) establish the period for which a sign permit is effective.

(g) The department may conduct an on-site compliance monitoring review every two years.

(h) The department may withdraw the approval of a political subdivision given under this section if the department determines that the political subdivision does not have an effective sign control program. The department will consider whether:

(1) the standards and criteria of the political subdivision's sign regulations continue to meet the requirements of subsection (c) of this section;

(2) the political subdivision maintains an accurate sign inventory and annually provides the inventory to the department in an electronic format; and

(3) the political subdivision enforces the sign regulations and annually reports enforcement actions as required.

(i) The department may reinstate a political subdivision's authority on the showing of a new plan that meets the requirements of subsection (c) of this section.

§21.193. Fees Nonrefundable.

A fee paid to the department under this subchapter is nonrefundable.

§21.194. Property Right Not Created.

Issuance of a permit or license under this subchapter does not create a contract or property right in the permit or license.

§21.195. Complaint Procedures.

(a) The department will accept and investigate all written complaints on a specific sign structure, sign company, or any other issue under the jurisdiction of the highway beautification program.

(b) The complaints can be filed through the department's website, www.txdot.gov, or by mail sent to: Texas Department of Transportation, Commercial Signs Regulatory Program Section, Right of Way Division, P.O. Box 5075, Austin, Texas 78763-5075.

(c) If the complaint involves a sign structure or a sign company, the department will notify the owner of the sign structure or sign company of the complaint and the pending investigation not later than the 15th day after the date of receipt of the complaint. The notification will include a copy of the complaint and the complaint investigation procedures.

(d) If the complaint included contact information, the department will provide the complainant with a copy of the complaint procedures not later than the 15th day after the date of the receipt of the complaint.

(e) If the complaint involves fewer than 10 sign structures, the department will investigate the complaint and make a finding not later than the 30th day after the date of the receipt of the complaint. If the complaint involves 10 or more sign structures or is an investigation of a sign company or any other sign matter, the department will make a finding not later than the 90th day after the date of the receipt of the complaint.

(f) If the department is unable to meet the deadlines provided by subsection (e) of this section, the department will notify the complainant, the sign owner, or sign company of the delay and will provide a date for the completion of the investigation.

(g) After the investigation is completed, the department will provide the complainant, sign owner, or sign company the findings of the investigation and a statement of whether the department will initiate administrative enforcement actions.

§21.196. Requirements For an Electronic Sign.

(a) Each message on an electronic sign must be displayed for at least eight seconds. A change of message must be accomplished

within two seconds and must occur simultaneously on the entire sign face.

(b) An electronic sign must:

(1) contain a default mechanism that freezes the sign in one position if a malfunction occurs; and

(2) automatically adjust the intensity of its display according to natural ambient light conditions.

(c) The owner of an electronic sign shall coordinate with state and local authorities to display, when appropriate, emergency information important to the traveling public, such as Amber Alerts or alerts concerning terrorist attacks or natural disasters. Emergency information messages must remain in the advertising rotation according to the protocols of the agency that issues the information.

(d) The department will share the contact information required by §21.154(e) of this subchapter (relating to Permit Application) with the appropriate local authority that has jurisdiction over the location of the electronic sign.

§21.197. Previously Relocated Commercial Signs.

If a commercial sign was relocated under a permit that authorized the relocation and was issued before September 1, 2024, and the sign met all of the location requirements applicable on that date, the sign is considered to remain a conforming sign as long as the location of the sign is unchanged and the sign satisfies all other applicable requirements of this subchapter.

§21.198. Credit for Acquired Commercial Sign.

(a) A commercial sign that has been timely removed from a department construction project site may be erected in compliance under §21.199 of this subchapter (relating to Permit Issued with Credit for Acquired Commercial Sign) and §21.200 of this subchapter (relating to Acquired Commercial Sign within Certified Cities) if the sign is legally erected and maintained and will be within the highway right of way as a result of a highway construction project or, under exceptional circumstances as determined by the executive director or the executive director's deputy if the sign is legally erected and maintained and the relocation will further the intended purposes of the Highway Beautification Act of 1965 (23 U.S.C. §§131, 136, 319).

(1) To establish timely removal, the permit holder must do the following:

(A) Verify ownership of the commercial sign structure. If the sign structure is not the property of the fee owner, verify ownership of the sign structure by providing a Disclaimer of Interest signed by the fee owner, or a copy of the permit holder's lease or easement that states all ownership in the structure is vested in the permit holder;

(B) Negotiate for the sale of and convey the commercial sign structure to the State of Texas prior to the date of a special commissioners' hearing in a proceeding brought to acquire the commercial sign through eminent domain, in exchange for a purchase price agreed to by the permit holder and the department, minus a retention/salvage value;

(C) Agree in the conveyance document to retain possession of and title to the commercial sign structure and its associated credit;

(D) Agree in the conveyance document to remove the commercial sign structure by the deadline provided by the department in a Notice to Vacate; and

(E) Remove the entire commercial sign structure by the deadline provided in the Notice to Vacate.

(2) In the event the permit holder fails to retain and remove the commercial sign structure within the time prescribed in the Notice to Vacate, the permit holder will not be eligible for an acquired credit.

(3) A sign is eligible for a credit only if the structure has remained in its present location from the time the owner received notice of eminent domain proceedings until the above-ground portion of the structure is removed entirely from the property pursuant to the Notice to Vacate or earlier upon written approval by the department. A sign that is moved to the acquired parcel's remainder is not eligible for an acquired sign credit.

§21.199. Permit Issued with Credit for Acquired Commercial Sign.

(a) To obtain a permit using a credit issued under §21.198 of this subchapter (relating to Credit for Acquired Commercial Sign), the license holder must submit a new sign permit application under §21.154 of this subchapter (relating to Permit Application) and indicate that the permit application is using an acquired sign credit. The location of the sign for which a permit is issued under this section must be within a zoned commercial or industrial area under §21.161 of this subchapter (relating to Zoned Commercial or Industrial Area) or an unzoned commercial or industrial area, under §21.162 of this subchapter (relating to Unzoned Commercial or Industrial Area).

(b) The department will issue a permit under this section for a sign under §21.179 of this subchapter (relating to Location of Commercial Signs Near Certain Highway Facilities) except as provided by this subsection.

(1) A sign may not be erected along a regulated highway that is outside an incorporated municipality in an area that is adjacent to or no less than 500 feet from:

(A) an interchange or intersection; or

(B) a rest area, ramp, or the highway's acceleration or deceleration lanes.

(2) A sign may be located not less than 500 feet from a public space that is adjacent to a regulated highway:

(A) on either side of a regulated highway that is on a nonfreeway primary system; or

(B) on the side of the highway adjacent to the public space if the regulated highway is on an interstate or freeway primary system;

(3) for a highway on the interstate or freeway primary system, not closer than 500 feet to another permitted sign on the same side of the highway;

(4) for a highway on the nonfreeway primary system and outside of a municipality, no closer than 300 feet to another permitted sign on the same side of the highway;

(5) for a highway on the nonfreeway primary system and within the incorporated boundaries of a municipality, no closer than 100 feet to another permitted sign on the same side of the highway.

(c) The department will not issue a permit under this section for a sign to be located on a rural road regulated by Subchapter K of this chapter (relating to Control of Signs along Rural Roads).

(d) A sign for which a permit is issued under this section must meet all other requirements of this subchapter that do not conflict with this section.

§21.200. Acquired Commercial Sign within Certified Cities

If an existing sign is located within the incorporated boundaries of a municipality that is approved by the department to control commercial signs under §21.192 of this subchapter (relating to Local Control

of Commercial Signs) and the sign will be relocated within the incorporated boundaries of the same municipality, permission to erect the sign must be obtained only from the municipality in accordance with the municipality's sign and zoning ordinances, and the department will not issue a permit to erect a sign unless the permit owner provides an official document from the city stating that relocation within the city is not allowed.

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

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Becky Blewett

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630



43 TAC §§21.143 - 21.145, 21.150, 21.152 - 21.164, 21.166 - 21.193, 21.195, 21.197 - 21.206

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.143. *Permit Required.*

§21.144. *License Required.*

§21.145. *Prohibited Signs.*

§21.150. *Continuance of Nonconforming Commercial Signs.*

§21.152. *License Application.*

§21.153. *License Issuance.*

§21.154. *License Not Transferable.*

§21.155. *License Renewals.*

§21.156. *License Fees.*

§21.157. *Temporary Suspension of License.*

§21.158. *License Revocation.*

§21.159. *Permit Application.*

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

- §21.161. *Site Owner's Consent; Withdrawal.*
- §21.162. *Permit Application for Certain Preexisting Commercial Signs.*
- §21.163. *Permit Application Review.*
- §21.164. *Decision on Application.*
- §21.166. *Commercial Sign Location Requirements.*
- §21.167. *Erection and Maintenance from Private Property.*
- §21.168. *Conversion of Certain Authorization to Permit.*
- §21.169. *Notice of Commercial Sign Becoming Subject to Regulation.*
- §21.170. *Appeal Process for Permit Denials.*
- §21.171. *Permit Expiration.*
- §21.172. *Permit Renewals.*
- §21.173. *Transfer of Permit.*
- §21.174. *Amended Permit.*
- §21.175. *Permit Fees.*
- §21.176. *Cancellation of Permit.*
- §21.177. *Commercial or Industrial Area.*
- §21.178. *Zoned Commercial or Industrial Area.*
- §21.179. *Unzoned Commercial or Industrial Area.*
- §21.180. *Commercial or Industrial Activity.*
- §21.181. *Abandonment of Sign.*
- §21.182. *Commercial Sign Face Size and Positioning.*
- §21.183. *Signs Prohibited at Certain Locations.*
- §21.184. *Location of Commercial Signs Near Public Spaces.*
- §21.185. *Location of Commercial Signs Near Certain Facilities.*
- §21.186. *Location of Commercial Signs Near Right of Way.*
- §21.187. *Spacing of Commercial Signs.*
- §21.188. *Wind Load Pressure.*
- §21.189. *Commercial Sign Height Restrictions.*
- §21.190. *Lighting of and Movement on Commercial Signs.*
- §21.191. *Repair and Maintenance of Commercial Signs.*
- §21.192. *Permit for Relocation of Commercial Sign.*
- §21.193. *Location of Relocated Commercial Sign.*
- §21.195. *Relocation of Commercial Sign within Certified Cities.*
- §21.197. *Discontinuance of Nonconforming Commercial Sign Due to Destruction.*
- §21.198. *Order of Removal.*
- §21.199. *Destruction of Vegetation and Access from Right of Way Prohibited.*
- §21.200. *Local Control of Commercial Signs.*
- §21.201. *Fees Nonrefundable.*
- §21.202. *Property Right Not Created.*
- §21.203. *Complaint Procedures.*
- §21.204. *Administrative Penalties for Commercial Signs.*
- §21.205. *Curable Commercial Sign Permit Violations.*
- §21.206. *Requirements for an Electronic Sign.*

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Becky Blewett

Deputy General Counsel

Texas Department of Transportation

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SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

**43 TAC §§21.409, 21.417, 21.423 - 21.426, 21.435, 21.448,
21.450, 21.452, 21.453, 21.457**

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.409. *Permit Application.*

(a) To obtain a permit for a sign, a person must file an electronic application through the department's website, www.txdot.gov [in a form prescribed by the department]. The application, at a minimum, must include:

- (1) the complete name and address of the license holder [applicant];
- (2) the complete name and address of the authorized agent of the license holder, if an agent is used [original signature of the applicant];
- (3) the proposed location and description of the sign;
- (4) the complete legal name, email [and] address, and telephone number of the owner of the designated site;
- (5) the appraisal district property tax identification number of the designated site;
- (6) the original signature of the site owner or the site owner's authorized representative, with appropriate documentation from the site owner authorizing the person to act as the site owner's representative on the application demonstrating:

(A) consent to the erection and maintenance of the sign; and

(B) right of entry onto the property of the sign location by the department or its agents;

(7) information that details how and the location from which the sign will be erected and maintained; and

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

(b) The application must be accompanied by the fee prescribed by §21.424 of this subchapter (relating to Permit Fees). [;]

~~[(1) notarized;]~~

~~[(2) sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043; and]~~

~~[(3) accompanied by the fee prescribed by §21.424 of this subchapter (relating to Permit Fees).]~~

(c) To facilitate a site's location during the initial inspection process, the application must identify the sign site by:

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

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

§21.417. Erection and Maintenance from Private Property.

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

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

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

(3) documented legal access through adjoining private property.

(b) If, after a permit is issued, the department finds [sufficient] evidence that the license holder accessed private property on which the sign is located by means other than one listed in subsection (a) of this section, the department will cancel the permit under §21.425 of this subchapter (relating to Cancellation of Permit). [~~licensee destroyed vegetation on the right of way for a proposed sign site, the permit application will be denied.~~]

(c) This section does not apply to the maintenance of a sign that is on railroad right of way and to which §21.408(a) of this subchapter (relating to Continuance of Nonconforming Signs) applies if:

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

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

§21.423. Amended Permit.

(a) To perform customary maintenance or to make substantial changes to the sign or sign structure under §21.434 of this subchapter (relating to Repair and Maintenance) a permit holder must obtain an amended permit before initiating any action to the sign structure.

(b) To obtain an amended permit, the permit holder must submit an amended permit application on a form prescribed by the department. The amended permit application must provide the information required under §21.409 of this subchapter (relating to Permit Application) applicable to an amended permit and indicates the change from

the information in the original application for the sign permit. The amended application is not required to obtain the signature of the land owner.

(c) The new sign face size, configuration, height, lighting, or location must meet all applicable requirements of this subchapter.

(d) The holder of a permit for a nonconforming sign may apply for an amended permit to perform eligible customary maintenance under §21.434 of this subchapter. An amended permit will not be issued for a substantial change, as described by §21.434(c) of this subchapter, to a nonconforming sign.

(e) Making a change to a sign, except as provided by subsection (h) of this section, without first obtaining an amended permit is a violation of this subchapter and will result in an administrative enforcement action.

(f) The department will make a decision on an amended permit application within 60 days of the date receipt of the amended permit application. If the decision cannot be made within the 60 day period the department will notify the applicant of the delay, provide the reason for the delay, and provide an estimate for when the decision will be made.

(g) If an amended permit application is denied, the applicant may file a request with the executive director for an appeal using the same procedures found in §21.167 [§21.170] of this chapter (relating to Appeal Process for Application [Permit] Denials).

(h) In the event of a natural disaster the department may waive the requirement that a required amended permit be issued prior to the repair of a conforming sign. If the department waives this requirement the amended permit must be submitted within 60 days of the completion of the repairs. If the repairs are in violation of these rules or the permit holder fails to submit the amended permit application the sign is subject to enforcement and removal actions.

(i) An amended permit is valid for one year after the date of the department's approval of the amended permit application. [~~The provisions of this subchapter relating to a permit, including §21.421(g) of this subchapter (relating to Permit Renewals), apply to the amended permit.~~] The date of the department's approval of the amended permit application is considered to be the amended permit's date of issuance.

(j) The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

(k) If a sign is built with a smaller face than the size shown on the permit application or if the face is reduced in size after it is built, an amended permit will be required to increase the size of the face.

§21.424. Permit Fees.

(a) The amounts of the fees related to permits under this subchapter are:

(1) \$100 for a new [an original] or amended permit application for a sign;

~~[(2) \$75 for the renewal of a permit;]~~

(2) ~~[(3)]~~ \$25 for the transfer of a permit; and

(3) ~~[(4)]~~ \$10 [~~\$25~~] for a new or amended permit application for a nonprofit sign [replacement sign permit plate].

~~[(b) In addition to the \$75 annual renewal fee, an additional late fee of \$100 is required for a renewal of a permit that is received before the 46th day after the permit expiration date.]~~

~~[(e)]~~ A fee prescribed by this section is payable by credit card or electronic check[, cashier's check, or money order]. If payment

[a check or money order] is dishonored upon presentment, the permit, amended permit [renewal], or transfer is void.

§21.425. *Cancellation of Permit.*

(a) The department will cancel a permit for a sign if the sign:

(1) is removed, unless the sign is removed and re-erected at the request of a condemning authority;

(2) is not maintained in accordance with this subchapter or Transportation Code, Chapter 394;

(3) is damaged beyond repair, as determined under §21.439 of this subchapter (relating to Discontinuance of Sign Due to Destruction);

(4) is abandoned, as determined under §21.427 of this subchapter (relating to Abandonment of Sign);

(5) has substantial changes made to a non-conforming sign in violation of this subchapter or Transportation Code, Chapter 394;

(6) is built by an applicant who uses false information on a material issue of the permit application;

(7) is erected, repaired, substantially changed, or maintained in violation of this subchapter, including under §21.417 of this subchapter (relating to Erection and Maintenance from Private Property), §21.423 of this subchapter (relating to Amended Permit), or §21.441 of this subchapter (relating to Destruction of Vegetation and Access from Right of Way Prohibited), or in violation of Transportation Code, Chapter 394;

(8) has been made more visible by the permit holder clearing vegetation from the highway right of way in violation of §21.441 of this subchapter;

(9) is in an unzoned commercial or industrial area and the department has evidence that an activity supporting the unzoned commercial or industrial area was created primarily or exclusively to qualify the area as an unzoned commercial or industrial area, and that no activity has been conducted at the site within one year; or

(10) site cannot be accessed from private property.

(b) The department may cancel a permit for a sign if the sign:

(1) is erected after the effective date of this section and is more than twenty feet from the location described in the permit application, or is built within twenty feet of the location described in the permit application but at a location that does not meet all spacing requirements of this chapter or other assertions contained in the permit application;

(2) has customary repairs made to a non-conforming sign, or substantial changes made to a conforming sign without obtaining a required amended permit under §21.423 of this subchapter (relating to Amended Permit); or

(3) is erected, repaired, or maintained from the right of way. [;]

[(4) does not have the permit plate properly attached under §21.414 of this subchapter (relating to Sign Permit Plate).]

(c) Before initiating an enforcement action under this section, the department will notify a sign owner in writing of a violation of subsection (b) of this section and will give the sign owner 60 days to correct the violation, provide proof of the correction, and if required, obtain an amended permit from the department.

(d) Upon determination that a permit should be canceled, the department will mail a notice of cancellation to the address of the record license holder. The notice must state:

(1) the reason for the cancellation;

(2) the effective date of the cancellation;

(3) the right of the permit holder to request an administrative hearing on the cancellation; and

(4) the procedure for requesting a hearing and the period for filing the request.

(e) A request for an administrative hearing under this section must be in writing and delivered to the department within 45 days after the date that the notice of cancellation is received.

(f) If timely requested, an administrative hearing will be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case) and the cancellation will be abated until the cancellation is affirmed by order of the commission.

(g) A permit holder may voluntarily cancel a permit by submitting a request in writing after the sign for which the permit was issued has been removed. Subsections (d) - (f) of this section do not apply to a permit voluntarily canceled under this subsection.

(h) The department will notify the landowner identified on the permit application of a cancellation enforcement action. The notice is for informational purposes only, and does not convey any rights to the landowner. The landowner may not appeal the cancellation unless the landowner is also the permit holder.

§21.426. *Administrative Penalties.*

(a) The department may impose administrative penalties against a person who intentionally violates Transportation Code, Chapter 394 or this subchapter.

(b) The amount of the administrative penalty may not exceed the maximum amount of a civil penalty that may be imposed under Transportation Code, §394.081. [and will be based on the following:

[(1) \$150 for a violation of a permit plate requirement under §21.414 of this subchapter (relating to Sign Permit Plate);]

[(2) \$250 for a violation of:]

[(A) a registration requirement of §21.407 of this subchapter (relating to Existing Off-Premise Signs); or]

[(B) erecting the sign at the location other than the location specified on the application; except that if the actual sign location does not conform to all other requirements the department will seek cancellation of the permit;]

[(3) \$500 for:]

[(A) maintaining or repairing the sign from the state right of way; or]

[(B) performing customary maintenance on any sign or substantial maintenance on a conforming sign without first obtaining an amended permit; or]

[(4) \$1000 for erecting a sign from the right of way.]

(c) In addition to the penalties assessed under subsection (b) of this section, the department may seek to recover the cost of repairing any damage to the right of way done by the sign owner or on the sign owner's behalf.

(d) Before initiating an enforcement action under this section, the department will notify the sign owner in writing of a violation of

subsection (b)(1) or (2)(B) of this section and will give the sign owner 60 days to correct the violation and provide proof of the correction to the department.

(e) Upon determination to seek administrative penalties the department will mail a notice of the administrative penalties to the last known address of the permit holder. The notice must clearly state:

- (1) the reasons for the administrative penalties;
- (2) the amount of the administrative penalty; and

(3) the right of the holder of the permit to request an administrative hearing.

(f) A request for an administrative hearing under this section must be made in writing and delivered to the department within 45 days after the date of the receipt of the notice.

(g) If timely requested, an administrative hearing shall be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case), and the imposition of administrative penalties will be abated unless and until that action is affirmed by order of the commission.

§21.435. *Permit for Relocation of Sign.*

(a) A sign may be relocated in accordance with this section, §21.436 of this subchapter (relating to Location of Relocated Sign), and §21.437 of this subchapter (relating to Construction and Appearance of Relocated Sign) if the sign is legally erected and maintained and will be within the highway right of way as a result of a construction project or, under exceptional circumstances as determined by the executive director or the executive director's deputy if the sign is legally erected and maintained and the relocation will further the intended purposes of the Transportation Code, Title 6, Subtitle H, "Highway Beautification."

(b) To relocate a sign under this section, the permit holder must obtain a new permit under §21.409 of this subchapter (relating to Permit Application), but the permit fee is waived.

(c) To receive a new permit to relocate a sign, the permit holder must submit a new permit application that identifies that the application is for the relocation of an existing sign due to a highway construction project. The new location must meet all local codes, ordinances, and applicable laws.

(d) If the permit holder of a sign that must be relocated due to a highway construction project desires to amend the sign structure by following the §21.423 of this subchapter (relating to Amended Permit), they must apply and receive the approved relocation permit from the department before filing for an amended permit.

(e) Notwithstanding other provisions of this section, if only a part of a sign will be located within the highway right of way as a result of the construction project, the sign owner may apply to amend an existing permit for the sign to authorize:

(1) the adjustment of the sign face on a monopole sign that would overhang the proposed right of way and the required five foot setback from that location to the land on which the sign's pole is located, including adding a second pole if required to support the adjustment for a legal non-conforming monopole sign;

(2) the relocation of the poles and sign face of a multiple pole sign structure that is located in the proposed right of way from the proposed right of way and the required five foot setback to the land on which the other poles of the sign structure are located; or

(3) a reduction in the size of a sign structure that is located partially in the proposed right of way and the required five foot setback

so that the sign structure and sign face are removed from the proposed right of way and the required five foot setback.

(f) A permit for the relocation of a sign must be submitted within 48 [36] months from the earlier of the date the original sign was removed or the date the original sign was required to move. The sign owner is required to continue to renew the sign permit and pay the permit renewal fee for the sign to remain eligible for relocation. [The relocation permit issued must be maintained in accordance with §21.421 of this subchapter (relating to Permit Renewals).]

(g) To replace an issued and active relocation permit, an operator first must cancel the permit, then must reapply, pay the fee prescribed by §21.424 of this subchapter (relating to Permit Fees), and obtain approval for the new permit in accordance with subsection (a) of this section. The relocation process must be completed within the time requirements of subsection (f) of this section.

§21.448. *License Required.*

(a) Except as provided by this subchapter, a person may not obtain a permit for a sign under this subchapter unless the person holds a currently valid license issued under §21.145 [§21.153] of this chapter (relating to License Issuance; Amendment), or under §21.450 of this subchapter (relating to License Issuance), applicable to the county in which the sign is to be erected or maintained.

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

§21.450. *License Issuance.*

(a) The department will issue a license if the requirements of §21.144 [§21.152] of this chapter (relating to License Application), or if the requirements of §21.449 of this subchapter (relating to License Application), are satisfied.

(b) To amend a license, the license holder must file an amended application in a form prescribed by the department and accompanied by a valid rider to its surety bond [The department will not issue a license to an entity that is not authorized to conduct business in this state].

§21.452. *License Renewals.*

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

(1) an electronic application;

(2) the applicable renewal fee prescribed by §21.453 of this subchapter (relating to License Fees); and

(3) proof of current surety bond coverage.

(b) The department will provide electronically to the license holder a notification of the amount due on or before January 1 of the year for which the license renewal fee is due. The department will send quarterly reminder notices to any license holder who maintains an unpaid balance and will provide notice to the license holder of the opportunity to file a late renewal. [To renew a license, the license holder must file a written application in a form prescribed by the department accompanied by each applicable license fee prescribed by the subchapter under which the license was issued. The application must be received by the department before the 46th day after the date of the license's expiration and must include at a minimum:]

[(1) the complete legal name, mailing address, and telephone number of the license holder;]

[(2) the number of the license being renewed;]

~~{(3) proof of current surety bond coverage; and}~~

~~{(4) the signature of the license holder or person signing on behalf of the business entity.}~~

~~(c) An expired license may be reinstated if the department receives a reinstatement request, accompanied by proof of current surety bond and the appropriate fee under §21.453 of this subchapter (relating to License Fees), not later than December 15 of the year in which the license expired. If reinstated, the license is considered to be renewed on the date of its reinstatement [A license is not eligible for renewal if the license holder is not authorized to conduct business in this state].~~

~~(d) An expired license that is not reinstated under this section is terminated on December 15 of the year in which the license expired and may not be renewed. A license is not eligible for renewal unless the license holder has complied with the permit requirements of this subchapter, Subchapter I of this chapter (relating to Regulation of Signs Along Interstate and Primary Highways), or Transportation Code, Chapters 391 and 394.~~

§21.453. License Fees.

~~(a) The amount of the fee for [the issuance of] a license application under this subchapter is \$125.~~

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

~~(1) \$75; plus~~

~~(2) the amount computed by multiplying \$75 by the total number of eligible permits held under the license of this chapter.~~

~~(c) To reinstate an expired license under §21.147 of this subchapter (relating to License Renewals), the license holder must pay an additional late fee of one percent of the annual renewal fee under this section in addition to the annual renewal fee [In addition to the \$75 annual renewal fee, an additional late fee of \$100 is required for a renewal license application that is received before the 45th day after the expiration date of the license].~~

~~(d) A license fee is payable online by credit card, or electronic check[, cashier's check, or money order made payable to the state highway fund, and must be submitted with the application]. If payment [the check or money order] is dishonored on [upon] presentment, the license is voidable.~~

~~{(e) The department will provide a renewal notification to the license holder at least 45 days before the date of the license expiration and if the license is not renewed before it expires, the department within 20 days after the date of expiration will provide notification to the license holder of the opportunity to file a late renewal application.}~~

§21.457. Nonprofit Sign Permit.

~~(a) A nonprofit service club, charitable association, religious organization, chamber of commerce, economic development council, nonprofit museum, or governmental entity may obtain a permit under this section to erect or maintain a nonprofit sign.~~

~~(b) To qualify as a nonprofit sign, the sign must:~~

~~(1) advertise or promote:~~

~~(A) a political subdivision in whose jurisdiction the sign is located or a political subdivision that is adjacent to such a political subdivision; or~~

~~(B) the entity that will hold the permit, but may only give information about the meetings, services, events, or location of the entity or provide a message that relates to promotion of all or a part of the political subdivision but that does not include identification of individual merchants; and~~

~~(2) comply with each sign requirement under this subchapter from which it is not expressly exempted.~~

~~(c) An application for a permit under this section must be in a form prescribed by the department and must include, in detail, the content of the message to be displayed on the sign.~~

~~(d) After a permit is issued, the permit holder must obtain approval from the department to change the message of the sign. The department may issue an order of removal of the sign if the permit holder fails to obtain that approval.~~

~~(e) If a sign ceases to qualify as a nonprofit sign, the permit for the sign is subject to cancellation under §21.425 of this subchapter (relating to Cancellation of Permit).~~

~~(f) If the holder of a permit issued under this section loses its nonprofit status or wishes to change the sign so that it no longer qualifies as a nonprofit sign the permit holder must:~~

~~(1) obtain a license under §21.145 [~~§21.153~~] of this chapter (relating to License Issuance; Amendment) or §21.450 of this subchapter (relating to License Issuance); and~~

~~(2) convert the sign permit to a permit for a sign other than a nonprofit sign and pay the original permit and renewal fees provided by §21.424 of this subchapter (relating to Permit Fees).~~

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

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

TRD-202401316

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 12, 2024

For further information, please call: (512) 463-8630

43 TAC §§21.414, 21.420, 21.421, 21.431

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.414. *Sign Permit Plate.*

§21.420. *Permit Expiration.*

§21.421. *Permit Renewals.*

§21.431. *Wind Load Pressure.*

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

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

TRD-202401317

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 12, 2024

For further information, please call: (512) 463-8630



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 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES

SUBCHAPTER B. FEES

7 TAC §97.113

The Credit Union Department withdraws proposed amendments to §97.113 which appeared in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6709).

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

TRD-202401285

Michael S. Riepen

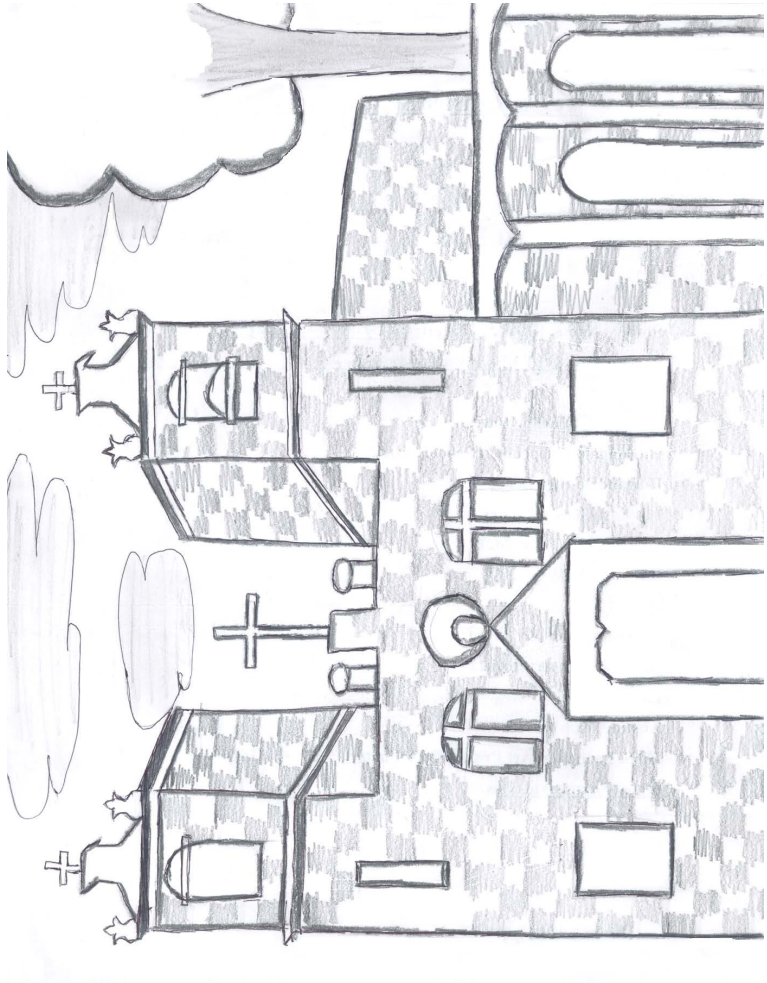
Commissioner

Credit Union Department

Effective date: March 26, 2024

For further information, please call: (512) 837-9236





ADOPTED RULES

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

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §45.4

The Texas Alcoholic Beverage Commission (TABC) adopts amendments to 16 TAC §45.4, relating to Product Registration Required. The amendments are adopted without changes to the proposed text as published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 619). The amended rule will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to implement legislation. Senate Bill 1322 (88th Regular Session) authorized the sale of vintage distilled spirits by a vintage distilled spirits seller, and Senate Bill 1932 (88th Regular Session) authorized the secondary sale of wine by a wine collection seller.

Currently, §45.4(a) prohibits alcoholic beverages from being sold in the state prior to the product being registered with TABC unless the type of alcoholic beverage is excepted from the registration requirement under §45.4(b). Pursuant to §101.671 of the Alcoholic Beverage Code, distilled spirits and wine are generally required to have a Certificate of Label Approval (COLA) issued by the United States Alcohol and Tobacco Tax and Trade Bureau to be registered with TABC and the registrant must be an authorized TABC permittee. Pursuant to §§1.04(31)(B) and 111.001(2)(B) of the Alcoholic Beverage Code, vintage distilled spirits sellers and wine collection sellers may not hold a TABC-issued permit. Thus, due to the nature of the distilled spirits and wine authorized by SB 1322 and SB 1932, the products are ineligible to receive a COLA and the authorized sellers are unable to apply for product registration. For these reasons, requiring registration of these products would be impracticable under the current regulatory framework. Therefore, the amendments to §45.4 add products sold by a vintage distilled spirits seller pursuant to Alcoholic Beverage Code §§22.19 or 23.07, and by a wine collection seller pursuant to Alcoholic Beverage Code §§111.002 or 111.003, to the list of products that do not require registration with TABC prior to being sold within the state.

SUMMARY OF COMMENTS. TABC did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. TABC adopts the amendments under §5.31 of the Alcoholic Beverage Code, which authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. TABC also adopts

new §45.4(b)(5) pursuant to Section 2 of SB 1932, which requires TABC to adopt rules necessary to implement Chapter 111 of the Alcoholic Beverage Code.

CERTIFICATION. The amended rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 March 26, 2024.

TRD-202401287

Matthew Cherry

Senior Counsel

Texas Alcoholic Beverage Commission

Effective date: April 15, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 206-3491



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 303. PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

The Texas Health and Human Services Commission (HHSC) adopts amendments to §303.102, concerning Definitions; §303.201, concerning Preadmission Process; §303.302, concerning LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process; §303.303, concerning Qualifications and Requirements for Staff Person Conducting a PE or Resident Review; §303.502, concerning Required Training for a Habilitation Coordinator; §303.503, concerning Documenting Habilitation Coordination Contacts; §303.601, concerning Habilitation Coordination for a Designated Resident; §303.602, concerning Service Planning Team Responsibilities Related to Specialized Services; §303.701, concerning Transition Planning for a Designated Resident; §303.703, concerning Requirements for Service Coordinators Conducting Transition Planning; §303.905, concerning Process for Service Initiation, §303.907, concerning Renewal and Revision of Person-Centered Recovery Plan, §303.909, concerning Refusal of the Uniform Assessment or MI Specialized Services; §303.910, concerning Suspension and Termination of MI Specialized Services; and §303.912, concerning Documentation.

HHSC adopts new §303.901, concerning Description of MI Specialized Services and §303.914, concerning Required Training for an LMHA or LBHA Staff Responsible for Coordinating MI Specialized Services and new Subchapter J, concerning Disaster Rule Flexibilities, comprised of §303.1000, concerning Flexibilities to Certain Requirements During Declaration of Disaster.

HHSC also adopts the repeal of §303.901, Description of MI Specialized Services.

Sections 303.102, 303.601, 303.602, 303.701, 303.901, 303.905, 303.907, 303.909, and 303.1000 are adopted with changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6174). These rules will be republished.

Sections 303.201, 303.302, 303.303, 303.502, 303.503, 303.703, 303.910, 303.912, 303.914, and the repeal of §303.901 are adopted without changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6174). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

House Bill 4, 87th Legislature, Regular Session, 2021 added §531.02161 to the Texas Government Code which requires HHSC to ensure that Medicaid recipients have the option to receive services through telecommunications to the extent it is cost effective and clinically appropriate. A purpose of the adopted rules is to implement Texas Government Code §531.02161 as it applies to the preadmission screening and resident review (PASRR) process. Another purpose of the adopted rules is to define terms used in the revised PASRR rule for clarification. The adopted rules ensure training requirements are similar for staff involved in the PASRR process across all local intellectual and developmental disability authorities (LIDDAs), local mental health authorities (LMHAs), and local behavioral health authorities (LBHAs). The adopted rules address documentation requirements related to the PASRR process, including the new requirement to obtain written or oral consent for the use of audio-visual or audio-only communication methods. The adopted rules require adjustments to the frequency of follow-up visits for residents with mental illness (MI), which mirrors the requirements of the habilitation coordinator related to the PASRR process. The adopted rules also require the MI specialized services team to agree the resident with MI no longer benefits from the MI specialized services when one or more specialized service is terminated.

The adopted rules provide that HHSC may allow LIDDAs, LMHAs, and LBHAs to use one or more of the exceptions specified in the rules while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. This provision ensures that LIDDAs, LMHAs, LBHAs are able to operate and provide services effectively during a disaster.

The adopted rules repeal §303.901, Description of MI Specialized Services, and replace it with new §303.901, Description of MI Specialized Services.

COMMENTS

The 31-day comment period ended November 20, 2023.

During this period, HHSC received comments regarding the proposed rules from five commenters: Cross Healthcare Management; Tri-County Behavioral Healthcare; Texas Medical Association; Disability Rights Texas; and Texas Council of Commu-

nity Centers. A summary of comments relating to the rules and HHSC's responses follows.

Comment: A commenter noted they are in support of the rule changes as long as there are not additional burdens imposed on the nursing facility, such as having to make separate arrangements to coordinate audio-only or audio-visual meetings.

Response: HHSC did not make changes to the rules in response to this comment. The rule changes do not impose additional burdens on nursing facilities.

Comment: Regarding the definition of Service Planning Team (SPT), a commenter asked for clarification regarding the inclusion of the person who develops a permanency plan in the service planning team definition.

Response: HHSC did not make changes to the rules in response to this comment. The commenter did not specify the clarification requested and the definition of "service planning team" describes this member of the team as "the person who develops a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22 Years of Age form and performs other permanency planning activities for a designated resident under 22 years of age, if the designated resident is at least 21 years of age but younger than 22 years of age."

Comment: Regarding the definition of SPT, the same commenter asked if the person completing the permanency plan must participate in all service planning team meetings or only when the permanency plan is due.

Response: HHSC did not make changes to the rules in response to this comment. The proposed rules do not allow for the exclusion of the person who develops the permanency plan from a service planning team meeting.

Comment: A commenter asked whether the service planning team member who is the permanency planner must participate in all service planning team meetings and whether this member must provide the permanency planning instrument to the service planning team.

Response: HHSC did not make changes to the rules in response to this comment. The proposed rules do not allow for the exclusion of the person who develops the permanency plan from a service planning team meeting. Responsibilities of persons who develop the permanency plan are not addressed in Chapter 303 but a person who develops the permanency plan would likely assist with providing the permanency planning instrument to the service planning team.

Comment: A commenter recommended deleting §303.302(d), because there are other PASRR requirements already in place to address barriers and challenges. The LIDDA, LMHA, or LBHA must develop a written policy that describes the process the LIDDA, LMHA, or LBHA will follow to address challenges related to the participation in receiving IDD habilitative specialized services (IHSS) or MI specialized services by the designated resident, resident with MI, or legally authorized representative (LAR).

Response: HHSC declines to remove this rule as suggested. Section 303.302(d) requires a process to address challenges related to a resident's participation in receiving IHSS or MI specialized services. Other PASRR requirements address barriers to community living and transitions into the community.

Comment: Regarding §303.502(a)(2) - (3), commenters recommended allowing habilitation coordinators to complete HHSC ap-

proved computer-based person-centered planning and practices training and all HHSC instructor-led training related to PASRR habilitation coordination within the first 90 days of performing habilitation coordination duties, rather than 60 days, due to difficulties at times in enrolling staff in instructor-led courses.

Response: HHSC declines to make changes in response to this comment. The HHSC approved person-centered planning and practices training is computer-based and can be taken at any time to easily accommodate habilitation coordinators' schedules. In addition, HHSC will be offering the instructor-led training more frequently to address the demand for this training.

Comment: In reference to §303.601(a), commenters suggested clarification is needed as to whether the rule should indicate "business days" or "calendar days."

Response: HHSC agrees with the requested change and revised §303.601(a) to specify that a LIDDA must assign a habilitation coordinator to each designated resident within "two business days" (instead of "two days") after a PASRR level II evaluation (PE) is completed if the PE is positive for intellectual disability or developmental disability. Additionally, HHSC revised §303.102 by adding definitions for "business day" and "calendar day" for clarity.

Comment: Regarding §303.601(b)(7)(A), a commenter suggested that the "more frequently if needed more than monthly" language be retained, because some individuals may require visits that are more frequent than monthly.

Response: HHSC declines to make changes in response to this comment. The requirement in the rule that a habilitation coordinator must meet with a designated resident "at least monthly" is a minimum requirement and, therefore, allows for more frequent meetings if necessary.

Comment: Regarding §303.703(b)(2) - (3), commenters recommended allowing the service coordinators to complete HHSC approved computer-based person-centered planning and practices training and all HHSC instructor-led training related to PASRR service coordination for transition planning within the first 90 days of performing transition planning duties, rather than 60 days, due to difficulties at times enrolling staff in instructor-led courses.

Response: HHSC declines to make changes in response to this comment. The HHSC approved person-centered planning and practices training is computer-based and can be taken at any time to easily accommodate service coordinators' schedules. In addition, HHSC will be offering the instructor-led training more frequently to address the demand for this training.

Comment: A commenter noted that "crisis intervention services" and "day programs for acute needs" are included in current §303.901 but not in proposed §303.901(b), though such services are offered under the Texas Resiliency and Recovery (TRR) program. The commenter also noted that proposed §303.901(b) does not reference the TRR Utilization Management Guidelines (TRR Guidelines) in its description of services for a resident with MI. As a result, the commenter noted concerns that it is not clear what services, if any, are available outside of the services listed in proposed §303.901(b)(1) through (5). The commenter recommended that proposed §303.901(b) be amended to clarify the availability of other services offered under the TRR program, such as day programs for acute needs.

Response: The definition of "MI specialized services" in §303.102(50) includes a non-exclusive list of MI specialized

services available and provides that the services are described in the Texas Resilience and Recovery Utilization Management Guidelines. Descriptions of some MI specialized services are included in §303.901(b) because those services are the MI specialized services most commonly used. HHSC revised §303.901(b) to clarify that the subsection describes some of the MI specialized services.

Comment: A commenter noted that in the proposed rules, a meeting via audio-visual communication is permitted in extenuating circumstances if consent is obtained from the resident or their LAR to meet via audio-visual communication and a description of the extenuating circumstances is documented in the resident's record. The rules as proposed state that, if consent is not obtained, the resident or LAR's refusal must be documented in the resident's record. The commenter recommended that proposed §§303.302, 303.602, 303.701, 303.905, and 303.907 be clarified to account for situations where the resident or LAR has refused to or neglected to provide consent to meet via audio-visual communication despite extenuating circumstances that preclude an in-person meeting.

Response: HHSC agrees with the requested change as to §§303.602, 303.701, 303.905, and 303.907. Accordingly, HHSC revised §303.602(g) to, if consent to meet via audio-visual communication is not obtained because of extenuating circumstances, require a habilitation coordinator to convene an SPT meeting in person as soon as possible after the extenuating circumstances no longer exist. HHSC made a similar change in §§303.701(k), 303.905(h) and 303.907(h) regarding meetings conducted by a service coordinator, LMHA, LBHA, and a qualified mental health professional - community services (QMHP-CS). HHSC declines to make the requested change to §303.302 because §303.302(i) describes the action a LIDDA, LMHA, or LBHA must take if consent to meet via audio-visual communication is not obtained because of extenuating circumstances. Also, the definition for "extenuating circumstances" in §303.102 was modified for clarity.

Comment: A commenter disagreed with the proposed change in §303.909(a)(2) and stated a concern that waiting for 90 days for a follow-up visit may be too long. Conversely, another commenter agreed with the proposed change.

Response: HHSC agrees with the requested change and revised §303.909(a)(2) to require the LMHA or LBHA to inform the resident that a follow-up visit will be conducted every 30 days for 90 days after the initial interdisciplinary team (IDT) meeting, consistent with the current rule. HHSC also revised §303.909(a) to clarify that the LMHA and LBHA are required to conduct a follow-up visit every 30 days for 90 days after the initial IDT meeting and make the 90th day follow-up visit the first MI quarterly meeting.

Comment: Regarding §303.914(a)(2), commenters suggested a revision to the timeframe in which an LMHA or LBHA staff must complete the HHSC approved computer-based person-centered planning and practices training within the first 90 days of coordinating MI specialized services instead of the proposed 60-day timeframe.

Response: HHSC declines to revise the rule as suggested. The commenter did not provide a reason for changing the time frame for completing the HHSC approved person-centered planning and practices training. Because the training can be taken at any time to easily accommodate staff schedules, the proposed

60-day timeframe should provide staff with sufficient time to complete the training.

Comment: A commenter noted they would like to see HHSC courses that align more closely with TRR services instead of those designed for the IDD population.

Response: HHSC did not make changes in response to this comment because it is outside the scope of this project.

Comment: Regarding §303.905(c), a commenter asked for clarification regarding the timeline for completing the uniform assessment, developing the person-centered recovery plan, and providing copies of these documents to the nursing facility.

Response: HHSC did not make changes in response to this comment. Section 303.905(c) and (f) include the timeframes for completing the uniform assessment and the person-centered recovery plan and providing copies of these documents to the nursing facility. Additional guidance about these activities is provided in the Preadmission Screening and Resident Review Mental Illness Handbook. Further, definitions for "business day" and "calendar day" were added to §303.102 for clarity.

In addition to the changes made to the rules in response to comments, HHSC made the changes below.

In §303.907(a), HHSC added, "with the MI specialized services team" to clarify that the QMHP-CS must include the team in the quarterly meeting.

In §303.901(b), HHSC changed "specialized services" to "MI specialized services" because "MI specialized services" is the defined term and used throughout the chapter.

HHSC revised §303.102(78)(G) and (H) to correct formatting, revised §303.1000(c)(3) and (4) to add section symbols to the section numbers, and added a comma to newly formatted §303.909(a)(4) for clarity.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §303.102

STATUTORY AUTHORITY

The amendment is authorized by 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, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§303.102. Definitions.

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

(1) **Actively involved person**--An individual who has significant, ongoing, and supportive involvement with a designated resident, as determined by the SPT based on the individual's:

(A) observed interactions with the designated resident;

(B) availability to the designated resident for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the designated resident's needs, preferences, values, and beliefs.

(2) **Acute care hospital**--A health care facility in which an individual receives short-term treatment for a severe physical injury or episode of physical illness, an urgent medical condition, or recovery from surgery and:

(A) may include a long-term acute care hospital, an emergency room within an acute care hospital, or an inpatient rehabilitation hospital; and

(B) does not include a stand-alone psychiatric hospital or a psychiatric hospital within an acute care hospital.

(3) **Alternate placement assistance**--Assistance provided to a resident to locate and secure services chosen by the resident or LAR that meets the resident's needs in a setting other than a NF. Alternate placement assistance includes transition planning, pre-move site review, and post-move monitoring.

(4) **APRN**--Advance practice registered nurse. An individual licensed to practice professional nursing as an advance practice registered nurse in accordance with Texas Occupations Code Chapter 301.

(5) **Audio-only**--An interactive, two-way audio communication that uses only sound and that meets the privacy requirements of the Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication. Audio-only does not include audio-visual or in-person communication.

(6) **Audio-visual**--An interactive, two-way audio and video communication that conforms to privacy requirements under the Health Insurance Portability and Accountability Act. Audio-visual does not include audio-only or in-person communication.

(7) **Behavioral support**--An IHSS that:

(A) is assistance provided for a designated resident to increase adaptive behaviors and to replace or modify maladaptive behaviors that prevent or interfere with the designated resident's interpersonal relationships across all service and social settings;

(B) is delivered in the NF or in a community setting; and

(C) consists of:

(i) assessing the behaviors to be targeted in an appropriate behavior support plan and analyzing those assessment findings;

(ii) developing an individualized behavior support plan that reduces or eliminates the target behaviors, assisting the designated resident in achieving the outcomes identified in the HSP;

(iii) training and consulting with the LAR, family members, NF staff, other support providers, and the designated resident about the purpose, objectives, and methods of the behavior support plan;

(iv) implementing the behavior support plan or revisions to the behavior support plan and documenting service delivery in accordance with the IDD Habilitative Specialized Services Billing Guidelines;

(v) monitoring and evaluating the success of the behavior support plan implementation;

(vi) revising the behavior support plan as necessary; and

(vii) participating in SPT and IDT meetings.

(8) Business day--Any day except Saturday, Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(9) Calendar day--Any day, including weekends and holidays.

(10) CMWC--Customized manual wheelchair. In accordance with §554.2703(5) of this title (relating to Definitions) and consistent with the requirements of Texas Human Resources Code §32.0425, a wheelchair that consists of a manual mobility base and customized seating system and is adapted and fabricated to meet the individualized needs of a designated resident.

(11) Collateral contact--A person who is knowledgeable about the individual seeking admission to a NF or the resident, such as family members, previous providers or caregivers, and who may support or corroborate information provided by the individual or resident.

(12) Coma--A state of unconsciousness characterized by the inability to respond to sensory stimuli as documented by a physician.

(13) Convalescent care--A type of care provided after an individual's release from an acute care hospital that is part of a medically prescribed period of recovery.

(14) Day habilitation--An IHSS that:

(A) is assistance provided for a designated resident to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to successfully and actively participate in all service and social settings;

(B) is delivered in a setting other than the designated resident's NF;

(C) does not include services provided under the Day Activity and Health Services program;

(D) includes expanded interactions, skills training activities, and programs of greater intensity or frequency beyond those a NF is required to provide by 42 Code of Federal Regulations (CFR) §483.24; and

(E) consists of:

(i) individualized activities consistent with achieving the outcomes identified in a designated resident's HSP to attain, learn, maintain, or improve skills;

(ii) activities necessary to reinforce therapeutic outcomes targeted by other support providers and other specialized services;

(iii) services in a group setting at a location other than a designated resident's NF for up to five days per week, six hours per day, on a regularly scheduled basis;

(iv) personal assistance for a designated resident who cannot manage personal care needs during the day habilitation activity;

(v) transportation between the NF and the day habilitation site, as well as during the day habilitation activity necessary for a designated resident's participation in day habilitation activities; and

(vi) participating in SPT and IDT meetings.

(15) DD--Developmental disability. A disability that meets the criteria described in the definition of "persons with related conditions" in 42 CFR §435.1010.

(16) Delirium--A serious disturbance in an individual's mental abilities that results in a decreased awareness of the individual's environment and confused thinking.

(17) Designated resident--An individual:

(A) whose PE or resident review is positive for ID or DD;

(B) who is 21 years of age or older;

(C) who is a Medicaid recipient; and

(D) who is a resident or has transitioned to the community from a NF within the previous 365 days.

(18) DME--Durable medical equipment. The items described in §554.2703(10) of this title.

(19) Emergency protective services--Services furnished by the Department of Family and Protective Services to an elderly or disabled individual who has been determined to be in a state of abuse, neglect, or exploitation.

(20) Employment assistance--An IHSS that:

(A) is assistance provided for a designated resident who requires intensive help locating competitive employment in the community; and

(B) consists of:

(i) identifying a designated resident's employment preferences, job skills, and requirements for a work setting and work conditions;

(ii) locating prospective employers offering employment compatible with a designated resident's identified preferences, skills, and requirements;

(iii) contacting prospective employers on a designated resident's behalf and negotiating the designated resident's employment;

(iv) transporting a designated resident between the NF and the site where employment assistance services are provided and as necessary to help the designated resident locate competitive employment in the community; and

(v) participating in SPT and IDT meetings.

(21) Essential supports--Those supports identified in a transition plan that are critical to a designated resident's health and safety and that are directly related to a designated resident's successful transition to living in the community from residing in a NF.

(22) Exempted hospital discharge--A category of NF admission that occurs when a physician has certified that an individual who is being discharged from an acute care hospital is likely to require less than 30 days of NF services for the condition for which the individual was hospitalized.

(23) Expedited admission--A category of NF admission that occurs when an individual meets the criteria for one of the following categories: convalescent care, terminal illness, severe physical illness, delirium, emergency protective services, respite, or coma.

(24) Extenuating circumstances--Circumstances beyond the LIDDA's, LMHA's or LBHA's control that prevents meeting in person. A disaster declared by the governor is excluded from this definition.

(25) Habilitation coordination--Assistance for a designated resident residing in a NF to access appropriate specialized services nec-

essary to achieve a quality of life and level of community participation acceptable to the designated resident and LAR on the designated resident's behalf.

(26) Habilitation coordinator--An employee of a LIDDA who provides habilitation coordination.

(27) HHSC--The Texas Health and Human Services Commission.

(28) HHSC instructor-led training--Training delivered by an HHSC employee.

(29) HSP--Habilitation service plan. A plan developed by the SPT while a designated resident is residing in a NF that:

(A) is individualized and developed through a person-centered approach;

(B) identifies the designated resident's:

(i) strengths;

(ii) preferences;

(iii) desired outcomes; and

(iv) psychiatric, behavioral, nutritional management, and support needs as described in the NF comprehensive care plan or MDS assessment; and

(C) identifies the specialized services that will accomplish the desired outcomes of the designated resident, or the LAR's on behalf of the designated resident, including amount, frequency, and duration of each service.

(30) ID--Intellectual disability, as defined in 42 CFR §483.102(b)(3)(i).

(31) IDD--Intellectual and developmental disability.

(32) IDT--Interdisciplinary team. A team consisting of:

(A) a resident with MI, ID, or DD;

(B) the resident's LAR, if any;

(C) an RN from the NF with responsibility for the resident;

(D) a representative of:

(i) the LIDDA, if the resident has ID or DD;

(ii) the LMHA or LBHA, if the resident has MI; or

(iii) the LIDDA and the LMHA or LBHA, if the resident has MI and DD, or MI and ID; and

(E) others as follows:

(i) a concerned person whose inclusion is requested by the resident or LAR;

(ii) an individual specified by the resident, LAR, NF, LIDDA, LMHA, or LBHA, as applicable, who is professionally qualified, certified, or licensed with special training and experience in the diagnosis, management, needs, and treatment of people with MI, ID, or DD; and

(iii) a representative of the appropriate school district if the resident is school age and inclusion of the district representative is requested by the resident or LAR.

(33) IHSS--IDD habilitative specialized services. IHSS are:

(A) behavioral support;

(B) day habilitation;

(C) employment assistance;

(D) independent living skills training; and

(E) supported employment.

(34) ILST--Independent living skills training. An IHSS that:

(A) is assistance provided for a designated resident that is consistent with the designated resident's HSP;

(B) is provided in the designated resident's NF or in a community setting;

(C) includes expanded interactions, skills training activities, and programs of greater intensity or frequency beyond those a NF is required to provide by 42 CFR §483.24; and

(D) consists of:

(i) habilitation and support activities that foster improvement of or facilitate a designated resident's ability to attain, learn, maintain, or improve functional living skills and other daily living activities;

(ii) activities that help preserve the designated resident's bond with family members;

(iii) activities that foster inclusion in community activities generally attended by people without disabilities;

(iv) transportation to facilitate a designated resident's employment opportunities and participation in community activities, and between the designated resident's NF and a community setting; and

(v) participating in SPT and IDT meetings.

(35) Implementation plan--A plan for each IHSS on the designated resident's plan of care that includes:

(A) a list of the designated resident's outcomes identified in the HSP that will be addressed using IHSS;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented;

and

(ii) derived from assessments;

(C) a target date for completion of each objective;

(D) the frequency, amount, and duration of IHSS needed to complete each objective; and

(E) the signature and date of the designated resident, LAR, and service provider agency.

(36) In-person (or in person)--Within the physical presence of another person. In-person or in person does not include audio-visual or audio-only communication.

(37) LAR--Legally authorized representative. An individual authorized by law to act on behalf of an individual seeking admission to a NF or resident with regard to a matter described by this chapter, and who may be the parent of a minor child, the legal guardian, or the surrogate decision maker.

(38) LBHA--Local behavioral health authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code §533.0356.

(39) LCSW--Licensed clinical social worker. An individual who is licensed as a licensed clinical social worker in accordance with Texas Occupations Code Chapter 505.

(40) Licensed psychologist--An individual who is licensed as a psychologist in accordance with Texas Occupations Code Chapter 501.

(41) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code §533A.035.

(42) LMFT--Licensed marriage and family therapist. An individual who is licensed as a marriage and family therapist in accordance with Texas Occupations Code Chapter 502.

(43) LMHA--Local mental health authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code §533.035.

(44) LPC--Licensed professional counselor. An individual who is licensed as a professional counselor in accordance with Texas Occupations Code Chapter 503.

(45) LTC online portal--Long term care online portal. A web-based application used by Medicaid providers to submit forms, screenings, evaluations, and other information.

(46) MCO service coordinator--Managed care organization service coordinator. The staff person assigned by a resident's Medicaid managed care organization to ensure access to and coordination of needed services.

(47) MDS assessment--Minimum data set assessment. A standardized collection of demographic and clinical information that describes a resident's overall condition, which a licensed NF in Texas is required to submit for a resident admitted into the facility.

(48) MI--Mental illness. Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(49) MI quarterly meeting--A quarterly meeting that is convened by the LMHA or LBHA for a resident with MI to develop, review, or revise the PCRCP and the transition plan, if the resident is transitioning to the community.

(50) MI specialized services--Specialized services for a resident with MI, if eligible, as described in the Texas Resilience and Recovery Utilization Management Guidelines, including:

- (A) crisis intervention services;
- (B) day programs for acute needs;
- (C) medication training and support services;
- (D) psychiatric diagnostic interview examination;
- (E) psychosocial rehabilitation services;
- (F) routine case management; and
- (G) skills training and development.

(51) NF--Nursing facility. A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code Chapter 242.

(52) NF comprehensive care plan--A comprehensive care plan, defined in §554.2703(3) of this title.

(53) NF PASRR support activities--Actions a NF takes in coordination with a LIDDA, LMHA, or LBHA to facilitate the successful provision of an IHSS or MI specialized service, including:

(A) arranging transportation for a NF resident to participate in an IHSS or a MI specialized service outside the facility;

(B) sending a resident to a scheduled IHSS or MI specialized service with food and medications required by the resident; and

(C) stating in the NF comprehensive care plan an agreement to avoid, when possible, scheduling NF services at times that conflict with IHSS or MI specialized services.

(54) NF specialized services--The following specialized services available to a resident with ID or DD:

- (A) therapy services;
- (B) CMWC; and
- (C) DME.

(55) PA--Physician assistant. An individual who is licensed as a physician assistant in accordance with Texas Occupations Code Chapter 204.

(56) PASRR--Preadmission screening and resident review. A federal requirement in 42 CFR Part 483, Subpart C that requires states to prescreen all individuals seeking admission to a Medicaid-certified NF for ID, DD, and MI.

(57) PCRCP--Person-centered recovery plan. For a resident with MI, the PCRCP identifies the services and supports that are needed to:

- (A) meet the needs of the resident with MI;
- (B) achieve the desired outcomes; and
- (C) maximize the ability for the resident with MI to live successfully in the most integrated setting possible.

(58) PE--PASRR level II evaluation. An evaluation as described in §303.302(a)(2) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process):

(A) of an individual seeking admission to a NF who is suspected of having MI, ID, or DD; and

(B) performed by a LIDDA, LMHA, or LBHA to determine if the individual has MI, ID, or DD and, if so, to:

- (i) assess the individual's need for care in a NF;
- (ii) assess the individual's need for specialized services; and
- (iii) identify alternate placement options.

(59) Physician--An individual who is licensed to practice medicine in accordance with Texas Occupations Code Chapter 155.

(60) PL1--PASRR level I screening. The process of screening an individual seeking admission to a NF to identify whether the individual is suspected of having MI, ID, or DD.

(61) Plan of care--A written plan that includes:

(A) the IHSS required by the NF baseline care plan or NF comprehensive care plan;

(B) the frequency, amount, and duration of each IHSS to be provided for the designated resident during a plan year; and

(C) the services and supports to be provided for the designated resident through resources other than PASRR.

(62) Preadmission process--A category of NF admission:

(A) from a community setting, such as a private home, an assisted living facility, a group home, a psychiatric hospital, or jail, but not an acute care hospital or another NF; and

(B) that is not an expedited admission or an exempted hospital discharge.

(63) QIDP--Qualified intellectual disability professional. An individual who meets the qualifications described in 42 CFR §483.430(a).

(64) QMHP-CS--Qualified mental health professional-community services. An individual who meets the qualifications of a QMHP-CS as defined in §301.303 of this title (relating to Definitions).

(65) Referring entity--The entity that refers an individual to a NF, such as a hospital, attending physician, LAR or other personal representative selected by the individual, a family member of the individual, or a representative from an emergency placement source, such as law enforcement.

(66) Relocation specialist--An employee or contractor of an MCO who provides outreach and relocation activities to individuals in NFs who express a desire to transition to the community.

(67) Resident--An individual who resides in a NF.

(68) Resident review--An evaluation of a resident performed by a LIDDA, LMHA, or LBHA as described in §303.302(a)(2) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process):

(A) for a resident whose PE is positive for MI, ID, or DD who experienced a significant change in condition, to:

(i) assess the resident's need for continued care in a NF;

(ii) assess the resident's need for specialized services; and

(iii) identify alternate placement options; and

(B) for a resident suspected of having MI, ID, or DD, to determine whether the resident has MI, ID, or DD and, if so:

(i) assess the resident's need for continued care in a NF;

(ii) assess the resident's need for specialized services; and

(iii) identify alternate placement options.

(69) Resident with MI--An individual:

(A) who is a resident of a NF;

(B) whose PE or resident review is positive for MI;

(C) who is at least 18 years of age; and

(D) who is a Medicaid recipient.

(70) Respite--Services provided on a short-term basis to an individual because of the absence of or the need for relief by the individual's unpaid caregiver for a period not to exceed 14 days.

(71) RN--Registered nurse. An individual licensed to practice professional nursing as a registered nurse in accordance with Texas Occupations Code Chapter 301.

(72) Service coordination--Assistance in accessing medical, social, educational, and other appropriate services and supports, including alternate placement assistance, that will help an individual to

achieve a quality of life and community participation acceptable to the individual and LAR on the individual's behalf.

(73) Service coordinator--An employee of a LIDDA who provides service coordination.

(74) Service provider agency--An entity that has a contract with HHSC to provide IHSS for a designated resident.

(75) Severe physical illness--An illness resulting in ventilator dependence or a diagnosis, such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure, that results in a level of impairment so severe that the individual could not be expected to benefit from specialized services.

(76) Significant change in condition--Consistent with §554.801(2)(C)(ii) of this title (relating to Resident Assessment), when a resident experiences a major decline or improvement in the resident's status that:

(A) will not normally resolve itself without further intervention by NF staff or by implementing standard disease-related clinical interventions;

(B) has an impact on more than one area of the resident's health status; and

(C) requires review or revision of the NF comprehensive care plan, or both.

(77) Specialized services--The following support services, other than NF services, that are identified through the PE or resident review and may be provided to a resident who has a PE or resident review that is positive for MI, ID, or DD:

(A) NF specialized services;

(B) IHSS; and

(C) MI specialized services.

(78) SPT--Service planning team. A team convened by a LIDDA staff person that develops, reviews, and revises the HSP and the transition plan for a designated resident. The team must include:

(A) the designated resident;

(B) the designated resident's LAR, if any;

(C) the habilitation coordinator for discussions and service planning related to specialized services or the service coordinator for discussions related to transition planning if the designated resident is transitioning to the community;

(D) the MCO service coordinator, if the designated resident does not object;

(E) the person who develops a permanency plan using the HHSC Permanency Planning Instrument for Children Under 22 Years of Age form and performs other permanency planning activities for a designated resident under 22 years of age, if the designated resident is at least 21 years of age but younger than 22 years of age;

(F) while the designated resident is in a NF:

(i) a NF staff person familiar with the designated resident's needs; and

(ii) an individual providing a specialized service for the designated resident or a representative of a provider agency that is providing specialized services for the designated resident;

(G) if the designated resident is transitioning to the community:

(i) a representative from the community program provider, if one has been selected; and

(ii) a relocation specialist;

(H) a representative from the LMHA or LBHA, if the designated resident's PE is positive for MI;

(I) a concerned person whose inclusion is requested by the designated resident or the LAR; and

(J) at the discretion of the LIDDA, an individual who is directly involved in the delivery of services for people with ID or DD.

(79) Supported employment--An IHSS that:

(A) is assistance provided for a designated resident:

(i) who requires intensive, ongoing support to be self-employed, work from the designated resident's residence, or work in an integrated community setting at which people without disabilities are employed; and

(ii) to sustain competitive employment in an integrated community setting; and

(B) consists of:

(i) making employment adaptations, supervising, and providing training related to the designated resident's assessed needs;

(ii) transporting the designated resident between the NF and the site where the supported employment services are provided and as necessary to support the designated resident to be self-employed, work from the designated resident's residence, or work in an integrated community setting; and

(iii) participating in SPT and IDT meetings.

(80) Surrogate decision maker--An actively involved family member of a resident who has been identified by an IDT in accordance with Texas Health and Safety Code §313.004 and who is available and willing to consent to medical treatment on behalf of the resident.

(81) Terminal illness--A medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course and that is documented by a physician's certification in the individual's medical record maintained by a NF.

(82) Therapy services--In accordance with §554.2703(46) of this title, assessment and treatment to help a designated resident learn, keep, or improve skills and functioning of daily living affected by a disabling condition. Therapy services are referred to as habilitative therapy services. Therapy services are limited to:

(A) physical therapy;

(B) occupational therapy; and

(C) speech therapy.

(83) Transition plan--A plan developed by the SPT or MI quarterly meeting attendees that describes the activities, timetable, responsibilities, services, and essential supports involved in assisting a designated resident or resident with MI to transition from residing in a NF to living in the community.

(84) Uniform assessment--The HHSC-approved uniform assessment tool for adult mental health services.

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 B. PASRR SCREENING AND EVALUATION PROCESS

26 TAC §303.201

STATUTORY AUTHORITY

The amendment is authorized by 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, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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SUBCHAPTER C. RESPONSIBILITIES

26 TAC §303.302, §303.303

STATUTORY AUTHORITY

The amendments are authorized by 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, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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**SUBCHAPTER E. HABILITATION
COORDINATION**

26 TAC §303.502, §303.503

STATUTORY AUTHORITY

The amendments are authorized by 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, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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**SUBCHAPTER F. HABILITATIVE SERVICE
PLANNING FOR A DESIGNATED RESIDENT**

26 TAC §303.601, §303.602

STATUTORY AUTHORITY

The amendments are authorized by 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, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§303.601. *Habilitation Coordination for a Designated Resident.*

(a) A LIDDA must assign a habilitation coordinator to each designated resident within two business days after a PE is completed if the PE is positive for ID or DD.

(1) The habilitation coordinator must attend the initial IDT and provide habilitation coordination while the designated resident is residing in the NF.

(2) A designated resident may refuse habilitation coordination.

(b) Unless a designated resident has refused habilitation coordination, the assigned habilitation coordinator must:

(1) assess and reassess quarterly, and as needed, the designated resident's habilitative service needs by gathering information from the designated resident and other appropriate sources, such as the LAR, family members, social workers, and service providers, to determine the designated resident's habilitative needs and preferences and the specialized services that will address those needs and preferences;

(2) develop and revise, as needed, an individualized HSP in accordance with HHSC's rules and IDD PASRR Handbook, and using HHSC forms;

(3) assist the designated resident to access needed specialized services agreed upon in an IDT or SPT meeting, including:

(A) monitoring to determine if a specialized service agreed upon in an IDT or SPT meeting is requested within required timeframes in accordance with the IDD PASRR Handbook or documenting delays and the habilitation coordinator's follow-up activities; and

(B) ensuring the delivery of all specialized services agreed upon in an IDT or SPT meeting or documenting delays and the habilitation coordinator's follow-up activities;

(4) coordinate other habilitative programs and services that can address needs and achieve outcomes identified in the HSP;

(5) facilitate the coordination of the designated resident's HSP and NF comprehensive care plan, including ensuring the HSP is shared with members of the SPT within 10 calendar days after the HSP is updated or renewed;

(6) monitor and provide follow-up activities that consist of:

(A) monitoring the initiation and delivery of all specialized services agreed upon in an IDT or SPT meeting and following up when delays occur;

(B) monitoring the designated resident's and LAR's satisfaction with all specialized services; and

(C) determining the designated resident's progress or lack of progress toward achieving goals and outcomes identified in the HSP from the designated resident's and LAR's perspectives;

(7) meet with the designated resident to provide habilitation coordination:

(A) at least monthly if the designated resident is receiving a specialized service in addition to habilitation coordination; and

(i) meet in person at least quarterly or more frequently as determined by the SPT using the findings of the HHSC Habilitative Assessment form; and

(ii) subject to subsection (d) of this section, meet via audio-visual communication in a month when a meeting is not conducted in person; or

(B) at least quarterly in person, if the designated resident is receiving only habilitation coordination, unless the designated resident or the designated resident's LAR requests more frequent meetings;

(8) convene and facilitate an SPT meeting:

(A) at least quarterly; and

(B) between quarterly SPT meetings if:

(i) there is a change in the designated resident's service needs or medical condition; or

(ii) requested by the designated resident or LAR;

(9) coordinate with the NF in accessing medical, social, educational, and other appropriate services and supports that will help the designated resident achieve a quality of life acceptable to the designated resident and LAR on the resident's behalf;

(10) initially and annually thereafter:

(A) provide the designated resident and LAR an oral and written explanation of the designated resident's rights in accordance with the IDD PASRR Handbook; and

(B) inform the designated resident and LAR both orally and in writing of all the services available and requirements pertaining to the designated resident's participation;

(11) for a designated resident who has a guardian, determine at least annually if the letters of guardianship are current; and

(12) if appropriate, for a designated resident who does not have a guardian, ensure the SPT discusses whether the designated resident would benefit from a less restrictive alternative to guardianship or from guardianship and make appropriate referrals.

(c) Regardless of whether the designated resident is receiving or has refused habilitation coordination, the habilitation coordinator must:

(1) address community living options with the designated resident and LAR by:

(A) offering the educational opportunities and informational activities about community living options that are periodically scheduled by the LIDDA;

(B) providing information about the range of community living services, supports, and alternatives, identifying the services and supports the designated resident will need to live in the community, and identifying and addressing barriers to community living in accordance with HHSC's IDD PASRR Handbook and using HHSC materials at the following times:

(i) six months after the initial presentation of community living options during the PE described in §303.302(a)(2)(B)(i) of this Chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process) and at least every six months thereafter;

(ii) when requested by the designated resident or LAR;

(iii) when the habilitation coordinator is notified or becomes aware that the designated resident, or the LAR on the designated resident's behalf, is interested in speaking with someone about transitioning to the community; and

(iv) when notified by HHSC that the designated resident's response in Section Q of the MDS Assessment indicates the resident is interested in speaking with someone about transitioning to the community; and

(C) arranging visits to community providers and addressing concerns about community living; and

(2) annually assess the designated resident's habilitative service needs by gathering information from the designated resident

and other appropriate sources, such as the LAR, family members, social workers, and service providers, to determine the designated resident's habilitative needs and preferences.

(d) Before the habilitation coordinator conducts the meeting described in subsection (b)(7)(A)(ii) of this section via audio-visual communication, the habilitation coordinator must:

(1) obtain the written informed consent of the designated resident or LAR; or

(2) obtain the designated resident's or LAR's oral consent and document the oral consent in the designated resident's record.

(e) If the habilitation coordinator does not obtain the written or oral consent required by subsection (d) of this section, the habilitation coordinator must document the designated resident's or LAR's refusal in the designated resident's record.

§303.602. *Service Planning Team Responsibilities Related to Specialized Services.*

(a) The SPT for a designated resident must:

(1) meet at least quarterly, as convened by the habilitation coordinator;

(2) ensure that the designated resident, regardless of whether he or she has an LAR, participates in the SPT to the fullest extent possible and receives the support necessary to do so, including communication supports;

(3) develop an HSP for the designated resident;

(4) review and monitor identified risk factors, such as choking, falling, and skin breakdown, and report to the proper authority if they are not addressed;

(5) make timely referrals, service changes, and revisions to the HSP as needed;

(6) considering the designated resident's preferences, monitor to determine if the designated resident is provided opportunities for engaging in integrated activities:

(A) with residents who do not have ID or DD; and

(B) in community settings with people who do not have a disability; and

(7) develop the plan of care for a designated resident who receives IHSS.

(b) Each member of the SPT for a designated resident must:

(1) consistent with the SPT member's role, assist the habilitation coordinator in ensuring the designated resident's needs are being met; and

(2) participate in an SPT meeting in person, via audio-visual communication, or via audio-only communication, except as described in subsection (c)(3) or (e) of this section;

(c) An SPT member who is a provider of a specialized service must:

(1) submit to the habilitation coordinator a copy of all assessments of the designated resident that were completed by the provider or provider agency;

(2) submit a written report describing the designated resident's progress or lack of progress to the habilitation coordinator at least five days before a quarterly SPT meeting; and

(3) participate in an SPT meeting, in person, via audio-visual communication, or via audio-only communication, unless the habilitation coordinator determines participation by the provider is not necessary.

(d) If a habilitation coordinator determines participation by a provider is not necessary as described in subsection (c)(3) of this section, the habilitation coordinator must:

(1) base the determination:

(A) on the information in the written report submitted in accordance with subsection (c)(2) of this section; and

(B) on the needs of the SPT; and

(2) document the reasons for exempting participation.

(e) A habilitation coordinator must facilitate a quarterly SPT meeting in person, or in extenuating circumstances via audio-visual communication.

(f) Before the habilitation coordinator conducts the meeting described in subsection (e) of this section via audio-visual communication, the habilitation coordinator must:

(1) do one of the following:

(A) obtain the written informed consent of the designated resident or LAR; or

(B) obtain the oral consent of the designated resident or LAR and document the oral consent in the designated resident's record; and

(2) document in the designated resident's record a description of the extenuating circumstances which required the use of audio-visual communication.

(g) If the habilitation coordinator does not obtain the written or oral consent required by subsection (f) of this section, the habilitation coordinator must:

(1) document the designated resident's or LAR's refusal in the designated resident's record; and

(2) convene an SPT meeting in person as soon as possible after the extenuating circumstances no longer exist.

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SUBCHAPTER G. TRANSITION PLANNING

26 TAC §303.701, §303.703

STATUTORY AUTHORITY

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HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§303.701. Transition Planning for a Designated Resident.

(a) A LIDDA must assign a service coordinator for a designated resident if the designated resident, or the LAR on the designated resident's behalf, expresses an interest in moving to the community and has selected a community program.

(b) A service coordinator must facilitate the development, revisions, implementation, and monitoring of a transition plan in accordance with HHSC's IDD PASRR Handbook and using HHSC forms. A transition plan must identify the services and supports a designated resident needs to live in the community, including those essential supports that are critical to the designated resident's health and safety.

(c) The SPT for a designated resident must:

(1) meet as convened by the service coordinator;

(2) ensure that the designated resident, regardless of whether he or she has an LAR, participates in the SPT to the fullest extent possible and receives the support necessary to do so, including communication supports; and

(3) conduct transition planning activities and develop a transition plan for the designated resident.

(d) Consistent with an SPT member's role, each SPT member must:

(1) assist the service coordinator in developing, revising, implementing, and monitoring a designated resident's transition plan to ensure a successful transition to the community for the designated resident; and

(2) participate in an SPT meeting in person, via audio-visual communication, or via audio-only communication, except as described in subsection (e) or (g) of this section.

(e) An SPT member who is a provider of a specialized service must participate in an SPT meeting, in person, via audio-visual communication, or via audio-only communication, unless the service coordinator determines participation by the provider is not necessary.

(f) If a service coordinator determines participation by a provider is not necessary as described in subsection (e) of this section, the service coordinator must:

(1) base the determination on the needs of the SPT; and

(2) document the reasons for exempting participation.

(g) At an SPT meeting convened by a service coordinator, the service coordinator must facilitate the SPT meeting in person, or in extenuating circumstances via audio-visual communication.

(h) For a designated resident who is transitioning to the community, a service coordinator must, in accordance with HHSC's IDD PASRR Handbook and using HHSC forms, conduct and document a pre-move site review of the designated resident's proposed residence in the community to determine whether all essential supports in the designated resident's transition plan are in place before the designated resident's transition to the community.

(i) If the SPT makes a recommendation that a designated resident continue to reside in a NF, the SPT must:

- (1) document the reasons for the recommendation; and
 - (2) include in the designated resident's transition plan:
 - (A) the barriers to moving to a more integrated setting; and
 - (B) the steps the SPT will take to address those barriers.
 - (j) Before the service coordinator conducts the meetings described in subsection (g) of this section via audio-visual communication, the service coordinator must:
 - (1) do one of the following:
 - (A) obtain the written informed consent of the designated resident or LAR; or
 - (B) obtain the oral consent of the designated resident or LAR and document the oral consent in the designated resident's record; and
 - (2) document in the designated resident's record a description of the extenuating circumstances which required the use of audio-visual communication.
 - (k) If the service coordinator does not obtain the written or oral consent required by subsection (j) of this section, the service coordinator must:
 - (1) document the designated resident's or LAR's refusal in the designated resident's record; and
 - (2) convene an SPT meeting in person as soon as possible after the extenuating circumstances no longer exist.
- 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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SUBCHAPTER I. MI SPECIALIZED SERVICES

26 TAC §303.901

STATUTORY AUTHORITY

The repeal is authorized by 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, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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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26 TAC §§303.901, 303.905, 303.907, 303.909, 303.910, 303.912, 303.914

STATUTORY AUTHORITY

The amendments are authorized by 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, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§303.901. Description of MI Specialized Services.

(a) An LMHA or LBHA staff must conduct the uniform assessment to determine which level of care the resident with MI will receive.

(b) Some of the MI specialized services for a resident with MI are described in more detail in this subsection.

(1) Skills training and development. Training provided to a resident with MI that:

(A) addresses the severe and persistent MI and symptom-related problems that interfere with the functioning of the resident with MI;

(B) provides opportunities for the resident with MI to acquire and improve skills needed to function as appropriately and independently as possible in the community; and

(C) facilitates community integration for the resident with MI and increases the length of community residency for the resident with MI.

(2) Medication training and support services. Education and guidance provided to a resident with MI and family members about the medications of the resident with MI and their possible side effects as described in §306.315 of this title (relating to Medication Training and Support Services).

(3) Psychosocial rehabilitation services. Social, educational, vocational, behavioral, and cognitive interventions provided by the therapeutic team members of a resident with MI that address deficits in their ability to develop and maintain social relationships, occupational or educational achievement, independent living skills, or housing. Psychosocial rehabilitative services include the following component services:

(A) coordination services;

(B) crisis related services;

(C) employment related services;

(D) housing related services;

(E) independent living services; and

(F) medication related services.

(4) Case management. A primarily site-based service to assist a resident with MI or LAR in gaining and coordinating access to necessary care and services appropriate to the needs of the resident with MI.

(5) Psychiatric diagnostic interview examination. An assessment of a resident with MI that includes relevant past and current medical and psychiatric information and a documented diagnosis by a licensed professional practicing within the scope of his or her license.

§303.905. *Process for Service Initiation.*

(a) The LMHA or LBHA must comply with §303.302 of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process).

(b) At the initial IDT meeting, an LMHA or LBHA staff must:

(1) review the MI specialized services recommended on the PE;

(2) explain the uniform assessment;

(3) ensure the resident with MI, or LAR on behalf of the resident with MI, understands the purpose of the uniform assessment; and

(4) have the resident with MI, or LAR on behalf of the resident with MI, agree or decline to receive the uniform assessment and MI specialized services.

(c) Within 20 business days after the IDT meeting, if the resident with MI or LAR agrees, the LMHA or LBHA must:

(1) complete the uniform assessment;

(2) develop the PCRPs; and

(3) for a resident with MI only, convene a meeting in person, or in extenuating circumstances via audio-visual communication, to discuss the results of the uniform assessment and PCRPs, and to determine the MI specialized services the resident with MI will receive.

(d) Attendees at the meeting convened in accordance with subsection (c)(3) of this section must include:

(1) the QMHP-CS who is familiar with the needs of the resident with MI;

(2) the resident with MI;

(3) the LAR for the resident with MI, if any; and

(4) a NF staff person familiar with the needs of the resident with MI.

(e) At the meeting convened in accordance with subsection (c)(3) of this section, the QMHP-CS must ensure the resident with MI, regardless of whether he or she has an LAR, participates in the meeting to the fullest extent possible and receives the support necessary to do so, including communication supports.

(f) The LMHA or LBHA must provide a copy of the completed uniform assessment and PCRPs to the NF for inclusion in the NF comprehensive care plan for the resident with MI within 10 calendar days after the meeting convened in accordance with subsection (c)(3) of this section.

(g) Before the LMHA or LBHA conducts the meeting described in subsection (c)(3) of this section via audio-visual communication, the LMHA or LBHA must:

(1) do one of the following:

(A) obtain the written informed consent of the resident with MI or LAR; or

(B) obtain oral consent from the resident with MI or LAR and document the oral consent in the record of the resident with MI; and

(2) document in the record of the resident with MI a description of the extenuating circumstances which required the use of audio-visual communication.

(h) If the LMHA or LBHA does not obtain the written or oral consent required by subsection (g) of this section, the LMHA or LBHA must:

(1) document the resident with MI's or LAR's refusal in the record of the resident with MI; and

(2) convene a meeting in person as soon as possible after the extenuating circumstances no longer exist.

§303.907. *Renewal and Revision of Person-Centered Recovery Plan.*

(a) At least quarterly, the QMHP-CS must convene a MI quarterly meeting with the MI specialized services team, in person, or in extenuating circumstances via audio-visual communication, to:

(1) review the PCRPs to determine whether the MI specialized services previously identified remain relevant; and

(2) determine whether the current uniform assessment accurately reflects the need for MI specialized services in the identified frequency for the resident with MI, in the amount, and duration, or if an updated uniform assessment is required.

(b) The MI specialized services team initiates revisions to the PCRPs in response to changes to the needs of the resident with MI.

(1) Any MI specialized services team member may ask the QMHP-CS to convene a meeting at any time to discuss whether the PCRPs for the resident with MI needs to be revised to add a new MI specialized service or change the frequency, amount, or duration of an existing MI specialized service.

(2) The QMHP-CS must convene a meeting within seven calendar days after learning of the need to revise the PCRPs for the resident with MI.

(c) If the MI specialized services team agrees to add a new MI specialized service to the PCRPs or determines an updated uniform assessment is required, a QMHP-CS must, within seven calendar days after the meeting is held, update the uniform assessment and provide it to the MI specialized services team.

(d) The QMHP-CS must:

(1) document revisions on the PCRPs within five calendar days after a team meeting; and

(2) retain the revised PCRPs documentation in the LMHA or LBHA record for the resident with MI.

(e) Within ten calendar days after the PCRPs is updated or renewed, the QMHP-CS must send each member of the MI specialized services team a copy of the revised PCRPs.

(f) If the MI specialized services team determines a new MI specialized service is needed or determines a change in the frequency, amount, or duration of an existing service is needed, the PCRPs must be revised before the LMHA or LBHA delivers a new or updated service.

(g) Before the QMHP-CS conducts the meeting described in subsection (a) of this section via audio-visual communication, the QMHP-CS must:

(1) do one of the following:

(A) obtain the written informed consent of the resident with MI or LAR; or

(B) obtain the oral consent from the resident with MI or LAR and document the oral consent in the record of the resident with MI; and

(2) document in the record of the resident with MI the extenuating circumstances which required the use of audio-visual communication.

(h) If the QMHP-CS does not obtain the written or oral consent required by subsection (g) of this section, the QMHP-CS must:

(1) document the refusal of the resident with MI or LAR in the record of the resident with MI; and

(2) convene an MI specialized services team meeting in person as soon as possible after the extenuating circumstances no longer exist.

§303.909. Refusal of the Uniform Assessment or MI Specialized Services.

(a) When a resident with MI refuses the uniform assessment or MI specialized services, the LMHA or LBHA must:

(1) ask the resident with MI or the LAR to sign the Refusal of PASRR MI Specialized Services form and document on the form if the resident with MI or LAR refuses to sign;

(2) inform the resident with MI that a follow-up visit will be conducted every 30 days for 90 days after the initial IDT meeting;

(3) conduct a follow-up visit every 30 days for 90 days after the initial IDT meeting and make the 90th day follow-up visit the first MI quarterly meeting; and

(4) if the resident with MI or the LAR refuses the uniform assessment or MI specialized services at the first MI quarterly meeting, inform the resident with MI and the LAR that an annual IDT meeting is required and will be conducted, at which time the uniform assessment and MI specialized services will be offered again.

(b) A resident with MI and their LAR, if applicable, may agree to receive the uniform assessment or MI specialized services at any time.

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 J. DISASTER RULE FLEXIBILITIES

26 TAC §303.1000

STATUTORY AUTHORITY

The amendment is authorized by 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, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§303.1000. Flexibilities to Certain Requirements During Declaration of Disaster.

(a) HHSC may allow LIDDAs, LMHAs, and LBHAs to use one or more of the exceptions described in subsection (c) of this section while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. HHSC will notify LIDDAs, LMHAs, and LBHAs when an exception is permitted and the date the exception must no longer be used, which may be before the declaration of a state of disaster expires.

(b) Subject to the notification by HHSC, the following flexibilities may be available to LIDDAs, LMHAs, and LBHAs to the extent the flexibility is permitted by and does not conflict with other laws or obligations of the LIDDAs, LMHAs, and LBHAs and is allowed by federal and state law.

(c) LIDDAs, LMHAs, and LBHAs, for services normally provided in person, may use audio-visual communication or audio-only communication methods to engage with the individual or resident to carry out the requirements in:

(1) §303.302(a)(2)(A)(ii) of this chapter (relating to LIDDA, LMHA, and LBHA Responsibilities Related to the PASRR Process);

(2) §303.601(b)(7) of this chapter (relating to Habilitation Coordination for a Designated Resident);

(3) §303.602(e) of this chapter (relating to Service Planning Team Responsibilities Related to Specialized Services);

(4) §303.701(g) of this chapter (relating to Transition Planning for a Designated Resident);

(5) §303.905(c)(3) of this chapter (relating to Process for Service Initiation); and

(6) §303.907(a) of this chapter (relating to Renewal and Revision of Person-Centered Recovery Plan).

(d) LIDDAs, LMHAs, and LBHAs that use the flexibilities allowed under subsection (c) of this section, must comply with:

(1) all guidance on the application of the rules during the declaration of disaster that is published by HHSC on its website or in another communication format HHSC determines appropriate; and

(2) all policy guidance applicable to the rules identified in subsection (c) of this section issued by HHSC's Medicaid and CHIP Services.

(e) LIDDAs, LMHAs, and LBHAs must ensure any method of contact complies with all applicable requirements related to security and privacy of information.

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
Health and Human Services Commission
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER K. ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS

34 TAC §§9.4251 - 9.4266

The Comptroller of Public Accounts adopts the repeal of §9.4251, concerning definitions; §9.4252, concerning request for arbitration; §9.4253, concerning agent representation in arbitration; §9.4254, concerning appraisal district responsibility for request; §9.4255, concerning comptroller processing of request, online arbitration system, and 45 calendar-day settlement period; §9.4256, concerning comptroller appointment of arbitrators; §9.4257, concerning application for inclusion in comptroller's registry of arbitrators; §9.4258, concerning qualifications for inclusion in the comptroller's registry of arbitrators; §9.4259, concerning arbitrator eligibility for a particular appointment; §9.4260, concerning arbitrator duties; §9.4261, concerning provision of arbitration services; §9.4262, concerning removal of arbitrator from the registry of arbitrators; §9.4263, concerning arbitration determination and award; §9.4264, concerning payment of arbitrator fee, refund of property owner deposit, and correction of appraisal roll; §9.4265, concerning prohibited communications regarding pending arbitration; and §9.4266, concerning forms, without changes to the proposed text as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 10). The rules will not be republished.

The comptroller repeals all sections included in Subchapter K (Arbitration of Appraisal Review Board Determinations). New sections concerning arbitration of appraisal review board determinations will be adopted in a separate rulemaking to add rules concerning limited binding arbitration and to update the current rules concerning regular binding arbitration and the comptroller's registry of arbitrators.

The comptroller did not receive any comments regarding adoption of the repeal.

The repeals are adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The repeals implement Tax Code, Chapter 41A.

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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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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DIVISION 1. GENERAL RULES

34 TAC §§9.4201 - 9.4213

The Comptroller of Public Accounts adopts new §9.4201, concerning scope and construction of rules; computation of time; §9.4202, concerning definitions; §9.4203, concerning prohibited communications regarding pending arbitrations; §9.4204, concerning filing requests for binding arbitration and deposit payments; §9.4205, concerning agent representation in binding arbitration; §9.4206, concerning appraisal district responsibility for processing request; §9.4207, concerning comptroller processing of request; §9.4208, concerning withdrawing a request; §9.4209, concerning refund and arbitrator fee processing; §9.4210, concerning forms; §9.4211, concerning communication with property owner, property owner's agent, ARB, appraisal district, and arbitrator; §9.4212, concerning arbitration proceedings; and §9.4213, concerning substitution of arbitrator assigned to arbitration hearing, with changes to the proposed text as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 11). The rules will be republished.

The new sections will be located in Subchapter K, in new Division 1 (General Rules). The comptroller will repeal all current sections in Subchapter K in a separate rulemaking.

The new sections establish rules concerning limited binding arbitration (LBA) for certain alleged procedural violations during the local protest process under Tax Code, §41A.015, and update current rules concerning regular binding arbitration (RBA) to appeal values determined by local appraisal review boards under Tax Code, §41A.01, and current rules concerning the comptroller's registry of arbitrators.

Section 9.4201 describes the scope and construction of the rules and the computation of time.

Section 9.4202 provides definitions.

Section 9.4203 prohibits parties to an arbitration and arbitrators assigned to an arbitration from seeking the comptroller's advice or direction on a matter relating to a pending arbitration.

Section 9.4204 details the requirements for the filing of requests for binding arbitration and deposit payments using electronic filing or paper-based filing, and the requirements for refund recipients.

Section 9.4205 addresses the qualifications, certifications, responsibilities, and appointment of an agent authorized to represent a party in a binding arbitration. This section also addresses the duration and verification of an agent's appointment.

Section 9.4206 sets forth the appraisal district's responsibility for processing requests for binding arbitration.

Section 9.4207 addresses the comptroller's responsibility for processing requests for binding arbitration.

Section 9.4208 describes the requirements for withdrawing a request for binding arbitration.

Section 9.4209 explains the process for deposit refunds and the payment of administrative fees and arbitrator fees.

Section 9.4210 lists the forms that are adopted by reference and provides that the comptroller may revise other forms at the comptroller's discretion and may prescribe additional forms for the administration of binding arbitration.

Section 9.4211 sets forth the methods by which the property owner, property owner's agent, appraisal review board, appraisal district, and arbitrator may communicate with one another.

Section 9.4212 addresses the process and requirements for conducting arbitration proceedings.

Section 9.4213 discusses the process of removing an arbitrator assigned to an arbitration hearing and substituting another arbitrator to replace the initial arbitrator.

The comptroller received comments regarding adoption of the amendments from Chase Koska, Selina Boggs, Dr. Loretta L. Higgins, Harris Central Appraisal District (HCAD), Travis Central Appraisal District (Travis CAD), Fort Bend Central Appraisal District (FBCAD), Texas Association of Appraisal Districts (TAAD), and Williamson Central Appraisal District (WCAD).

Mr. Koska comments that the RBA award form, adopted by reference in §9.4210(a)(2), "looks good in style but lacks indication of who (CAD {county appraisal district} or property owner/agent) is closer to the Arbitrator Awarded Value, or a Dollar Difference field as the previous award form had, and therefore doesn't show who the winner is (so to speak)." The comptroller thanks Mr. Koska for submitting this comment and, in response, modifies the RBA award form to indicate whether the award was determined in favor of the property owner or appraisal district.

Ms. Boggs asks whether individuals and companies may submit personal checks under item (2) of the request for RBA form, adopted by reference in §9.4210(a)(1), which refers to a check or money order. In response to this comment, the comptroller states that, prior to the online arbitration system becoming available, deposits for binding arbitration may be made by issuing a personal check. After the online system becomes available, only property owners filing using the paper-based system described in §9.4204(b) may pay using personal checks. However, if the personal check is not honored, the deposit must be paid with a check issued and guaranteed by a banking institution (i.e., a cashier's or teller's check) or money order under §9.4207(c). No change to the rules is necessary.

Ms. Boggs asks how, if agents must file online, an agent pays when a property owner is required to submit a check or money order payable to the comptroller. In response to this comment, the comptroller notes that an individual who is required to file using the online arbitration system must submit payments through the online arbitration system under Tax Code, §41A.03(c). An individual who is required to file using the online arbitration system may not submit personal checks. No changes to the rules are necessary.

Ms. Boggs asks whether the property owner or agent is supposed to submit the request for binding arbitration form and whether it must be submitted online or using a paper form. In response to this comment, the comptroller states that either the property owner or the agent may submit a request for binding arbitration; however, once the online arbitration system

becomes available, the request must be filed using the online arbitration system if the property owner has an agent. Only one request per property may be submitted. No changes to the rules are necessary.

The comptroller thanks Ms. Boggs for submitting these comments.

Dr. Higgins believes that §9.4202(12) concerning the definition of "limited binding arbitration" is "confusing in nature as it implies that the property owner or agent may choose a specific arbitrator to conduct LBA procedures." To accomplish the comptroller's intent, Dr. Higgins suggests that the rule be revised "to state that the comptroller will choose an arbitrator on behalf of the property owner (agent) from qualified arbitrators and that arbitrator shall compel the ARB {appraisal review board} or chief appraiser to take certain actions." In response to this comment, the comptroller revises the language of §9.4202(12) to clarify this definition.

Dr. Higgins asks whether the comptroller has "an estimation on when the online arbitration system," defined in §9.4202(15), "will become available for arbitrators." In response to this comment, the comptroller states that the online arbitration system is currently being developed and that the comptroller's Property Tax Assistance Division (PTAD) will announce when the online arbitration system is available. No changes to the rules are necessary.

Dr. Higgins asks whether arbitrators will be able to see the appointment of agents form, described in §9.4205, online when the online arbitration system becomes available. No changes to the rules are necessary in response to this comment because arbitrators will not be able to see the appointment of agents form online when the online arbitration system becomes available.

The comptroller thanks Dr. Higgins for submitting these comments.

HCAD recommends that, in §9.4212(h)(4), the due date for exchanging hearing evidence be set at 10 days before the hearing date and the due date for exchanging rebuttal evidence be set at three days before the hearing date to "add consistency to the process." The comptroller declines to make changes to the rules in response to this comment because Tax Code, Chapter 41A.08, allows arbitrators to give notice of and conduct hearings as long as they are consistent with Civil Practice and Remedies Code, Chapter 171, Subchapter C, and does not provide a specific time frame in which evidence exchanges must take place.

HCAD recommends that, under §9.4212(h)(4), all evidence be exchanged electronically "unless the property owner requests a paper copy" because "electronic means is more efficient, reduces costs and is in line with the spirit of recent legislation pushing our processes away from paper." The comptroller declines to make changes to the rules in response to this comment because not all property owners have access to email. However, the comptroller revises §9.4212(h)(7) to expand the list of possible options to include the electronic exchange of evidence.

The comptroller thanks HCAD for submitting these comments.

Travis CAD requests "that the time frame for CAD response be extended" in §9.4206 because, based on "the increased arbitration volume, a longer response time would assist CADs in providing the necessary information." The comptroller declines to make changes to the rules in response to this comment because Tax Code, §41A.05(a) requires appraisal districts to respond within 10 days.

Travis CAD requests that the online arbitration system, defined in §9.4202(15), "allow for mass download of information so that the CAD can avoid data entry into our CAMA system," which "would cut down on processing time for the CAD." The comptroller declines to make changes to the rules in response to this comment because downloadable reports will eventually be available on the online arbitration system.

The comptroller thanks Travis CAD for submitting these comments.

FBCAD recommends amending §9.4202(6) to define an ARB order "as a written determination issued under Tax Code §41.47" because a "written decision by an ARB can include more than just an Order." In response to this comment, the comptroller revises §9.4202(6) to define an ARB order as an "ARB's written decision issued under Tax Code, §41.47."

FBCAD recommends narrowing the definition of "limited binding arbitration" in §9.4202(12) "by specifying that an LBA is to compel certain procedural actions pursuant to Tax Code, §41A.015." In response to this comment, the comptroller revises §9.4202(12) by adding the word "procedural."

FBCAD recommends providing a definition of "settlement period" in §9.4202 "as described in §9.4242(a)." The comptroller declines to make changes to the definition of "settlement period"; however, the comptroller rewords each mention of "settlement period" to "45-day settlement period" in §9.4242(b) and §9.4243(a), which will be submitted in a separate rulemaking.

FBCAD recommends not allowing an exception to the prohibition on communications regarding pending arbitrations under §9.4203(c) because by allowing an exception to the prohibition on communications for the curing of defects in submitted requests for binding arbitration, the comptroller risks providing substantive legal advice to only one party in an adversarial proceeding by advising property owners on perfecting their appeals through binding arbitration. FBCAD states that other than providing notice of a defect, "the comptroller should not communicate regarding the curing of a defect in a request for binding arbitration." The comptroller declines to make changes to the rules in response to this comment because the exception is necessary for PTAD to communicate with property owners in order to accept deposits. This exception gives effect to the legislative directive that property owners be given an opportunity to cure. All jurisdictional issues will be determined by the arbitrator. PTAD will not provide substantive legal advice.

FBCAD recommends requiring the appointment of agent for binding arbitration under §9.4205(b) "to be filed with the comptroller contemporaneous with the filing of the RBA." The comptroller declines to make changes to the rules in response to this comment because the online arbitration system will not be able to collect the appointment of agent for binding arbitration forms.

FBCAD recommends making the appointment of agent for arbitration "available for viewing by the appraisal district" on the online arbitration system or "providing it to the appraisal district with the notice of filing of an RBA" under §9.4206(a)(2). If it is not provided to the appraisal district, "appraisal districts will have to request a copy to verify the authority of an agent during the appraisal district's 10-day processing period under Tax Code §41A.05(a)" and §9.4206(a)(2). This would cause "unnecessary delays on appraisal districts' processing requirements." The comptroller declines to make changes to the rules in response to this comment because the online arbitration system

will not be able to collect the appointment of agent for binding arbitration forms. The appraisal district will not be required to determine whether the agent has authority to represent the property owner; the question of whether proper authority exists will fall to the arbitrator.

FBCAD recommends clarifying that the 10-day period in §9.4206(a)(2) "begins with the receipt by the appraisal district of notice from the comptroller that a request for binding arbitration has been filed," as opposed to "10 days from the comptroller's receipt of the request for binding arbitration." In response to this comment, the comptroller revises §9.4206(a)(2) to clarify that the 10-day period in that section begins with the receipt by the appraisal district of notice from the comptroller that a request for binding arbitration has been filed.

FBCAD recommends changing the language in §9.4206(a)(2)(C) "to include more than one representative for an appraisal district in a hearing." FBCAD points out that Tax Code §41A.08(b) "does not require a single, statutorily authorized person to be designated per arbitration hearing." The comptroller declines to make changes to the rules in response to this comment because nothing in the rules prevents more than one appraisal district employee from attending a hearing. The online arbitration system will allow multiple appraisal district representatives to have access to cases in the online arbitration system.

FBCAD recommends that if the comptroller requires a contact person at the appraisal district, they require that one be designated. In response to this comment, the comptroller changes "representative" to "contact" in §9.4206(a)(2)(C) and (D). The appraisal district will be required to designate a contact, but not the representative for the arbitration hearing, in the online arbitration system. The appraisal district will be required to designate the appraisal district's representative for the arbitration hearing to the arbitrator.

FBCAD recommends requiring the appraisal district "to provide only contact information for the chair of the ARB or legal counsel to the ARB pursuant to Tax Code, §6.43" under §9.4206(a)(2)(D). For purposes of an LBA, "the appraisal district should not be responsible for determining and providing contact information for the ARB." Under Tax Code, §41A.015(h), the ARB and the chief appraiser are separate parties to an LBA. In response to this comment and the previous comment, the comptroller revises §9.4206(a)(2)(D) to require an appraisal district to only enter information for an ARB contact.

FBCAD recommends the comptroller "remove the 15-day period to cure an insufficient or dishonored payment" under §9.4207(c) and "require property owners provide the statutory deposit not later than the 60th day after notice of issuance of an ARB order is received by the property owner." The comptroller declines to make changes to the rules in response to this comment because PTAD interprets Tax Code, §41A.05(d) to allow a cure for a deposit defect.

FBCAD recommends removing "payment" as an element that may be cured in §9.4207(e). FBCAD states that although Tax Code §41A.05(d) provides that an applicant may cure a defect without regard to the deadline for filing under Tax Code §41A.03(a), the defect that may be cured under Tax Code, §41A.05(d) is a defect in the application, not an insufficient deposit. FBCAD also states that there must first be jurisdiction before a defect can be determined or cured and no jurisdiction has been established if a deposit is insufficient. The comptroller

declines to make changes to the rules in response to this comment because PTAD interprets Tax Code, §41A.05(d) to allow a cure for a deposit defect.

FBCAD recommends "deleting the phrase 'open to the public or to the arbitrator' in §9.4212(e) and substituting language that would require an office-like setting designed or intended for professional meetings and conducive to hearings." FBCAD is concerned that "a location generally open to the public or arbitrator could be interpreted to include coffee shops and restaurants among other places open to the public." The comptroller declines to make changes to the rules in response to this comment because the current rule already requires a hearing be conducted "in an office-like setting."

FBCAD recommends "deleting the phrase, 'by telephone' in §9.4212(f) and requiring the contact be in writing." The comptroller declines to make changes to the rules in response to this comment because not all property owners have access to email.

FBCAD recommends "the confidentiality provisions of Government Code, §552.149 be included as applicable to the arbitrator" in §9.4212(n). In response to this comment, the comptroller changes the rule to reference all applicable confidentiality laws and makes a conforming change for consistency with §9.4213(f) and §9.4265(g).

FBCAD requests that the processing time in §9.4212(p) "be reduced from 120 days to 90 days" because the 120-day time period "will push arbitration hearings into the next tax year's noticing of appraised value and protests." The comptroller declines to make changes to the rules in response to this comment because most arbitrators complete hearings and issue determinations within the 120-day time period and delays are often due to requests for postponement.

FBCAD requests that, if a substitute arbitrator is appointed after an arbitration hearing but prior to the award under §9.4213(b), "a new hearing be required unless the parties agree otherwise." In response to this comment, the comptroller revises §9.4213(b) to require the substitute arbitrator appointed under this subsection to comply with Subchapter K in facilitating and completing a new hearing.

FBCAD recommends "the confidentiality provisions of Government Code §552.149 be included as applicable to the information" provided in §9.4213(f). The comptroller changes the rule to reference all applicable confidentiality laws.

The comptroller thanks FBCAD for submitting these comments.

TAAD requests notice be "provided to appraisal districts when a request for Limited Binding Arbitration is filed with the Comptroller." The comptroller declines to make changes to the rules in response to this comment because the online arbitration system will notify appraisal districts when a request for LBA is filed.

TAAD requests that language be added in the rules, deeming an agreement reached by the parties after a request for LBA has been filed but before a hearing has been held, a withdrawal of the request for LBA. The comptroller declines to make changes to the rules in response to this comment because §9.4208 already addresses how to make a timely request to withdraw.

TAAD requests "a provision be added in the rules for a refund of fees upon the deemed withdrawal" of the request for LBA. The comptroller declines to make changes to the rules in response to this comment because §9.4208 already addresses how to re-

ceive a refund of the deposit upon the timely withdrawal of the request for LBA.

TAAD asks that a provision be added to the rules requiring the appointment of agent for binding arbitration form to be filed with the comptroller and made available on the online arbitration system. The comptroller declines to make changes to the rules in response to this comment because the online arbitration system will not be able to collect the appointment of agent for binding arbitration forms.

TAAD asks whether §9.4206(a)(2)(C) seeks a contact person at the appraisal district or requires the assignment of the appraisal district representatives for the arbitration hearing. In response to this comment, the comptroller changes "representative" to "contact" in §9.4206(a)(2)(C).

TAAD asks whether §9.4206(a)(2)(D) seeks a contact person at the ARB or the ARB's representatives for the LBA hearing. In response to this comment, the comptroller changes "representative" to "contact" in §9.4206(a)(2)(D).

TAAD asks for a timeframe to be added to the rules relating to the comptroller's review of information submitted to cure a defect. The comptroller declines to make changes to the rules in response to this comment because there is not a statutory deadline for this process and PTAD is unable to predict how many requests will need to be cured.

The comptroller thanks TAAD for submitting these comments.

WCAD recommends clarifying or removing the words "or the first day the comptroller makes the online arbitration system available" from §9.4206 because it is confusing since it appears to apply to a time period prior to January 1, 2024, which has already passed. The comptroller declines to make changes to the rules in response to this comment because the online arbitration system is not yet available.

WCAD comments that §9.4212(h)(7) "makes it very difficult for both parties to exchange evidence when an arbitrator insists on very short deadlines" and does "not allow email for evidence exchange," which can make the exchange of evidence very expensive. The comptroller declines to change the rules to require set deadlines or require email evidence exchange because Tax Code, Chapter 41A.08, allows arbitrators to conduct hearings as long as they are consistent with Civil Practice and Remedies Code, Chapter 171, Subchapter C, and does not provide a specific time frame in which evidence exchanges must take place. Additionally, not all property owners have access to email. However, the comptroller revises §9.4212(h)(7) to expand the list of possible options to include the electronic exchange of evidence.

Regarding the Request for RBA Form, adopted by reference in §9.4210(a)(2), WCAD recommends removing the border between the two sections of the form if the mailing address is for the contact person; otherwise, owner or organization information may be filled in. The comptroller declines to make changes to the form because the mailing address is for the request and not for the contact person.

The comptroller thanks WCAD for submitting these comments.

The new sections are adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4201. *Scope and Construction of Rules; Computation of Time.*

(a) Scope of rules. The rules in this subchapter shall govern:

(1) the procedures concerning regular binding arbitration to appeal values determined by local appraisal review boards under Tax Code, §41A.01;

(2) the procedures concerning limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015; and

(3) the comptroller's registry of arbitrators.

(b) Construction of rules. Unless otherwise provided, this subchapter shall be construed in accordance with the Code Construction Act, Government Code, Chapter 311.

(c) Computation of time. Computation of time shall be consistent with the Code Construction Act, Government Code, §311.014, and Tax Code, §1.06.

§9.4202. *Definitions.*

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

(1) Agent--An individual, authorized under Tax Code, §41A.08(b) or §41A.015(h), and §9.4205 of this title, as applicable, to represent a party in arbitration.

(2) Appraisal district--A political subdivision established in each county responsible for appraising property in the county for ad valorem tax purposes for each taxing unit that imposes such taxes on property in the county.

(3) Appraisal review board (ARB)--The board established in a county's appraisal district pursuant to Tax Code, §6.41, authorized to hear and resolve disputes between property owners and the appraisal district.

(4) Appraised value--The value of property determined under the appraisal methods and requirements of Tax Code, Chapter 23.

(5) Arbitration--A form of conflict resolution in which all parties agree that an arbitrator will consider the evidence and render a binding decision. This term includes the two types of arbitration governed by this subchapter: regular binding arbitration and limited binding arbitration. The terms "arbitration," "binding arbitration," and "arbitration proceeding" are synonymous as used in this subchapter and include the term "arbitration hearing," the specific event at which evidence is presented to an arbitrator.

(6) ARB order--An ARB's written decision issued under Tax Code, §41.47.

(7) Authorized individual--An individual with the legal authority to act on behalf of the property owner, a legal guardian, or one who holds a valid power of attorney. Where the property owner is a business entity, this term includes the designated employee of that entity. This term does not include an individual appointed as an agent for binding arbitration under §9.4205 of this title or under Tax Code, §1.111.

(8) Chief Appraiser--The chief administrator of the appraisal district.

(9) Comptroller--The Texas Comptroller of Public Accounts and employees and designees of the comptroller.

(10) Division director--The director of the Property Tax Assistance Division of the Texas Comptroller of Public Accounts or the division director's designee.

(11) Individual--A single human being.

(12) Limited Binding Arbitration (LBA)--A process that allows a property owner through binding arbitration to request that an arbitrator compel the ARB or the chief appraiser to take certain procedural actions under Tax Code, §41A.015.

(13) LBA award--A final decision rendered by an arbitrator resolving the matter submitted for their consideration in an LBA case.

(14) Market value--Has the meaning assigned by Tax Code, §1.04(7).

(15) Online arbitration system--A web-based software application designed to electronically administer the binding arbitration program consistent with this subchapter.

(16) Party--The property owner, property owner's agent, ARB, or appraisal district.

(17) Property owner--The authorized individual or a person having legal title to property. The term does not include lessees who have the right to protest property valuations before ARBs.

(18) Regular Binding Arbitration (RBA)--A process under Tax Code, §41A.01, that allows a property owner to contest an ARB order determining a protest through binding arbitration.

(19) RBA award--A final decision rendered by an arbitrator resolving the matter submitted for their consideration in an RBA case.

§9.4203. *Prohibited Communications Regarding Pending Arbitrations.*

(a) Prohibited communications. Parties to an arbitration and arbitrators assigned to an arbitration shall not seek the comptroller's advice or direction on a matter relating to a pending arbitration under Tax Code, Chapter 41A.

(b) Pending arbitration. An arbitration is pending from the date a request for binding arbitration is filed until the date of delivery of the LBA or RBA award pursuant to Tax Code, §41A.09.

(c) Exception. The prohibition in subsection (a) of this section shall not apply to the comptroller's processing and curing of requests for binding arbitration and deposits or other administrative matters.

§9.4204. *Filing Requests for Binding Arbitration and Deposit Payments.*

(a) Electronic filing.

(1) This subsection applies to requests for binding arbitration filed on or after the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available for the administration of the binding arbitration program. Requests for binding arbitration filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available, must use paper-based filing under subsection (b) of this section.

(2) Arbitrators, appraisal districts, ARBs, agents, and property owners who are working with an agent are required to register with the online arbitration system and use the online arbitration system to complete required forms referenced in this subchapter, pay required arbitration deposits online, and receive notifications by email under this subchapter.

(3) A property owner who does not appoint an agent may:

(A) register with the online arbitration system and use the online arbitration system to complete required forms referenced in this subchapter, pay required arbitration deposits online, and receive notifications by email under this subchapter; or

(B) use the paper-based filing method described in subsection (b) of this section.

(4) Use of an email address or other information to access the online arbitration system is a voluntary disclosure constituting consent to the collection and disclosure of the information for the purposes for which it was requested. This information may be subject to disclosure under the Texas Public Information Act.

(b) Paper-based filing. The following parties must mail the applicable request form pursuant to the instructions provided on the form and include a check or money order for the required arbitration deposit payable to the comptroller:

(1) a property owner or property owner's agent, if the request for binding arbitration is filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available; and

(2) a property owner who does not appoint an agent and who chooses not to use the online arbitration system.

(c) Deposit payments. A request for binding arbitration is not officially submitted until the required deposit is paid. If the request is filed using electronic filing under subsection (a) of this section, the deposit must be paid through the online arbitration system. If the request is filed using paper-based filing under subsection (b) of this section, the deposit must be paid by including a check or money order with the request for binding arbitration form.

(d) Requirements for refund recipient.

(1) Except as provided in paragraphs (2) and (3) of this subsection, the property owner shall designate the refund recipient on the request for binding arbitration.

(2) If the property owner appoints an agent under §9.4205 of this title, the agent may designate the refund recipient on the request for binding arbitration by designating the refund recipient that the property owner designated in the appointment of agent for binding arbitration form.

(3) The refund recipient's name, mailing address, phone number, and one of the following Internal Revenue Service identification numbers for the refund recipient, must be provided on the request for binding arbitration:

(A) Social Security Number (SSN);

(B) Individual Taxpayer Identification Number (ITIN) issued by the Internal Revenue Service to individuals not eligible to obtain an SSN; or

(C) Federal Employer Identification Number (FEIN).

(4) To protect the confidentiality of the refund recipient's identification number, the comptroller shall assign a Texas Identification Number (TIN) to serve as the payee account number on any warrants issued by the comptroller.

§9.4205. Agent Representation in Binding Arbitration.

(a) Professional qualifications. Property owners may represent themselves or choose to be represented by an agent. An agent must hold a current and active license, certification, or registration in one of the following fields:

(1) an attorney licensed to practice in Texas;

(2) a real estate broker or sales agent licensed under Occupations Code, Chapter 1101;

(3) a real estate appraiser licensed under Occupations Code, Chapter 1103;

(4) a property tax consultant registered under Occupations Code, Chapter 1152; or

(5) a certified public accountant licensed under Occupations Code, Chapter 901.

(b) Required documentation.

(1) The property owner must complete and sign the appointment of agent for binding arbitration form. No other agent appointment, authorization form, or document will be accepted.

(2) Neither the individual being appointed as an agent under this subsection, nor an agent appointed under Tax Code, §1.111, may sign the form described in paragraph (1) of this subsection on behalf of the property owner.

(3) For requests for binding arbitration filed with the comptroller on or after January 1, 2024, the agent shall retain the form and shall produce the form immediately upon request from the property owner, appraisal district, ARB, arbitrator assigned to the arbitration, or comptroller under Tax Code, §41A.08(d).

(4) Failure of the agent to produce the form immediately upon request as required by Tax Code, §41A.08(d), or production of an invalid form, shall result in dismissal of the request for binding arbitration and may result in loss of the arbitration deposit.

(c) Agent responsibilities. Authorized agents may take the following actions in an arbitration on a property owner's behalf:

(1) file online requests for binding arbitration and pay the required arbitration deposit through the online arbitration system;

(2) receive a potential refund of an arbitration deposit, if the agent is designated as a refund recipient under §9.4204(d) of this title;

(3) send and receive communications regarding the arbitration;

(4) negotiate with the appraisal district to try to settle the case before the arbitration hearing;

(5) execute a settlement agreement with the appraisal district to resolve the case;

(6) withdraw a request for binding arbitration; and

(7) appear and represent the property owner at the arbitration hearing.

(d) Designation of specific individual.

(1) The property owner must identify on the appointment of agent for binding arbitration form a specific individual to act as an agent and provide the agent's license number for the specific type of license, certification, or registration that qualifies the individual to act as an agent under subsection (a) of this section.

(2) The property owner may also appoint an alternate agent on the appointment of agent for binding arbitration form. Unless the alternate agent is with the same organization as the first agent, the alternate agent shall not be authorized to act on a property owner's behalf unless the alternate agent provides written notice to the appraisal district and the appointed arbitrator that the first agent is not available. For LBA, a copy of the notice must also be provided to the ARB.

(3) A company or business entity does not qualify to act as an agent.

(e) Agent representation at arbitration hearing. Only the individual(s) identified on the appointment of agent for binding arbitration form may undertake representation of the property owner in the arbitration hearing.

tration for which the request for binding arbitration was submitted. No other individual, including a licensed attorney, may act on the property owner's behalf in that proceeding unless another subsequently executed appointment of agent for binding arbitration form is completed and signed.

(f) Agents for non-individual property owners. The property owner's name, current mailing address, phone number, and email address, if available, must be provided on the appointment of agent for binding arbitration form. If the property owner is not an individual, an authorized individual shall complete and sign the form on behalf of the property owner. The authorized individual's name and contact information must be provided on the form, as well as the basis for the authorized individual's authority.

(g) Duration of agent appointment. The appointment of agent for binding arbitration form is valid for three years from the date of execution, unless revoked. The property owner may revoke the appointment of an agent or alternate agent at any time by delivery of written notice to the agent, and all alternate agents, if any are appointed, to the address provided on the form or the agent's last known address. A copy of the revocation notice must also be provided to the comptroller, appraisal district, and the arbitrator assigned to the case, if an arbitrator is assigned. For LBA, a copy of the revocation notice must also be provided to the ARB.

(h) Agent certifications. In undertaking representation of the property owner pursuant to Tax Code, §41A.08(b), each agent must certify that:

(1) they are acting as a fiduciary on behalf of the property owner in the specific arbitration proceeding for which the request for binding arbitration was filed and agree to undertake the responsibilities specified in subsection (c) of this section; and

(2) the property owner knowingly authorized the agent's filing of the request for binding arbitration and the agent's representation of the property owner in the arbitration.

§9.4206. Appraisal District Responsibility for Processing Request.

(a) Appraisal district responsibilities.

(1) If a request for RBA is filed before the later of January 1, 2024, or the first day the comptroller makes the online arbitration system available, within 10 calendar days of receipt of each request for binding arbitration under Tax Code, §41A, the appraisal district shall:

(A) assign a unique arbitration number to each request for RBA;

(B) complete and sign that portion of the request for RBA form applicable to the appraisal district, based on examination of the documentation submitted;

(C) deliver each request for RBA form, the accompanying deposit, the ARB order (as well as the appointment of agent for binding arbitration form, if provided), and supporting documentation for any items not checked in the appraisal district portion of the request for RBA form, if applicable, to the comptroller's office by certified first-class mail, and simultaneously deliver a copy of the submission to the property owner or property owner's agent, as appropriate, by regular first-class mail or email; and

(D) provide promptly any additional information the comptroller's office requests to process the request for binding arbitration submission.

(2) If a request for RBA or LBA is filed on or after the later of January 1, 2024, or the first day the comptroller makes the online system available, within 10 calendar days of notification by the

comptroller of each request for binding arbitration under Tax Code, §41A, the appraisal district shall, using the online arbitration system:

(A) review each request for binding arbitration;

(B) verify property account details;

(C) assign an appraisal district contact for the arbitration hearing;

(D) enter the contact information for an ARB contact for LBA cases;

(E) indicate any potential defects, including any discrepancies or jurisdictional issues, that affect the deposit amount or the eligibility of a property to be included on the request for binding arbitration; and

(F) upload supporting documentation for any potential defects, including any discrepancies or jurisdictional issues, identified in the review process.

(b) Comptroller's request for additional information. The appraisal district shall provide to the comptroller any additional information the comptroller requests to process the request for binding arbitration within 15 calendar days of the comptroller's request.

(c) Notification if new ARB hearing is mandated. Where an LBA award mandates a new ARB hearing associated with a pending request for RBA, the appraisal district shall promptly notify the comptroller.

§9.4207. Comptroller Processing of Request.

(a) No defects identified. If no defects are identified by the comptroller or by the appraisal district under §9.4206(a)(2)(E) of this title, the comptroller shall notify the appraisal district and the property owner or the property owner's agent that the request for binding arbitration has been processed and provide the arbitration number assigned by the comptroller. For LBA, a copy of the notice must also be provided to the ARB.

(b) Defects identified. If the appraisal district or the comptroller identifies defects on the request for binding arbitration that affect the deposit or property eligibility, the comptroller shall review the request to determine whether it can be processed or requires a cure under subsection (d) of this section.

(c) Deposit not honored or insufficient. If a property owner using paper-based filing under §9.4204(b) of this title pays the deposit with a check that is not honored, the property owner shall submit to the comptroller a check issued and guaranteed by a banking institution (i.e., a cashier's or teller's check) or money order. If a property owner using paper-based filing under §9.4204(b) of this title pays the deposit with a check or money order that is for less than the required deposit amount under §9.4221 or §9.4241 of this title, the property owner shall submit to the comptroller a supplemental check or money order sufficient to pay the full deposit. If a property owner or the property owner's agent using the online arbitration system pays the deposit with a credit card or electronic funds transfer (eCheck) that is not honored, the property owner or the property owner's agent shall submit another electronic payment to the comptroller. Such payments must be received no later than 15 calendar days after the notice of the defect is delivered under subsection (d) of this section.

(d) Cure period. If a request for binding arbitration is defective, the comptroller shall notify the property owner or the property owner's agent of the defect, the process to file a cure for the defect, and the date the cure is due. Mailed notices are deemed delivered when deposited in the mail. If notified by email or on the online arbitration

system, the notification is deemed delivered on the date the comptroller transmits the email or notice.

(e) Cure resolution. If the property owner or the property owner's agent provides documentation, payment, or information that cures the defect within 15 calendar days of the comptroller's notice, the comptroller shall process the request for binding arbitration and notify the appraisal district and property owner or the property owner's agent. For LBA, a copy of the notice must also be provided to the ARB.

(f) Failure to cure. If the property owner or the property owner's agent fails to cure any defect that the comptroller determines to be curable within 15 calendar days of the comptroller's notice, the request for binding arbitration shall not be processed any further and shall be closed, the comptroller shall notify the parties of the comptroller's action, and the comptroller shall refund the deposit pursuant to §9.4209 of this title.

(g) Processing is not certification of requirements. The comptroller's processing of a request does not certify that the request meets all statutory requirements and requests may still be dismissed by an arbitrator for lack of jurisdiction.

(h) Dispute. If there is a dispute regarding whether there is jurisdiction for an arbitration under §9.4223 or §9.4244 of this title, the request for binding arbitration shall be forwarded to the arbitrator and the arbitrator shall render a determination on jurisdiction. Arbitrators shall determine whether a request meets all statutory criteria and shall dismiss the request if it satisfies the criteria for dismissal under §9.4223 or §9.4244 of this title. Dismissal of the request may result in the loss of the requestor's deposit.

§9.4208. *Withdrawing a Request.*

(a) Notice of withdrawal. A property owner or the property owner's agent using the online arbitration system under §9.4204(a) of this title must withdraw a request for binding arbitration using the online arbitration system. A property owner or the property owner's agent using paper-based filing under §9.4204(b) of this title must deliver a written notice of the withdrawal to all parties and the comptroller.

(b) Timely withdrawal. If the comptroller receives the notice of withdrawal before an arbitrator accepts the case, the notice is considered timely, and the deposit will be refunded pursuant to §9.4209 of this title.

(c) Untimely withdrawal. If the comptroller receives the notice of withdrawal after an arbitrator accepts the case, the notice is considered untimely and the arbitrator is entitled to charge a fee, up to the amount allowed in §9.4226 or §9.4247 of this title, as applicable, out of the deposit.

§9.4209. *Refund and Arbitrator Fee Processing.*

(a) Administrative costs. The comptroller shall retain \$50 of every arbitration deposit to cover the comptroller's administrative costs.

(b) Refund recipients. Any deposit refunds will be issued to the refund recipient designated on the request for binding arbitration.

(c) Refund amounts.

(1) A deposit refund shall be issued to the property owner or property owner's agent in the amount of the deposit less the \$50 comptroller administrative fee if:

(A) the request for binding arbitration is closed due to a defect that could not be cured or due to a defect that was not cured;

(B) the request for binding arbitration is timely withdrawn;

(C) the arbitration is dismissed in its entirety due to delinquent property taxes;

(D) the LBA award found a procedural violation in accordance with §9.4226 of this title; or

(E) the RBA award is in favor of the property owner in accordance with §9.4247(b) of this title.

(2) A deposit refund, if any, shall be issued in the amount of the deposit less the arbitrator's fee and the \$50 comptroller administrative fee if:

(A) the request for binding arbitration is not timely withdrawn;

(B) the arbitration is dismissed in its entirety for lack of jurisdiction under §9.4223(a)(2)-(9) or §9.4244(a)(2)-(8) of this title;

(C) the LBA award did not find a procedural violation in accordance with §9.4226 of this title; or

(D) the RBA award is not in favor of the property owner in accordance with §9.4247(b) of this title.

§9.4210. *Forms.*

(a) Adoption by reference. The comptroller adopts by reference:

(1) the request for RBA form; and

(2) the RBA award form.

(b) Revision and addition of forms. Except as provided by subsection (a) of this section, all comptroller forms regarding binding arbitration under Tax Code, Chapter 41A, may be revised at the discretion of the comptroller. The comptroller may also prescribe additional forms for the administration of binding arbitration.

§9.4211. *Communication with Property Owner, Property Owner's Agent, ARB, Appraisal District, and Arbitrator.*

Except as otherwise provided in Tax Code, §41A.015(b)(1) or §41A.015(i), these rules, or other law, as applicable, the property owner, property owner's agent, ARB, appraisal district, and arbitrator, as applicable, may provide written communications, notifications, and materials to each other using email, first-class mail, or any other method acceptable to the intended recipient of the communication, notification, or materials. Any written communications, notifications, and materials provided to the arbitrator shall also be provided to all other parties to the arbitration.

§9.4212. *Arbitration Proceedings.*

(a) Necessary Parties. Necessary parties to LBA under Tax Code, §41A.015, include the property owner or the property owner's agent, the chief appraiser, and the ARB. Necessary parties to RBA under Tax Code, §41A.01, include the property owner or the property owner's agent and the appraisal district.

(b) Requirements. An arbitrator who accepts an appointment shall conduct each arbitration proceeding pursuant to the terms of Tax Code, Chapter 41A, and this subchapter, and for a fee that is not more than the applicable amount stated in Tax Code, §41A.015(p)(2) or §41A.06(b)(4), as applicable.

(c) Arbitrator professionalism. The arbitrator shall determine the level of formality or informality of arbitration proceedings; however, the arbitrator must behave professionally while rendering arbitration services. The arbitrator shall not engage in conduct that creates a conflict of interest.

(d) Arbitration hearing types. Arbitrations may be conducted in person or by telephone or video conference call. The arbitrator may

decide the manner of the arbitration hearing unless the property owner or the property owner's agent selects a specific format on the request for binding arbitration.

(e) In-person arbitration hearing requirements. Unless all necessary parties agree otherwise, if the arbitration is conducted in person, the arbitrator and all necessary parties shall appear in person for the arbitration hearing. If the arbitration is in person, the arbitration hearing must be held in the county where the subject property is located, unless all necessary parties agree to another location. The selected location must be in an office-like setting generally open to the public or to the arbitrator. The arbitrator is responsible for identifying and reserving the arbitration hearing location and is responsible for any location costs incurred. Neither the property owner, the appraisal district, nor the ARB, may be charged an additional fee or requested to provide additional monies to participate in an in-person arbitration.

(f) Arbitrator initiation of arbitration hearing. Promptly upon acceptance of an appointment, the arbitrator shall contact all necessary parties by telephone or email to notify the parties of the arbitrator's appointment, propose one or more dates for the arbitration hearing, and request alternate arbitration hearing dates from the parties if the date(s) proposed is not acceptable. The arbitrator should cooperate with all necessary parties in scheduling the arbitration hearing.

(g) Notice of arbitration hearing. The arbitrator shall set the arbitration hearing date and serve written notice of the arbitration hearing under subsection (h) of this section as follows:

(1) where the arbitrator received written agreement from all necessary parties on an arbitration hearing date, the arbitrator shall serve the written notice of arbitration hearing to all necessary parties in the method acceptable to each party; or

(2) where written agreement from all necessary parties is not obtained after 14 calendar days of the arbitrator's initial contact attempt under subsection (f) of this section, the arbitrator shall set the arbitration hearing date, providing a minimum of 21 calendar days' notice before the arbitration hearing, and shall serve the notice of arbitration hearing by:

(A) serving a copy of the notice to all necessary parties by email, if available; and

(B) providing a paper copy of the notice to the property owner through the U.S. Postal Service or a private third-party service such as FedEx or United Parcel Service (UPS) as long as proof of delivery is provided.

(h) Contents of arbitration hearing notice. The arbitrator shall include the following information in the written notice of arbitration hearing:

(1) the arbitration number;

(2) the date and time of the arbitration hearing;

(3) the physical address of the arbitration hearing location if the arbitration hearing is in person, or instructions concerning how to participate in the arbitration hearing if the hearing is by telephone or video conference call;

(4) the date by which the parties must exchange evidence before the arbitration hearing;

(5) the arbitrator's contact information, including email address, phone number, and mailing address, as well as a fax number, if available;

(6) a copy of the arbitrator's written procedures for the arbitration hearing;

(7) the methods by which the parties are to communicate and exchange materials, including by electronic means, U.S. first-class mail, or overnight or personal delivery; and

(8) any other matter about which the arbitrator wishes to advise the parties before the arbitration hearing.

(i) Continuance. The arbitrator may continue an arbitration hearing:

(1) for reasonable cause; or

(2) if all necessary parties agree to the continuance.

(j) Failure to appear and waiver of defective notice. The arbitrator may hear and determine the controversy on the evidence produced at the arbitration hearing as long as notice was provided pursuant to subsection (g) of this section. Appearance at the arbitration hearing waives any defect in the notice.

(k) Evidence. Each party at the arbitration hearing is entitled to be heard, present evidence material to the controversy, and cross-examine witnesses. The arbitrator shall ask each witness testifying to swear or affirm that the testimony they are about to give shall be the truth, the whole truth, and nothing but the truth. The arbitrator's decision is required to be based solely on the evidence provided at the arbitration hearing.

(l) Availability of arbitration hearing procedures. The arbitrator shall have a written copy of the arbitrator's hearing procedures available at the arbitration hearing.

(m) Recording proceedings. The parties shall be allowed to record audio of the proceedings. Video recordings require the consent of the arbitrator.

(n) Confidentiality. Information provided to an arbitrator that is made confidential by law may not be disclosed except as provided by law. That portion of the materials considered confidential must be designated as such to protect it from disclosure.

(o) Ex parte communications. The arbitrator shall not initiate, permit, or consider an ex parte communication made to the arbitrator by a party outside the presence of the other parties at any time before the LBA or RBA award is issued, concerning specific evidence, argument, facts, or the merits of the arbitration. Such ex parte communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(p) Processing time. The arbitrator must complete an arbitration proceeding in a timely manner and must make every effort to complete the proceeding within 120 calendar days after the arbitrator's acceptance of the appointment. Failure to timely complete arbitration proceedings may constitute good cause for removal from the comptroller's registry of arbitrators.

§9.4213. *Substitution of Arbitrator Assigned to Arbitration Hearing.*

(a) Substitution prior to arbitration hearing. The comptroller shall remove an arbitrator from an arbitration and substitute a different arbitrator prior to the arbitration hearing taking place if the division director determines by clear and convincing evidence there is good cause for such removal.

(b) Substitution prior to award. After an arbitration hearing is held and prior to issuance of the award, an arbitrator may be removed from an arbitration and a substitute arbitrator appointed where a disaster or emergency, as defined by Government Code, §418.004 or §433.001, impacts the arbitrator's ability to complete the arbitration in compliance with this subchapter. Substitution may also take place if, as determined by the division director in the exercise of the division director's discretion, the arbitrator experiences a personal emergency,

rendering them incapable of completing the arbitration in compliance with this subchapter. The substitute arbitrator appointed under this subsection shall comply with Subchapter K of this chapter in facilitating and completing a new hearing.

(c) Good cause for substitution. Good cause for substitution under subsection (a) of this section includes the following:

(1) the individual is not eligible or becomes ineligible under the terms of §9.4260 or §9.4263 of this title, as applicable;

(2) the individual violates one or more provisions of this subchapter;

(3) there is a pending request for the arbitrator's removal from the registry of arbitrators and the division director, in the exercise of the division director's discretion, believes the request could impact the arbitrator's ability to conduct a fair and impartial arbitration hearing; or

(4) the division director determines, in the exercise of the division director's discretion, that substitution is in the interests of providing for a fair, impartial arbitration hearing.

(d) Clear and convincing evidence. For purposes of this section, clear and convincing evidence means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations.

(e) Filing of substitution request. A party to an arbitration may request the substitution of an arbitrator by filing a written request with the division director. Requests must be received with sufficient time to process and investigate the request prior to the arbitration hearing if filed under subsection (a) of this section or prior to the award being issued if filed under subsection (b) of this section. If the arbitration hearing is held prior to resolution of a request under subsection (a) of this section, or an award is issued prior to resolution of a request under subsection (b) of this section, the request will be dismissed. All requests must contain the following:

(1) a letter, addressed to the division director and signed by the requestor, that identifies the arbitration, arbitrator, and the grounds for substitution under subsection (b) or (c) of this section; and

(2) copies of all available communications exchanged between the arbitrator and the parties, as applicable, that support the request.

(f) Confidentiality. Information reviewed under this section that is made confidential by law may not be disclosed except as provided by law. That portion of the materials considered confidential must be designated as such to protect it from disclosure.

(g) Dismissals. Requests for substitution shall be dismissed if:

(1) the conduct complained of does not meet the requirements of subsection (b) or (c) of this section; or

(2) the complaint is not timely or otherwise fails to meet the requirements of subsection (e) of this section.

(h) Processing time. The comptroller shall examine the request for substitution in a timely manner.

(i) Cure period. If good cause for substitution is found, the arbitrator shall be notified by the comptroller and, where applicable, given the chance to cure the violation by the deadline established in the comptroller's notice. If the arbitrator does not cure the violation by the deadline established in the comptroller's notice, the arbitrator shall be removed and a new arbitrator substituted. The comptroller shall keep a record of any removals under subsection (a) of this section in the arbitrator's file.

(j) No appeal. The determination of a request for substitution, including dismissal of the request, or the removal of an arbitrator under this section is final and may not be appealed.

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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Victoria North

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For further information, please call: (512) 475-2220

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DIVISION 2. LIMITED BINDING ARBITRATION FOR PROCEDURAL VIOLATIONS

34 TAC §§9.4220 - 9.4226

The Comptroller of Public Accounts adopts new §9.4220, concerning request for LBA; §9.4221, concerning LBA deposit; §9.4222, concerning comptroller appointment of arbitrators for LBA; §9.4223, concerning dismissal for lack of jurisdiction; §9.4224, concerning LBA award; §9.4225, concerning correction of procedural violations; and §9.4226, concerning payment of arbitrator fees, with changes to the proposed text as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 18). The rules will be republished.

The new sections will be located in Subchapter K, in new Division 2 (Limited Binding Arbitration for Procedural Violations). The comptroller will repeal all current sections in Subchapter K in a separate rulemaking.

The new sections establish procedures concerning limited binding arbitration (LBA) for certain alleged procedural violations during the local protest process under Tax Code, §41A.015.

Section 9.4220 describes the process for requesting LBA to compel the appraisal review board (ARB) or the chief appraiser to take certain actions under Tax Code, §41A.015.

Section 9.4221 requires a deposit to be submitted with each LBA and details the amount of deposit that must be submitted.

Section 9.4222 describes the comptroller's process for appointing arbitrators for LBA.

Section 9.4223 addresses the reasons for which an arbitrator shall dismiss a pending request for LBA with prejudice, for lack of jurisdiction.

Section 9.4224 provides the process and requirements for the issuance of an LBA award by an arbitrator.

Section 9.4225 sets forth the process of correcting procedural violations committed by the chief appraiser or ARB following the issuance of an LBA award.

Section 9.4226 describes the payment and processing of arbitrator fees in an LBA.

The comptroller received comments regarding adoption of the amendments from Dr. Loretta L. Higgins and the Texas Association of Appraisal Districts (TAAD).

Dr. Higgins states that §9.4224 refers "to the fact that cases may be dismissed for circumstances prescribed in Section 171 of the Civil Code." She asks whether the language in §9.4224 means that "even if the arbitrator who conducts the LBA is in violation of the Section 171 of the Texas Civil Code the opinion is not subject to appeal." Dr. Higgins also asks whether it means that "an arbitrator may behave in any manner they choose during an LBA (possibly engaging in bias) and that a potentially defective award is still not subject to appeal." Although the comptroller thanks Dr. Higgins for submitting this comment, the comptroller declines to make changes to the rules in response to this comment because Tax Code, 41A.015(j)(4) states the award is final and may not be appealed. Arbitrators who violate any rules under this subchapter may be subject to substitution under §9.4213 and disciplinary action under §9.4265.

TAAD asks that the forms or the rules regarding the forms and the LBA award address how the arbitrator gets paid if the appraisal district loses an arbitration hearing and whether the appraisal districts will have to link an online bank account to the online arbitration system. In response to these comments, the comptroller revises §9.4226(c) to require appraisal districts to pay the arbitrator's fee under Tax Code, §41A.015(k) outside of the online arbitration system.

Additionally, "TAAD suggests requiring a short explanation for an arbitrator's decision in a LBA award" because currently, "there is no way to determine what changes may be needed to prevent future procedural violations." The comptroller declines to make changes to the rules in response to this comment because the requirements of an LBA award are already outlined in Tax Code, §41A.015(j).

The comptroller thanks TAAD for submitting these comments.

The new sections are adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4220. *Request for LBA.*

(a) Actions reviewable in LBA. A property owner who has filed a notice of protest under Tax Code, Chapter 41, may file a request for LBA to compel the ARB or the chief appraiser to take certain actions under Tax Code, §41A.015(a).

(b) Waiver of right to seek LBA. A property owner waives their right to seek LBA under Tax Code, §41A.015, if:

(1) under Tax Code, §41A.015(a)(5), there was no request that the ARB hearing be postponed, or the property owner or the property owner's agent was offered a postponement and chose to proceed with the ARB protest; or

(2) under Tax Code, §41A.015(a)(7), there was an offer to postpone the ARB hearing upon the objected-to evidence being provided and the property owner or the property owner's agent chose to proceed with the ARB protest.

(c) Requirements for processing. A request for LBA that meets the following terms and conditions will be processed by the comptroller:

(1) The request was submitted in accordance with Tax Code, §41A.015, §9.4204 of this title, and this section.

(2) The request includes a deposit that meets the requirements of §9.4204 and §9.4221 of this title.

(d) Multiple alleged violations or properties. LBA requests are confined to a single tax year and a single property owner. The property owner may file for multiple alleged procedural violations for a single property or for multiple properties owned by a single property owner. If the request involves multiple alleged procedural violations or multiple properties, each individual allegation and property must separately meet the requirements of this section, except that a single deposit is required.

§9.4221. *LBA Deposit.*

(a) Deposit amount. A deposit shall be submitted with each request for LBA in the following amount, as applicable:

(1) \$450 if the property qualifies as the property owner's residence homestead under Tax Code, §11.13, and the appraised or market value, as applicable, is \$500,000 or less as determined by the appraisal district for the most recent tax year.

(2) \$550 for all property not subject to paragraph (1) of this subsection.

(b) Multiple properties. Where the property owner has appealed multiple properties, with one or more qualifying under subsection (a)(1) of this section and one or more qualifying under subsection (a)(2) of this section; the deposit must be made in the amount of subsection (a)(2) of this section.

§9.4222. *Comptroller Appointment of Arbitrators for LBA.*

(a) Qualifications. The comptroller shall appoint to a pending request for LBA an individual who meets the requirements of Tax Code, §41A.015(p) and is included in the registry of arbitrators under §9.4260 of this title.

(b) Use of computer system for appointment. The comptroller shall use a computer system that distributes the arbitration appointments as evenly as possible among qualified and eligible arbitrators included in the registry of arbitrators.

§9.4223. *Dismissal for Lack of Jurisdiction.*

(a) Reasons for dismissal. The arbitrator shall dismiss a pending request for LBA with prejudice, for lack of jurisdiction, if:

(1) except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are delinquent because, for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) no notice of protest under Tax Code, Chapter 41, was filed prior to the request for LBA being filed under Tax Code, §41A.015(a);

(3) the requestor seeks to compel the ARB or chief appraiser to take an action that is not authorized by Tax Code, §41A.015(a);

(4) the requestor failed to timely provide written notice to the chair of the ARB, the chief appraiser, and the taxpayer liaison officer for the applicable appraisal district by certified mail, return receipt requested, of the procedural requirement(s) with which the property owner alleges the ARB or chief appraiser was required to comply under Tax Code, §41A.015(b)(1);

(5) the requestor failed to timely file the request for LBA under Tax Code, §41A.015(d), which requires filing it no earlier than

the 11th day and no later than the 30th day after the date the property owner delivered the notice required by Tax Code, §41A.015(b)(1);

(6) the chief appraiser or ARB chair delivered a written statement to the property owner on or before the 10th day after the notice described by Tax Code, §41A.015(b)(1), was delivered confirming that the ARB or chief appraiser would comply with the requirement or cure a failure to comply with the requirement;

(7) a lawsuit was filed in district court regarding the same issues, for the same properties, and for the same tax year for which the request was filed;

(8) the property owner or the property owner's agent and the appraisal district have executed a written agreement resolving the matter; or

(9) the request for LBA was filed by an agent who does not have proper authority to act as an agent for the property owner under Tax Code, §41A.08 and §9.4205 of this title.

(b) An arbitrator shall dismiss any individual properties for which subsection (a) of this section applies and the case will move forward with only the remaining properties.

§9.4224. LBA Award.

(a) Questions of jurisdiction. In all arbitrations, the arbitrator shall first determine any questions of jurisdiction.

(b) Arbitrator's determination. If jurisdiction exists, the arbitrator shall render a determination on whether there was a violation of the procedural requirements submitted for review. A separate determination must be made for each individual alleged procedural violation and each individual property. If a violation is found, the arbitrator shall direct the ARB or chief appraiser, as applicable, to either comply with the procedural requirement or, if the ARB determination has been issued, to rescind the ARB order and hold a new ARB hearing that complies with the procedural requirements.

(c) Arbitrator's award. Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall render and issue an LBA award in the online arbitration system. The arbitrator shall deliver a copy of the LBA award by first class mail to any property owner not participating in the online arbitration system.

(d) No appeal of LBA award. An LBA award is final and may not be appealed.

§9.4225. Correction of Procedural Violations.

Upon receipt of the LBA award, the chief appraiser or ARB, as applicable, shall:

(1) Take any action required to comply with the requirements of the LBA award;

(2) Rescind the ARB order and schedule and conduct a new ARB hearing, as applicable; and

(3) Notify the comptroller if there is a pending request for RBA under Tax Code, §41A.01, involving the same tax year, property owner, and properties.

§9.4226. Payment of Arbitrator Fees.

(a) Amount of arbitrator fee. The arbitrator fee for LBA shall not exceed the applicable amount specified in Tax Code, §41A.015(p)(2).

(b) Multiple properties. Where the property owner has appealed multiple properties, some qualifying under Tax Code, §41A.015(p)(2)(A) and some qualifying under Tax Code, §41A.015(p)(2)(B), the fee shall not exceed the amount specified in Tax Code, §41A.015(p)(2)(B).

(c) Processing of arbitrator fees. Payment of arbitrator fees shall be processed in accordance with Tax Code, §41A.015(k) and (l), and §9.4209 of this title. For payments of arbitrator's fees by appraisal districts under Tax Code, §41A.015(k), the payment shall be made outside of the online arbitration system.

(d) Multiple ARB hearing procedural violations. Where the property owner alleges more than one ARB hearing procedural violation or alleges the same violation on more than one property, the arbitrator fee shall be paid in accordance with Tax Code, §41A.015(k), unless the arbitrator found no violations of any of the ARB hearing procedural requirements submitted for review.

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) 475-2220



DIVISION 3. REGULAR BINDING ARBITRATION OF APPRAISAL REVIEW BOARD DETERMINATIONS

34 TAC §§9.4240 - 9.4247

The Comptroller of Public Accounts adopts new §9.4240, concerning request for RBA; §9.4241, concerning RBA deposit; §9.4242, concerning RBA 45-day settlement period; §9.4243, concerning comptroller appointment of arbitrators for RBA; §9.4244, concerning dismissals for lack of jurisdiction; §9.4245, concerning RBA award; §9.4246, concerning correction of appraisal roll; and §9.4247 concerning payment of arbitrator fees, with changes to the proposed text as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 20). The rules will be republished. The new sections will be located in Subchapter K, in new Division 3 (Regular Binding Arbitration of Appraisal Review Board Determinations). The comptroller will repeal all current sections in Subchapter K in a separate rulemaking.

The new sections update the procedures concerning regular binding arbitration (RBA) to appeal values determined by local appraisal review boards (ARBs) under Tax Code, §41A.01.

Section 9.4240 explains the process for requesting RBA to contest an ARB order determining a protest under Tax Code, §41A.01.

Section 9.4241 requires a deposit to be submitted with each RBA and describes the amount of deposit that must be submitted.

Section 9.4242 describes the 45-day settlement period that allows the parties to try to settle the RBA case or determine that the request for RBA should be withdrawn timely before an arbitrator is appointed. It also sets forth the requirements for waiving the 45-day settlement period.

Section 9.4243 provides the comptroller's process for appointing arbitrators for an RBA.

Section 9.4244 details the reasons for which an arbitrator shall dismiss with prejudice a pending request for RBA for lack of jurisdiction.

Section 9.4245 describes the process and requirements for the issuance of an RBA award by an arbitrator.

Section 9.4246 requires the chief appraiser to correct the appraised or market value, as applicable, of the property as shown on the appraisal roll to reflect an RBA award only where the arbitrator's value is lower than the value determined by the ARB.

Section 9.4247 describes the payment and processing of arbitrator fees in an RBA.

The comptroller received comments regarding adoption of the amendments from Dr. Loretta L. Higgins, Harris Central Appraisal District (HCAD), Fort Bend Central Appraisal District (FBCAD), Texas Association of Appraisal Districts (TAAD), and Williamson Central Appraisal District (WCAD).

Dr. Higgins comments that §9.4245 "states that all awards must be mailed via first class mail." She asks whether this would "still apply when the online arbitration system is implemented" and whether an arbitrator could also issue the award in this manner "if all parties are in agreement to receive correspondence via email." No changes are necessary in response to this comment because §9.4245 states that the award must be entered into the online system once available and that mailed awards apply only to property owners without agents who choose not to participate in the online system.

Dr. Higgins comments that a provision should be included in §9.4247 providing a timeline in which appraisal districts must remit funds to an arbitrator. Dr. Higgins recommends that the comptroller implement guidelines that arbitrators be paid within 30 days of award receipt. She asserts that several instances have occurred "in the past when counties have been unhappy with the arbitrator's ruling and have delayed payment of funds to the arbitrator for 120 days and beyond." The comptroller declines to make changes to the rules in response to this comment because the comptroller does not have statutory authority to enforce such a deadline.

Regarding §9.4247, Dr. Higgins recommends adding a provision in the rules "to accommodate the arbitrator in the event the comptroller refunds the payment to the property owner when it is due to the arbitrator less the \$50 administration fee" to prevent an arbitrator from losing payments due to them. The comptroller declines to make changes to the rules in response to this comment because the online arbitration system should resolve any mistakes regarding incorrect payments.

The comptroller thanks Dr. Higgins for submitting these comments.

HCAD comments that the comptroller should extend the 45-day settlement period in §9.4242(a) to 60 days. HCAD believes that "both the filer and the district will benefit by allowing more time to potentially settle cases" because of "the volume of RBA's submitted and the uncertainty on how quickly applications will be processed with the Comptroller's new online arbitration system." HCAD also believes that the settlement period of RBA's should be extended because "the district and filers have limited resources and many RBA's that could potentially be settled may go to a hearing due to time limitations." Although the comptroller thanks HCAD for submitting these comments, the comptroller declines to make changes to the rules in response to this comment because the 45-day period is sufficient and extending the

settlement period would delay the resolution of the taxpayer's request.

FBCAD requests notice of the acceptance of appointment by an arbitrator from the comptroller under §9.4243 to prevent an appraisal district from "having to follow up with the comptroller concerning appointments for any particular arbitration and to facilitate a faster resolution of hearings." The comptroller declines to make changes to the rules in response to this comment because the online arbitration system will notify appraisal districts when an arbitrator has accepted an appointment.

FBCAD recommends adding "an appeal filed in district court under Tax Code §41.45(f)" to the reasons for dismissal in §9.4244(a)(5). The comptroller declines to make changes to the rules in response to this comment because litigation filed under Tax Code, §41.45(f) would impact jurisdiction for limited binding arbitration (LBA), not RBA, and §9.4223 already addresses a dismissal for this reason with regard to LBA.

FBCAD requests §9.4245(d) be removed from the rules because, for a residence homestead, "only a determination of the appraised value is authorized for an award in an RBA." FBCAD states that once a determination of the appraised value is made by the arbitrator, it is the chief appraiser that applies the provisions of Tax Code, Chapter 23. The comptroller declines to make changes to the rules in response to this comment because the appraised value of residence homesteads is accorded special treatment by Tax Code, §23.23, and the subsection informs arbitrators of those requirements.

In connection with a separate rulemaking, FBCAD recommends providing a definition of "settlement period" in §9.4202 "as described in §9.4242(a)." The comptroller declines to make changes to the definition of "settlement period" in §9.4202; however, the comptroller rewords each mention of "settlement period" to "45-day settlement period" in §9.4242(b) and §9.4243(a).

The comptroller thanks FBCAD for submitting these comments.

TAAD asks that the forms or the rules regarding the Forms and the RBA award address how the arbitrator gets paid if the appraisal district loses an arbitration hearing and whether the appraisal districts will have to link an online bank account to the online arbitration system. In response to this comment, the comptroller revises §9.4247 to require appraisal districts to pay the arbitrator's fee outside of the online arbitration system.

TAAD requests that the 45-day settlement period in §9.4242(a) be extended to 60 days because a 60-day settlement period is needed to resolve arbitration disputes due to "quicker processing expected with the new online arbitration system and the volume of arbitrations filed in recent years." The comptroller declines to make changes to the rules in response to this comment because the 45-day period is sufficient and extending the settlement period would delay the resolution of the taxpayer's request.

TAAD suggests that §9.4245(c) and (d) should be removed from the rules and the arbitrators be required to determine value for RBA awards based on the evidence provided at the hearings because "the arbitrators should determine the values in dispute based on the evidence presented at the arbitration hearings and should not be recalculating appraisals under the special appraisal provisions of Tax Code, Chapter 23, Subchapter B, C, D, E or H, or the appraised value limitation under Tax Code, §23.23." The comptroller declines to make changes to the rules in response to this comment because the appraised value

of qualified open-space land and residence homesteads are accorded special treatment by Tax Code, Chapter 23, and the subsections inform arbitrators of those requirements. Additionally, arbitrators are informed by §9.4212(k) that their decision is required to be based solely on the evidence provided at the hearing.

The comptroller thanks TAAD for submitting these comments.

WCAD recommends including all options listed in §9.4240 and §9.4244 in the RBA award form, or the options should be deleted from the form and replaced with the applicable rules. The comptroller thanks WCAD for submitting these comments and, in response, changes the form to more closely match the applicable rules.

The new sections are adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4240. Request for RBA.

(a) Right of appeal in RBA. A property owner or the property owner's agent may appeal an ARB order determining a protest of property value through RBA under the terms and conditions of this section. A single ARB order may be appealed to RBA by only one property owner, even if multiple property owners are listed.

(b) Requirements for processing. A request for RBA will be processed for arbitration under Tax Code, §41A.01, if:

(1) The request for RBA concerns a property with an appraised or market value of \$5 million or less as determined by the ARB order, or the property qualifies as the property owner's residence homestead under Tax Code, §11.13;

(2) The only matter in dispute is the determination of a protest filed under either Tax Code, §41.41(a)(1), concerning the property's appraised or market value, or under Tax Code, §41.41(a)(2) concerning unequal appraisal of the property;

(3) The deposit meets the requirements of Tax Code, §41A.03(a)(2), and §9.4204 and §9.4241 of this title;

(4) Except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are not delinquent because, for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(5) No lawsuit has been filed in district court regarding the property for the same issue for the same tax year; and

(6) The request for RBA is timely filed pursuant to Tax Code, §41A.03, using the comptroller-prescribed form.

(c) Contiguous tracts. If the request for RBA involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), each tract of land and ARB order must separately meet the requirements of subsection (b) of this section, except that a single arbitration deposit is required. The combined total value of all ARB orders appealed may exceed the \$5 million threshold requirement in subsection (b)(1) of this section as long as each individual tract is valued at \$5 million or less or has a residence homestead exemption. If the appraisal district indicates two or more tracts are not contiguous during its review of the property accounts subject to the request, the property owner may select the single or contiguous tracts that will be arbitrated during the 45-day settlement period. Otherwise, the arbitrator that accepts the ap-

pointment will move forward with the single or contiguous tracts that contain the property with the highest appraised or market value.

(d) Requests for in-county or out-of-county arbitrators. A property owner or the property owner's agent may request that the comptroller appoint an arbitrator for RBA who resides in the county in which the property that is the subject of the appeal is located or an arbitrator who resides outside that county. In appointing an initial arbitrator, the comptroller shall comply with the request of the property owner unless there is not an available arbitrator who resides in the county in which the property that is the subject of the request is located. In appointing a substitute arbitrator, the comptroller shall consider but is not required to comply with the request. This does not authorize a property owner to request the appointment of a specific individual as an arbitrator.

(e) Impact of LBA award on RBA request. If a property owner is granted a new ARB hearing as a result of an LBA award and the property owner has a pending request for RBA based on the same ARB proceedings that were at issue in the LBA, the property owner and appraisal district shall promptly notify the comptroller. The pending request for RBA will be considered withdrawn or dismissed for lack of jurisdiction, depending on its current status. The deposit shall be either paid to the arbitrator or refunded according to §9.4209 or §9.4244 of this title. This shall not impact the property owner's ability to file a new request for RBA based on a subsequent ARB order.

§9.4241. RBA Deposit.

(a) Amount of deposit. A deposit shall be submitted with each request for RBA in the applicable amount specified in Tax Code, §41A.03(a)(2).

(b) Deposit amount for contiguous tracts. The deposit amount required for arbitration of contiguous tracts of land must correspond with the tract on which subsection (a) of this section would require the largest deposit, if filed separately.

§9.4242. RBA 45-Day Settlement Period.

(a) Notice of processing. The parties shall have 45 calendar days after the date that the comptroller provides notice that the request for RBA has been processed under §9.4207 of this title in which to try to settle the case or determine that the request for RBA should be withdrawn timely before an arbitrator is appointed. A notice of withdrawal must be provided in accordance with §9.4208 of this title.

(b) Waiver of 45-day settlement period. A property owner or the property owner's agent may request to waive the 45-day settlement period. If the appraisal district agrees to the waiver, the comptroller shall appoint an arbitrator to the request for RBA pursuant to §9.4243 of this title.

§9.4243. Comptroller Appointment of Arbitrators for RBA.

(a) Appointment of arbitrator. After the conclusion of the 45-day settlement period or waiver of the 45-day settlement period, the comptroller shall appoint an individual included in the comptroller's registry of arbitrators who is both qualified and eligible for the particular appointment under §§9.4240(d), 9.4260, and 9.4263 of this title.

(b) Use of computer system for appointment. The comptroller shall use a computer system that distributes the arbitration appointments as evenly as possible among qualified and eligible arbitrators included in the comptroller's registry of arbitrators.

§9.4244. Dismissals for Lack of Jurisdiction.

(a) Reasons for dismissal. For requests for RBA filed under Tax Code, §41A.01, the arbitrator shall dismiss with prejudice a pending request for RBA for lack of jurisdiction, if:

(1) except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are delinquent because for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) the ARB order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1), concerning the appraised or market value, or Tax Code, §41.41(a)(2), concerning unequal appraisal of the property;

(3) the appraised or market value of the property as determined in the ARB order was either more than \$5 million or the property did not qualify as the property owner's residence homestead under Tax Code, §11.13;

(4) the request for RBA was filed after the deadline established in Tax Code, §41A.03, which requires submission by not later than the 60th calendar day after the date the property owner or the property owner's agent receives the ARB order determining the protest;

(5) the property owner or the property owner's agent filed an appeal with the district court under Tax Code, Chapter 42, concerning the value of the same property in the same tax year that is at issue in the pending RBA;

(6) the property owner or the property owner's agent and appraisal district have executed a written agreement resolving the matter;

(7) the request for RBA was filed by an agent without proper authority as described by Tax Code, §41A.08; or

(8) an LBA award rescinded the ARB order(s) under Tax Code, §41A.015(j)(2)(B).

(b) Contiguous tracts. When an RBA proceeding is brought pursuant to Tax Code, §41A.03(a-1), involving two or more contiguous tracts of land, the arbitrator shall dismiss from the proceeding any tract of land for which subsection (a) of this section applies. If, after dismissal, two or more tracts are not contiguous, the property owner may select the single or contiguous tracts that will be arbitrated. Otherwise, the arbitrator will determine the single or contiguous tracts that contain the property with the highest appraised or market value.

§9.4245. *RBA Award.*

(a) Questions of jurisdiction. In all arbitrations, the arbitrator shall first determine any questions of jurisdiction.

(b) Arbitrator's determination. If jurisdiction exists, the arbitrator shall determine the appraised or market value of the property that is the subject of the RBA.

(c) Special appraisal. If the arbitrator determines the property qualifies for special appraisal under Tax Code, Chapter 23, Subchapter B, C, D, E, or H, the statutory provisions regarding special appraisal, and the comptroller's rules and policies, including the comptroller's special appraisal manuals, must be followed in making the appraised value determination.

(d) Determination of value of residential homestead. If the arbitrator determines that a residence homestead's appraised value is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(1) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23 was incorrectly applied, and the change correctly applies the formula;

(2) the calculation of the appraised value of the property reflected in the ARB order includes an amount attributable to new improvements, and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(3) the arbitrator determines that the market value of the property is less than the appraised value indicated on the ARB order, and the change reduces the appraised value to the market value determined by the arbitrator.

(e) Arbitrator's award. Within 20 calendar days after the conclusion of the arbitration hearing, the arbitrator shall render a determination and issue the RBA award on the online arbitration system. The arbitrator shall deliver a copy of the RBA award by regular first-class mail to any property owner not participating in the online arbitration system.

(f) No appeal of RBA award. An RBA award is final and may not be appealed except as permitted under Civil Practice and Remedies Code, §171.088, and may be enforced in the manner provided by Civil Practice and Remedies Code, Chapter 171, Subchapter D.

§9.4246. *Correction of Appraisal Roll.*

The chief appraiser shall correct the appraised or market value, as applicable, of the property as shown on the appraisal roll to reflect the RBA award only where the arbitrator's value is lower than the value determined by the ARB.

§9.4247. *Payment of Arbitrator Fees.*

(a) Amount of arbitrator fee. The arbitrator fee for RBA shall not exceed the applicable amount specified in Tax Code, §41A.06(b)(4).

(b) Processing of arbitrator fees. Payment of arbitrator fees shall be processed in accordance with §9.4209 of this title and as follows:

(1) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is nearer to the property owner's opinion of value as stated in the request for RBA than the value reflected in the ARB order, the comptroller shall refund the property owner's arbitration deposit. In this case, the appraisal district, on receipt of a copy of the RBA award, shall pay the arbitrator fee. Payments shall be made outside of the online arbitration system.

(2) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is not nearer to the property owner's opinion of value as stated in the request for RBA than the value reflected in the ARB order, the comptroller shall pay the arbitrator fee out of the property owner's deposit.

(3) If the arbitrator determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is exactly one-half of the difference in value between the property owner's opinion of value of the property as stated in the request for RBA and the ARB order, the comptroller shall process payment of the arbitrator fee and arbitration deposit pursuant to paragraph (2) of this subsection.

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 March 27, 2024.
TRD-202401307



DIVISION 4. COMPTROLLER'S REGISTRY OF ARBITRATORS

34 TAC §§9.4260 - 9.4265

The Comptroller of Public Accounts adopts new §9.4260, concerning qualification for inclusion in comptroller's registry of arbitrators; §9.4261, concerning application requirements; §9.4262, concerning renewal requirements; §9.4263, concerning arbitrator eligibility for appointment; §9.4264, concerning arbitrator responsibility for registry profile; and §9.4265 concerning disciplinary action, with changes to the proposed text as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 22). The rules will be republished. The new sections will be located in Subchapter K, in new Division 4 (Comptroller's Registry of Arbitrators). The comptroller will repeal all current sections in Subchapter K in a separate rulemaking.

The new sections update the procedures concerning the comptroller's registry of arbitrators for regular binding arbitration to appeal values determined by local appraisal review boards under Tax Code, §41A.01, and limited binding arbitration for certain alleged procedural violations during the local protest process under Tax Code, §41A.015.

Section 9.4260 sets forth the requirements for an individual to be included in the comptroller's registry of arbitrators.

Section 9.4261 details the process and requirements for applying to be included in the comptroller's registry of arbitrators.

Section 9.4262 addresses the requirements for an arbitrator to continue to qualify for inclusion in the comptroller's registry of arbitrators.

Section 9.4263 sets forth eligibility requirements for appointment as an arbitrator to a particular arbitration proceeding.

Section 9.4264 requires arbitrators to update their registry profile on the online arbitration system and provide additional information required by the comptroller. It also addresses the effect of updated information that causes the arbitrator to become ineligible to serve as an arbitrator or to be removed from the comptroller's registry of arbitrators.

Section 9.4265 authorizes the comptroller to remove an arbitrator from the comptroller's registry of arbitrators or to render lesser disciplinary actions, and describes the process and requirements for taking such an action. The comptroller corrects a typographical error in §9.4265(c)(5) by deleting the word "of."

The comptroller received comments regarding adoption of the amendments from Frank D. McAllister and the Fort Bend Central Appraisal District (FBCAD).

Mr. McAllister states that §9.4263(d) "should be revised to include a requirement for the appraisal district to pay the arbitrator's award to the property owner within 30 days of receiving the award." Although the comptroller thanks Mr. McAllister for this comment, the comptroller declines to make changes to the rules

in response to this comment because the property owner's deposit is refunded by the comptroller's office, not the appraisal district, under Tax Code, §§41A.015(k) and (l), 41A.09(c), and 41A.10(b).

FBCAD recommends the confidentiality provisions of Government Code §552.149 be included as applicable to the information provided under §9.4265(g). The comptroller thanks FBCAD for submitting this comment and changes the rule to reference all applicable confidentiality laws.

The new sections are adopted under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The new sections implement Tax Code, Chapter 41A.

§9.4260. *Qualification for Inclusion in Comptroller's Registry of Arbitrators.*

(a) Inclusion in the registry. To qualify for inclusion in the registry of arbitrators and continue to be included in the registry, an individual must meet the requirements of this section.

(b) Residency requirement.

(1) An individual must reside in the state of Texas. An individual who has been granted a residence homestead exemption on property they own and occupy in Texas satisfies the residency requirement.

(2) An individual does not qualify for inclusion in the registry of arbitrators if the individual has been granted a residence homestead exemption in another state or has been granted more than one such exemption.

(3) If an individual owns no property for which a residence homestead exemption has been granted in any state, the individual's residence will be considered the state of Texas if the individual lives in a residential property in Texas more than 50 percent of the individual's time.

(4) Falsely claiming to reside in Texas will result in the immediate removal of the individual from the registry and the reporting of this misconduct to the individual's professional licensing or certification board or regulatory authority.

(c) Professional qualifications. To qualify to serve as an arbitrator, an individual must meet the requirements described in Tax Code, §41A.06(b), including the following requirements:

(1) The individual must have completed the comptroller's courses for training and education of ARB members established under Tax Code, §5.041(a) and (e-1), and for the training and education of arbitrators established under Tax Code, §5.043, and be issued a certificate indicating completion of each course prior to applying to the registry.

(2) Individuals in any one of the occupations specified in Tax Code, §41A.06(b)(1)(B)(ii), must:

(A) have completed at least 30 hours of training described in Tax Code, §41A.06(B)(i), of which no more than three hours may be self-study or homework; and

(B) hold a current and continually active license in one of the occupations specified in Tax Code, §41A.06(b)(1)(B)(ii), during the five years preceding the application submission date.

(d) Disqualifying Employment. An individual does not qualify for inclusion in the registry of arbitrators during any period in which the individual holds any one of the following positions in this state:

- (1) member of a board of directors of any appraisal district;
- (2) member of any appraisal review board;
- (3) employee, contractor, or officer of any appraisal district;
- (4) employee of the comptroller; or
- (5) member of a governing body, officer, or supervisory or managerial employee of any taxing unit.

§9.4261. *Application Requirements.*

(a) Application submission. Individuals who wish to be included in the registry of arbitrators shall submit their applications through the online arbitration system or, if the online arbitration system is not available, by mailing or emailing the application form to the address specified by the comptroller.

(b) Attestation. By submitting the application and documentation required, the applicant attests that the applicant:

- (1) principally resides in the state of Texas in the county identified;
- (2) meets all of the qualifications required under §9.4260 of this title;
- (3) has read and understands the provisions of this subchapter and Tax Code, Title 1 (Property Tax Code);
- (4) will conduct all arbitrations under the terms of Tax Code, Chapter 41A, and this subchapter, as applicable;
- (5) will perform these arbitration services for the applicable fee specified in Tax Code, §41A.015(p)(2) or §41A.06(b)(4), as applicable; and

(6) will update the arbitrator's registry profile on the online arbitration system to notify the comptroller of any change in the arbitrator's registry profile, including any change in qualifications, eligibility, contact information, or any material change regarding information provided in the application, within 10 calendar days of the change.

(c) Denial of application. The comptroller shall deny an application if the applicant does not meet all of the requirements of §9.4260 of this title or if the division director, in the exercise of the division director's discretion, determines inclusion of the applicant in the registry would not be in the interest of impartial arbitration proceedings.

(d) Approval of application. If the application is approved, the applicant's name, county of residence in Texas, and other pertinent information will be added to the registry.

(e) Notification to applicant. The comptroller must notify the applicant of the approval or denial of the application as soon as practicable and, for a denial, must provide a brief explanation of the reason(s) for the denial.

(f) Update of registry. The registry will be updated within 30 calendar days of the date the comptroller approves and processes the application.

(g) Registry disclaimers. Inclusion of an arbitrator in the registry is not and shall not be construed as a representation by the comptroller that all information provided by the applicant is true and correct and shall not be construed or represented as a professional endorsement.

§9.4262. *Renewal Requirements.*

For an arbitrator to continue to qualify for inclusion in the registry, the arbitrator must:

(1) complete and submit the renewal form through the online arbitration system or, if the online arbitration system is not available, by mailing or emailing the renewal form to the address specified by the comptroller, on or before:

(A) each renewal date of the applicant's license or certification under which the applicant was qualified previously under §9.4260 of this title; or

(B) the second anniversary of the date the arbitrator was initially added to the registry or the arbitrator's listing on the registry was renewed;

(2) continue to meet the requirements in §9.4260 of this title;

(3) have no history of failure to comply with this subchapter;

(4) have completed during the preceding two years at least eight hours of continuing education in arbitration and alternative dispute resolution procedures offered by a university, college, or legal or real estate trade association. This continuing education requirement may be satisfied by submission of documentation that the arbitrator attended or taught personally at least eight hours of one or more training courses that meet the requirements of this paragraph;

(5) complete a revised comptroller training program on property tax law for the training and education of arbitrators established under Tax Code, §5.043, not later than the 120th day after the date the program is available to be taken if the comptroller:

(A) revises the program after the individual is included in the registry; and

(B) determines that the program is substantially revised.

§9.4263. *Arbitrator Eligibility for Appointment.*

(a) Eligibility for appointment. To be eligible for appointment as an arbitrator to a particular arbitration proceeding, an arbitrator must satisfy the requirements of this section.

(b) Engaging in activities in county's appraisal district. An arbitrator is ineligible for and shall not accept any appointment in a county in which the property that is the subject of the arbitration is located, if at any time during the two years preceding the appointment at issue, the arbitrator has engaged in the following activities in that county's appraisal district:

(1) represented any person or entity for compensation, or served as an officer or employee of any firm, company, or other organization that has represented another person or entity for compensation, in any proceeding under Tax Code, Title 1 (Property Tax Code);

(2) served as an officer or employee of the appraisal district; or

(3) served as a member of the appraisal review board for the appraisal district.

(c) Duration of proceeding. For purposes of subsection (b)(1) of this section, a proceeding under Tax Code, Title 1 (Property Tax Code), begins with the filing of a notice of protest and includes communications with appraisal district employees regarding a matter under protest, protest settlement negotiations, any appearance at an ARB hearing, any involvement in a binding arbitration under Tax Code, Chapter 41A, and any involvement at either the district court or appellate court level of an appeal pursued under Tax Code, Chapter 42.

(d) Family relationships. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitrator is related by affinity within the second degree or by consanguinity

within the third degree as determined under Government Code, Chapter 573, to any of the following individuals:

- (1) the property owner or the property owner's agent;
- (2) an officer, employee, or contractor of the appraisal district responsible for appraising the property at issue;
- (3) a member of the board of directors of the appraisal district responsible for appraising the property at issue; or
- (4) a member of the ARB in the area in which the property at issue is located.

(e) Business relationships. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitrator currently or during the previous two years has had a business relationship with the property owner, the property owner's agent, the ARB, or the appraisal district involved in that particular arbitration.

(f) Other conflicts of interest. An arbitrator is ineligible for and shall not accept an appointment to any arbitration in which the arbitrator knows of any other conflict of interest that has not been previously described above.

§9.4264. Arbitrator Responsibility for Registry Profile.

(a) Registry profile updates. Each arbitrator included in the registry of arbitrators is required to update the arbitrator's registry profile on the online arbitration system to notify the comptroller of any changes in contact information, including address, phone number, and email address, and any material change in the information provided in the arbitrator's application, qualifications, or eligibility for appointment, within 10 calendar days of the change. A material change includes loss of required licensure, incapacity, ineligibility, a change in county of residence, or other conditions that would prevent the individual from lawfully and professionally performing the arbitrator's arbitration duties. Once the arbitrator has submitted registry profile updates, the arbitrator will be notified that, pending review, the arbitrator will not be able to modify active cases on the online arbitration system or receive new appointments.

(b) Eligible to resume active status. If the information provided in the profile updates do not cause the arbitrator to be disqualified, the comptroller will return the arbitrator to active status, and the arbitrator will be able to access arbitration functions in the online arbitration system and receive new appointments.

(c) Ineligible to complete active cases. If any of the information provided in profile updates causes the arbitrator to be ineligible to act as an arbitrator in one or more of the arbitrator's active cases, the comptroller will reassign affected cases to an eligible arbitrator.

(d) Request for additional information. If the comptroller requires additional information, the comptroller shall notify the arbitrator of the information needed. Once the arbitrator submits the information needed, the comptroller will complete the review.

(e) Removal of arbitrator. Failure of the arbitrator to report a material change in the arbitrator's registry profile, or information provided in profile updates that cause the arbitrator to be disqualified, may result in the removal of the arbitrator from the registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this section shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in active status in the registry.

§9.4265. Disciplinary Action.

(a) Disciplinary action generally. The comptroller is authorized to remove an arbitrator from the registry or, in the comptroller's

discretion, to render lesser disciplinary actions including warnings, restriction of arbitrator eligibility for certain counties, or removal from individual arbitrations.

(b) Disciplinary history. The determination to discipline may be based solely on the information or complaint at issue or on a combination of the information or complaint and the arbitrator's disciplinary history.

(c) Good cause for removal. Good cause for removal includes the following grounds:

(1) the individual engaged in repeated instances of bias or misconduct while acting as an arbitrator;

(2) the individual engaged in fraudulent conduct;

(3) the individual is disqualified or becomes disqualified under §9.4260 of this title;

(4) the individual accepts a case in violation of §9.4263 of this title;

(5) the individual violates §9.4212 or §9.4264 of this title while acting as an arbitrator;

(6) the individual fails or declines to renew the agreement to serve as an arbitrator in the manner required under §9.4262 of this title; or

(7) the comptroller finds that inclusion of the applicant in the arbitration registry would not be in the interest of impartial arbitration proceedings.

(d) Disciplinary discretion. The comptroller may take appropriate disciplinary action where the comptroller finds clear and convincing evidence of a violation, even if that violation does not rise to the level of good cause to justify removal under subsection (c) of this section. In determining the level of discipline, the comptroller may consider not only the complaint at issue, but any disciplinary history in the arbitrator's file. Good cause for disciplinary action includes the following grounds:

(1) the individual is disqualified or becomes disqualified under §9.4262 of this title;

(2) the individual fails to respond to or refuses to comply with communications and requests for information from the comptroller's office by the deadline established in the communication; or

(3) the individual has violated one or more provisions of this subchapter.

(e) Clear and convincing evidence. For purposes of this section, clear and convincing evidence means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations regarding the arbitrator.

(f) Filing a complaint. An individual may file a complaint concerning an arbitrator with the comptroller within 60 calendar days of the last incident giving rise to the complaint. The complaint must contain the following items:

(1) a letter, addressed to the division director and signed by the requestor, that identifies the arbitrator complained of and the alleged grounds for removal or discipline;

(2) for grounds for removal under subsection (c) of this section, at least one affidavit or unsworn declaration meeting the requirements of Civil Practice and Remedies Code, §132.001, from an individual with first-hand knowledge of the alleged conduct that supports the complaint; and

(3) as applicable, copies of all available communications exchanged between the arbitrator and the parties, including emails, documents, and any other materials, such as video or audio recordings, that support the complaint.

(g) Confidentiality. Information reviewed under this section that is made confidential by law may not be disclosed except as provided by law. That portion of the materials considered confidential must be designated as such to protect it from disclosure.

(h) Dismissal. Complaints shall be dismissed under the following conditions:

(1) the conduct complained of does not meet the requirements of this section;

(2) the complaint is not timely or otherwise fails to meet the requirements of subsection (f) of this section; or

(3) the complaint is based on one or more substantive arbitration issues, including evidentiary considerations and the resulting award.

(i) Initial review of complaints. Within 30 calendar days after submission of a complaint under this section, the comptroller shall notify the complainant whether the complaint is under review or dismissed. The dismissal of a complaint is final and may not be appealed. If the complaint is under review, all materials the complainant submitted will be forwarded electronically, by U.S. Postal Service, or by a private third-party service such as FedEx or United Parcel Service (UPS), as long as proof of delivery is provided, to the arbitrator who is the subject of the complaint for a response.

(j) Arbitrator response. The arbitrator has 30 calendar days from delivery of the materials to respond to the comptroller, explaining why a finding of good cause should not be made.

(k) Post-response review and determination. Within 30 calendar days after receipt of the arbitrator's response, the comptroller shall determine whether clear and convincing evidence supports a finding of good cause for removal of the arbitrator from the registry or disciplinary action. The comptroller shall promptly notify the complainant and the arbitrator of the comptroller's determination.

(l) Removal or disciplinary action. If good cause for removal of the arbitrator from the registry under subsection (c) of this section is found, the arbitrator shall be removed from the registry for a period of two years from the date of the determination. If, in the comptroller's discretion, clear and convincing evidence of a violation is established, however, after reviewing the violation and the arbitrator's file, the comptroller does not find it rises to the level of good cause for removal, the comptroller may issue disciplinary action. Prior disciplinary action may be considered in future complaints. If there is neither good cause for removal nor clear and convincing evidence of a violation, no disciplinary action will be taken.

(m) No appeal. The comptroller's determination and a removal or disciplinary action is final and may not be appealed. An arbitrator removed from the registry under subsection (c) of this section may reapply for inclusion in the registry two years after the date of the removal determination. The circumstances giving rise to the removal under this section may be considered in evaluating the reapplication.

(n) No effect on determinations and awards. Any disciplinary action taken shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in active status in the registry.

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 March 27, 2024.

TRD-202401308

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: April 16, 2024

Proposal publication date: January 5, 2024

For further information, please call: (512) 475-2220



TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 411, State Mental Health Authority Responsibilities, Subchapter G, Community Centers, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 300, State Mental Health Authority Responsibilities, Subchapter A, Community Centers.

The rules will be transferred in the Texas Administrative Code effective May 13, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 411, Subchapter G

TRD-202401326

Texas Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 411, State Mental Health Authority Responsibilities, Subchapter G, Community Centers, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 300, State Mental Health Authority Responsibilities, Subchapter A, Community Centers.

The rules will be transferred in the Texas Administrative Code effective May 13, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 411, Subchapter G

TRD-202401327

Figure: 25 TAC Chapter 411, Subchapter G

Current Rules Title 25. Health Services Part 1. Department of State Health Services Chapter 411. State Mental Health Authority Responsibilities	Move to Title 26. Health and Human Services Part 1. Texas Health and Human Services Commission Chapter 300. State Mental Health Authority Responsibilities
Subchapter G. Community Centers	Subchapter A. Community Centers
§411.301. Purpose.	§300.1. Purpose.
§411.302. Application.	§300.3. Application.
§411.303. Definitions.	§300.5. Definitions.
§411.305. Process to Establish a New Community Center.	§300.7. Process to Establish a New Community Center.
§411.307. Modifying a Community Center's Current Plan.	§300.9. Modifying a Community Center's Current Plan.
§411.308. Dissolution and Merger of Community Centers.	§300.11. Dissolution and Merger of Community Centers.
§411.309. Appointment of Manager or Management Team.	§300.13. Appointment of Manager or Management Team.
§411.310. Standards of Administration for Boards of Trustees.	§300.15. Standards of Administration for Boards of Trustees.
§411.311. Civil Rights.	§300.17. Civil Rights.
§411.312. Fiscal Controls.	§300.19. Fiscal Controls.



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 Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re Adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code:

Chapter 351, Coordinated Planning and Delivery of Health and Human Services

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 351, Coordinated Planning and Delivery of Health and Human Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 351" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published but may be found in Title 1, Part 15, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202401371

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: April 2, 2024



Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re Adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 8, Peer Assistance Programs for Impaired Professionals

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 8, Peer Assistance Programs for Impaired Professionals, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 8" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202401323

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: April 1, 2024



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 120 (Compensation Procedure--Employers);

-Chapter 122 (Compensation Procedure--Claimants); and

-Chapter 124 (Insurance Carriers: Notices, Payments, and Reporting).

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 May 13, 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-202401369

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: April 2, 2024

Adopted Rule Reviews

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 421, Health Care Information

Notice of the review of this chapter was published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 571). HHSC received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 421 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agencies determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 421 except:

§421.6, Acceptance of Discharge Reports and Correction of Errors;

§421.7, Certification of Discharge Reports;

§421.47, Data Fees;

§421.65, Acceptance of Event Files and Correction of Data Content Errors; §421.66, Certification of Compiled Event Data;

§421.67, Event Files--Records, Data Fields and Codes;

§421.75, Acceptance of Event Files and Correction of Data Content Errors; and

§421.76, Certification of Compiled Event Data.

The identified repeals and any amendments, if applicable, to Chapter 421 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 421 as required by the Texas Government Code §2001.039.

TRD-202401370

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: April 2, 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 301, IDD-BH Contractor Administrator Functions

Notice of the review of this chapter was published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 424). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 301 in accordance with §2001.039 of the Texas Government Code, 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 301. Any appropriate amendments or repeals to Chapter 301 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 301 as required by the Texas Government Code §2001.039.

TRD-202401309

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: March 27, 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 7, Memoranda of Understanding, 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 September 8, 2023, issue of the *Texas Register* (48 TexReg 5073).

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 7 are required because the rules in 30 TAC Chapter 7 include the Memoranda of Understanding between TCEQ and various other state agencies. The rules are necessary to memorialize agreements between TCEQ and other state agencies.

The review resulted in a determination that references to predecessor agencies should be updated throughout the chapter. Additionally, certain sections may need to be updated to reflect the need for the Memoranda of Understanding that reference the National Flood Insurance Program minimum regulations.

Public Comment

The public comment period closed on October 9, 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 7 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401359

Charmaine K. Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 1, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 70, Enforcement, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5554).

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 70 are required because the rules implement TCEQ's enforcement authority under Texas Water Code (TWC), §7.002 of laws within the TCEQ's jurisdiction and to establish the procedures whereby enforcement matters are handled by the TCEQ. TCEQ is required to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state, and to adopt reasonable procedural rules to be followed in a TCEQ hearing (TWC, §5.103). TCEQ is required to adopt rules of practice stating the nature of all available formal and informal procedures (Texas Government Code, §2001.004). The rules also authorize the executive director to pursue an enforcement matter through court action (by referring the matter to the Texas Attorney General), as is contemplated in TWC, §5.230. Subchapter D, Criminal Enforcement Review, is needed to implement the Commission's authority under TWC, §7.203.

Public Comment

The public comment period closed on October 23, 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 70 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401319

Gitanjali Yadav

Deputy Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 28, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 210, Use of Reclaimed Water as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5554).

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 210 are required because Chapter 210 provides for the use of reclaimed water. Subchapter A, General Provisions, applies to the reclaimed water producer, provider, and user. Subchapter B, General Requirements for the Production, Conveyance, and Use of

Reclaimed Water, establishes general requirements applicable to producers, providers, and users of reclaimed water. This subchapter also establishes requirements and specifications for transfer, storage, and irrigation using reclaimed water and design criteria of reclaimed water systems. Additionally, this subchapter establishes requirements and specifications necessary to minimize discharges of waste into or adjacent to waters in the state. Subchapter C, Quality Criteria and Specific Uses for Reclaimed Water, applies to the reclaimed water producer, provider, and user. This subchapter sets the specific uses, the quality standards, as well as the monitoring, recordkeeping, and reporting standards for reclaimed water. Subchapter D, Alternative and Pre-Existing Reclaimed Water Systems, contains provisions in the event a reclaimed water provider or user proposes to design, construct, or operate a reclaimed water system or to utilize reclaimed water in a manner other than authorized in these rules. Subchapter E, Special Requirements for Use of Industrial Reclaimed Water, establishes the applicable requirements for industrial reclaimed water use which may be used instead of potable water or raw water. Subchapter F, Use of Graywater and Alternative Onsite Water, establishes the applicable requirements for residential, commercial, industrial, institutional, and agricultural reuse of graywater and alternative onsite water which may be used instead of potable water for landscape irrigation, gardening, composting, foundation stabilization, toilet/urinal flushing, process water, dust control, and other similar uses.

The rules in Chapter 210 are needed to require reclaimed water quality criteria and design and operational requirements for the reuse of reclaimed water. The requirements encourage and facilitate the reuse of treated domestic wastewater effluent, treated industrial wastewater effluent, graywater, and alternative onsite water for beneficial purposes. The rules assist in the conservation of surface water and groundwater, ensure the protection of public health, protect the quality of surface water and groundwater, and help ensure an adequate supply of water for present and future needs. These sections do not affect any current requirements necessitating the need for a water right or amendment, if applicable to a particular reclaimed water use or activity.

Chapter 210 establishes requirements to protect the health of persons who might normally come into contact with reclaimed water; protect against adverse effects from reclaimed water should crops be irrigated with reclaimed water; and ensure that the conveyance, storage, and use of reclaimed water will not cause adverse effects to surface water, groundwater, and soil resources.

Public Comment

The public comment period closed on October 23, 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 210 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401360

Charmaine K. Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 1, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 285, On-Site Sewage Facilities, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice

of Intent to Review these rules in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5554).

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 285 are necessary to eliminate and prevent health hazards by regulating and establishing minimum standards for planning materials, construction, installation, alteration, repair, extension, operation, maintenance, permitting, and inspection of OSSFs.

Additionally, these rules provide the procedures for the designation of local governmental entities as authorized agents; the licensing of OSSF installers, designated representatives, site evaluators, and maintenance providers; and the registration of OSSF apprentices and maintenance technicians.

Public Comment

The public comment period closed on October 23, 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 285 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401361

Charmaine K. Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 1, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 294, Priority Groundwater Management Areas, 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 September 22, 2023, issue of the *Texas Register* (48 TexReg 5554).

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 294 are required because Chapter 294 implements the requirements of Texas Water Code, Chapter 35, which allows TCEQ to identify, study, and designate priority groundwater management areas.

Public Comment

The public comment period closed on October 23, 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 294 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401357

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 1, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting, 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 August 25, 2023, issue of the *Texas Register* (48 TexReg 4676).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules under Chapter 309 are needed to provide effluent limitations for domestic wastewater in Subchapter A, location standards in Subchapter B, and land disposal of sewage effluent in Subchapter C. Subchapter A includes effluent quality limitations for treated domestic sewage which are required to maintain water quality in accordance with TCEQ surface water quality standards. Subchapter B establishes minimum standards for the location of domestic wastewater treatment facilities, including definitions, considerations for determining site selection, and unsuitable site characteristics. Subchapter C outlines the components of a required technical report for the design of the wastewater disposal system as well as the requirements of irrigation disposal systems and percolation disposal systems.

The rules are needed to provide regulations to support the state water quality management program regarding domestic wastewater treatment facilities to minimize possible contamination of ground and surface water and the possibility of exposing the public to nuisance or unhealthful conditions.

Public Comment

The public comment period closed on September 26, 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 309 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401356

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 1, 2024



Department of Aging and Disability Services

Title 40, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Aging and Disability Services, adopts the review of the chapter below in Title 40, Part 1, of the Texas Administrative Code (TAC):

Chapter 7, DADS Administrative Responsibilities

Notice of the review of this chapter was published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 722). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 7 in accordance with §2001.039 of the Texas Government Code, 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 7 except for:

§7.6, Assignment and Use of Pooled Vehicles;

§7.23, Unauthorized Departures That May Have Unusual Consequences;

§7.34, Commercial Solicitation on Grounds;

§7.51, Purpose;
§7.52, Application;
§7.53, Definitions;
§7.54, Procurement;
§7.55, Accountability;
§7.56, Provisions for All Contracts;
§7.57, Additional Requirements for Specific Contracts;
§7.58, Contract Extension or Renewal;
§7.60, Protest and Appeal Procedures;
§7.61, Contract Monitoring;
§7.62, Remedies and Sanctions for All Contracts Except Construction Contracts;
§7.63, Negotiation and Mediation;
§7.64, References;
§7.65, Distribution;
§7.160, Distribution;
§7.901, Purpose;
§7.902, Applicability;
§7.903, Definitions;
§7.904, Prerequisites to Suit;
§7.905, Sovereign Immunity;
§7.906, Notice of Claim of Breach of Contract;
§7.907, Agency Counterclaim;
§7.908, Request for Voluntary Disclosure of Additional Information;
§7.909, Duty to Negotiate;
§7.910, Timetable;

§7.911, Conduct of Negotiation;
§7.912, Settlement Approval Procedures;
§7.913, Settlement Agreement;
§7.914, Costs of Negotiation;
§7.915, Request for Contested Case Hearing;
§7.916, Mediation Timetable;
§7.917, Conduct of Mediation;
§7.918, Agreement to Mediate;
§7.919, Qualifications and Immunity of the Mediator;
§7.920, Confidentiality of Mediation and Final Settlement Agreement;
§7.921, Costs of Mediation;
§7.922, Settlement Approval Procedures;
§7.923, Initial Settlement Agreement;
§7.924, Final Settlement Agreement; and
§7.925, Referral to the State Office of Administrative Hearings.

The identified repeals and any amendments, if applicable, to Chapter 7 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 40 TAC Chapter 7 as required by the Texas Government Code §2001.039.

TRD-202401368

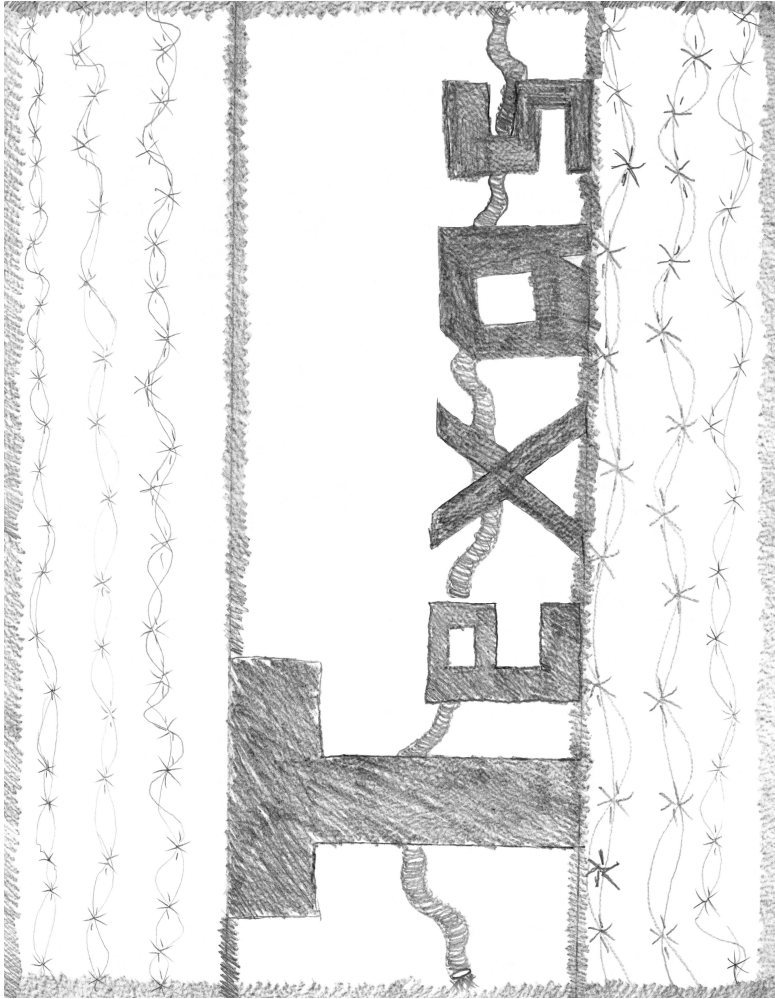
Jessica Miller

Director, Rules Coordination Office

Department of Aging and Disability Services

Filed: April 2, 2024





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 04/08/24 - 04/14/24 is 18.00% for consumer¹ credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/08/24 - 04/14/24 is 18.00% for commercial² credit.

The monthly ceiling as prescribed by §303.005³ and §303.009 for the period of 04/01/24 - 04/30/24 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-202401391

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 3, 2024



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 **May 13, 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 **May 13, 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: 1943 SWEETWATER ROAD, LLC; DOCKET NUMBER: 2022-0601-PWS-E; IDENTIFIER: RN110591138; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(c)(1)(A)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 1.0 gallons per minute per unit; 30 TAC §290.45(c)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of ten gallons per unit with a minimum of 220 gallons; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; PENALTY: \$550; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(2) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2022-1105-PWS-E; IDENTIFIER: RN100843143; LOCATION: Leander, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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: \$4,500; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(3) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2022-1205-PWS-E; IDENTIFIER: RN102681079; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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; 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; 30 TAC §290.46(f)(2) and (3)(A)(iv), and (vi), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.118(a) and (b), by failing to meet the maximum secondary constituent level for color of 15 color units; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$9,939; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118;

REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2023-1180-PWS-E; IDENTIFIER: RN101233534; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine throughout the distribution system at all times; and 30 TAC §290.46(e)(4)(c) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of at least two water works operators who hold a Class C or higher groundwater license who work at least 16 hours per month; PENALTY: \$13,466; ENFORCEMENT COORDINATOR: Christiana McCrimmon, (512) 239-2811; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2022-0862-PWS-E; IDENTIFIER: RN102678968; LOCATION: Fresno, Fort Bend County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the Executive Director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: \$3,060; ENFORCEMENT COORDINATOR: Wyatt Throm, (512) 239-1120; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(6) COMPANY: City of Bogata; DOCKET NUMBER: 2022-1592-MWD-E; IDENTIFIER: RN101721157; LOCATION: Bogata, Red River 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 WQ0010065001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$3,188; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: City of Dumas; DOCKET NUMBER: 2022-0783-MWD-E; IDENTIFIER: RN101921005; LOCATION: Dumas, Moore 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 WQ0015273001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$42,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$34,100; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: City of Gorman; DOCKET NUMBER: 2023-1188-PWS-E; IDENTIFIER: RN101198794; LOCATION: Gorman, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$3,300; ENFORCEMENT COORDINATOR: Dalton Wallace, (512) 239-6704; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: City of Maud; DOCKET NUMBER: 2021-0991-MWD-E; IDENTIFIER: RN103138202; LOCATION: Maud, Bowie County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014025001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$15,187; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$12,150; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: City of Rose City; DOCKET NUMBER: 2022-0017-PWS-E; IDENTIFIER: RN102676269; LOCATION: Rose City, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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; 30 TAC §290.41(e)(2)(C), by failing to establish a restricted zone of 200 feet radius from the raw water intake works prohibiting all recreational activities and trespassing, designated with signs recounting these restrictions; 30 TAC §290.42(d)(3)(A), by failing to have the recycle stream returned to the raw waterline upstream of the raw water sample tap; 30 TAC §290.42(d)(13), by failing to identify the influent, effluent, waste backwash, and chemical feed lines by the use of labels every five feet or various colors of paint; 30 TAC §290.42(e)(3)(F), by failing to provide both pretreatment disinfection and post-disinfection; 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution for testing for chlorine leakage which is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(7)(A)(i), by failing to have the ammonia injection point downstream of the chlorine injection point; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.42(f)(1)(E)(ii)(IV), by failing to provide separate containment facilities for chemicals that are incompatible; 30 TAC §290.43(c)(2), by failing to ensure that the facility's clearwell hatch remains locked except during inspections and maintenance; 30 TAC §290.45(b)(2)(B), by failing to provide a treatment plant capacity of 0.6 gallons per minute per connection under normal rated design flow; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system at all times; 30 TAC §290.46(e)(6)(A) and THSC, §341.033(a), by failing to use at least one operator who holds a Class B or higher surface water license who, if used part-time, 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; 30 TAC §290.46(e)(6)(C), by failing to ensure that each surface water treatment plant has at least one Class C or higher surface water operator on duty at the plant when it is in operation or provide the plant 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; 30 TAC §290.46(f)(2) and (3)(A)(i) and (ii)(I), (iii) and (iv), (B)(v), and (C)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(i), by failing to 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; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exist, or after any material improvements, corrections or additions to the private water distribution facilities; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's elevated storage tank and two clearwells annually; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.46(p)(2), by failing to provide the ED with a list of all the operators and operating companies that the public water system uses on an annual basis; 30 TAC §290.46(s)(1), by failing to calibrate the raw water, recycled decant, backwash source, and treated water flow meters at least once every 12 months; 30 TAC §290.46(s)(2)(A)(i) and (ii), by failing to calibrate the facility's benchtop pH meter according to the manufacturer specifications at least once each day and check with at least one buffer each time a series of samples is run; 30 TAC §290.46(s)(2)(A)(iii), by failing to calibrate the on-line pH meters at least once every 30 days and check at least once each week with a primary standard or by comparing results from the on-line unit with the results from the properly calibrated benchtop unit; 30 TAC §290.46(s)(2)(B), by failing to properly calibrate benchtop and on-line turbidimeters with primary standards at least once every 90 days; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(s)(2)(C)(ii), by failing to verify the accuracy of the facility's continuous disinfectant residual analyzer 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; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.110(c), by failing to monitor the performance of the disinfection facilities at sites designated in the public water system's monitoring plan; 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; 30 TAC §290.111(d)(2)(A), by failing to measure the disinfection residual, pH, temperature, and flow rate of the water in each disinfection zone at least once each day during a time when peak hourly flow rates are occurring for seven days in the month of October 2021 and one day in the month of November 2021; 30 TAC §290.111(d)(2)(B), by failing to ensure that the disinfection contact time used by the facility is based on tracer study data or a theoretical analysis approved by the ED and the actual flow rate that is occurring at the time that monitoring occurs; 30 TAC §290.111(e)(1)(A) and (h)(1) and THSC, §341.0315(c), by failing to achieve a turbidity level of combined filter effluent (CFE) that is less than 1.0 nephelometric turbidity unit (NTU) and consult with the ED within 24 hours after having a turbidity level exceeding 1.0 NTU in the CFE; 30 TAC §290.111(e)(3)(B), by failing to properly monitor the turbidity level of the CFE at least every four hours that the system serves water to the public; 30 TAC §290.111(e)(3)(C), by failing to continuously monitor the filtered water turbidity at the effluent of each individual filter and record the turbidity every 15 minutes; 30 TAC §290.111(e)(5)(C)(iii), by failing to conduct grab sampling every four hours in the event the facility's continuous turbidity monitoring equipment malfunctions, but not for more than 14 working days; 30

TAC §290.111(h)(2), by failing to submit properly completed Surface Water Monthly Operating Reports with the required turbidity and disinfectant residual data to the ED; 30 TAC §290.119(b)(7), by failing to use an acceptable analytical method for disinfectant analysis; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with monitoring requirements; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the maximum contaminant level for haloacetic acids during the fourth quarter of 2019; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2019 - June 30, 2019, monitoring period; 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 for each year a copy of the annual CCR and certification that the CCR has been; PENALTY: \$38,263; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$30,611; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: City of Tahoka; DOCKET NUMBER: 2022-1090-PWS-E; IDENTIFIER: RN101234847; LOCATION: Tahoka, Lynn County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(4), by failing to provide the elevated storage tank (EST) with a liquid level indicator calibrated in feet of water; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's EST annually; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: \$797; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(12) COMPANY: City of Teague; DOCKET NUMBER: 2024-0126-MWD-E; IDENTIFIER: RN101607935; LOCATION: Teague, Freestone County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §21.4 and TWC, §5.702, by failing to pay associated late fees for TCEQ Financial Administration account Number 23001862; and 30 TAC §305.121(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010300003, Interim Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with permitted effluent limitations; PENALTY: \$15,412; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: CSWR-Texas Utility Operating Company, LLC; DOCKET NUMBER: 2023-0483-PWS-E; IDENTIFIER: RN101264372; LOCATION: Lubbock, Lubbock 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 0.100 milligrams per liter for chromium based on a running annual average; PENALTY: \$2,550; ENFORCEMENT COORDINATOR: Daphne Greene, (903) 535-5157; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: Duval County Conservation and Reclamation District; DOCKET NUMBER: 2022-0937-PWS-E; IDENTIFIER: RN101390672; LOCATION: Benavides, Duval 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: \$1,250; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(15) COMPANY: Johnny Baulch Sandpit, L.L.C.; DOCKET NUMBER: 2023-0510-WQ-E; IDENTIFIER: RN104316781; LOCATION: Hitchcock, Galveston County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; and 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$46,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$18,400; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(16) COMPANY: LOVE'S TRAVEL STOPS and COUNTRY STORES, INCORPORATED and SUNNYLAND DEVELOPMENT, INCORPORATED; DOCKET NUMBER: 2023-0701-MWD-E; IDENTIFIER: RN110876042; LOCATION: Winona, Smith 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 WQ0015832001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$12,937; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: LUFKIN LLC dba Gas N Go; DOCKET NUMBER: 2022-0619-PST-E; IDENTIFIER: RN102355864; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), §334.50(b)(1)(B) and (2)(A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to conduct effective inventory control procedures for all underground storage tanks (USTs) involved in the retail sale of petroleum substances used as motor fuel, and failing to monitor the UST installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring, also, failing to test the line leak detector for performance and operational reliability at least once per year; 30 TAC §334.48(g)(1)(A)(ii), (h)(1)(A) and (B) and TWC, §26.3475(c)(1) and (2), by failing to test the spill prevention equipment at least once every three years to ensure that the equipment is liquid tight, also, failing to inspect the overfill prevention equipment at least once every three years to ensure that the overfill prevention equipment is set to activate at the correct level, in addition, failing to conduct a walkthrough inspection of the spill prevention equipment and release detection equipment every 30 days, and furthermore, failing to conduct the annual inspection of the containment sumps for regulated substance releases in the containment sump and the environment; and 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the corrosion protection system tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$7,876; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Mansfield Service Partners South, LLC; DOCKET NUMBER: 2023-1392-PST-E; IDENTIFIER: RN102042512; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet fueling facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Celia Garza, (210) 657-8422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(19) COMPANY: Samsung Austin Semiconductor, LLC; DOCKET NUMBER: 2021-0934-MLM-E; IDENTIFIER: RN100518026; LOCATION: Austin, Travis County; TYPE OF FACILITY: semiconductor fabrication plant; RULES VIOLATED: 30 TAC §116.110(a) and §122.143(4), Federal Operating Permit Number O4088, General Terms and Conditions, and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state; PENALTY: \$186,326; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$93,163; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Stay A While RV Park LLC; DOCKET NUMBER: 2022-0467-PWS-E; IDENTIFIER: RN105374755; LOCATION: Murchison, Henderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or backflow prevention assembly, as identified in 30 TAC §290.47(f); 30 TAC 290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons 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 §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher groundwater license; 30 TAC §290.46(f)(2) and (3)(A)(iii), (iv), and (vi), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(i), by failing to 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; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground storage tank annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's pressure tank annually; 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; 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; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$8,677; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(21) COMPANY: Union Buying and Selling Agency LLC dba Sunny Food Store; DOCKET NUMBER: 2022-1559-PST-E; IDENTIFIER: RN101436327; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,344; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202401365

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 2, 2024



Cancellation of Public Meeting

The public meeting previously scheduled for April 9, 2024, regarding 705 Limmerloop JV LLC; Proposed Permit No. WQ0016260001, has been cancelled. The public meeting will be rescheduled for a later date.

TRD-202401322

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 1, 2024



Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision Air Quality Standard Permit for Concrete Batch Plants Proposed Registration No. 174578

APPLICATION. Gonzalez Brothers Batch Plant, LP, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 174578, which would authorize construction of a permanent concrete batch plant located using the following driving directions, from the intersection of Hodgins Road and Central Expressway Service Road, travel South for approximately 0.2 miles to find the site entrance on the right, in Van Alstyne, Grayson County, Texas 75495. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact loca-

tion, refer to application. <https://gisweb.tceq.texas.gov/LocationMap-per/?marker=-96.604487,33.447852&level=13>. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

This application was submitted to the TCEQ on November 9, 2023. The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 TAC § 116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

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, May 2, 2024 at 7:00 p.m.

Kidd-Key Auditorium

400 Elm Street

Sherman, Texas 75090

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 Web site 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 application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Dallas/Fort Worth regional office, and at Van Alstyne Public Library, 151 West Cooper Street, Van Alstyne,

Grayson County, Texas 75495. The facility's compliance file, if any exists, is available for public review at the TCEQ Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from Gonzalez Brothers Batch Plant, LP, P.O. Box 29955, Dallas, Texas 75229-0955 or by calling Ms. Deissy De La Rosa, Administrative Assistant at (214) 991-2130.

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: March 28, 2024

TRD-202401394

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 3, 2024



Enforcement Order

An agreed order was adopted regarding Gary Garnett, Docket No. 2022-1443-OSS-E on April 2, 2024, assessing \$1,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Georgette Oden, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202401398

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 3, 2024



Enforcement Orders

An agreed order was adopted regarding Lazy River RV & Trailer Park, LLC, Docket No. 2020-0876-PWS-E on March 28, 2024 assessing \$11,181 in administrative penalties with \$2,236 deferred. Information concerning any aspect of this order may be obtained by contacting Daphne Greene, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SIRBAN USA ENTERPRISE INC dba SK Quick Mart, Docket No. 2021-0381-PST-E on March 28, 2024 assessing \$7,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ben Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southern Montgomery County Municipal Utility District, Docket No. 2021-0767-MWD-E on March 28, 2024 assessing \$21,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Milford, Docket No. 2021-0886-MWD-E on March 28, 2024 assessing \$47,400 in administrative penalties with \$9,480 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Clifton, Docket No. 2021-1201-MWD-E on March 28, 2024 assessing \$20,185 in administrative penalties with \$4,037 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Raymond Lemons, Sr. and Gaynell Lemons, Docket No. 2021-1300-MSW-E on March 28, 2024 assessing \$26,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pack Ellis, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EAST TEXAS BAPTIST ENCAMPMENT, Docket No. 2022-0097-PWS-E on March 28, 2024 assessing \$9,150 in administrative penalties with \$5,550 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PERMIAN LODGING ORLA LLC, Docket No. 2022-0335-MLM-E on March 28, 2024 assessing \$60,880 in administrative penalties with \$12,176 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding PNS Operating, dba Pump N Shop 48, Docket No. 2022-0459-PST-E on March 28, 2024 assessing \$3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marilyn Norrod, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Llano County Municipal Utility District 1, Docket No. 2022-0561-PWS-E on March 28, 2024 assessing \$1,462 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BHULLAR ENTERPRISES LLC dba A Motion Food Mart, Docket No. 2023-0565-PST-E on March 28, 2024 assessing \$10,703 in administrative penalties with \$2,140 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BFS Asset Holdings LLC dba BMC West, Docket No. 2023-1015-PST-E on March 28, 2024 assessing \$8,313 in administrative penalties with \$1,662 deferred. Information concerning any aspect of this order may be obtained by contacting Eunice Adegele, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202401321

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 1, 2024

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Notice Issued April 2, 2024

NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR TPDES PERMIT FOR MUNICIPAL WASTEWATER STAFF-INITIATED MINOR AMENDMENT AND NOTICE OF A PRETREATMENT PROGRAM SUBSTANTIAL MODIFICATION

PERMIT NO. WQ0010079003

APPLICATION AND PRELIMINARY DECISION. The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010079003 issued to City of Denison, P.O. Box 347, Denison, Texas 75020 to authorize a substantial modification to the approved pretreatment program. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day (gpd).

The facility is located at 1500 East Sears Street, Denison, in Grayson County, Texas 75021. The treated effluent is discharged directly to the Red River Below Lake Texoma in Segment No. 0202 of the Red River Basin. The designated uses for Segment No. 0202 are primary contact recreation, public water supply, and high aquatic life use. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.513333%2C33.760833&level=12>

The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The request for approval complies with both federal and state requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication.

Approval of the request for modification to the approved pretreatment program will allow the applicant to revise their technically based local limits and ordinance which incorporates such revisions and to continue to regulate the discharge of pollutants by industrial users into its treatment works facilities. The following treatment work facilities will be subject to the requirements of the pretreatment program: TPDES Permit Nos. WQ0010079003 and WQ0010079005.

The TCEQ Executive Director has completed the technical review of the pretreatment program substantial modification and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The Executive Director has also made a preliminary decision that the requested substantial modification to the approved pretreatment program, if approved, meets all statutory and regulatory requirements. The pretreatment program substantial modification, fact sheet and Executive Director's preliminary decision, and draft permit are available for viewing and copying at Denison City Hall, 300 West Main Street, Denison, Texas.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this draft permit or on the

application for substantial modification of the pretreatment program. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the draft permit or the application for the substantial modification of the pretreatment program. Generally, the TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the draft permit, or the application for substantial modification of the pretreatment program, or if requested by a local legislator. A public meeting is not a contested case hearing. There is no opportunity to request a contested case hearing on the application for substantial modification of the pretreatment program.

All written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days of the date of publication of this notice.

After the deadline for public comments, the Executive Director will consider the comments and prepare a response to all relevant and material, or significant public comments. The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application.

MAILING LIST. If you submit public comments, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this draft permit, application for substantial modification of the pretreatment program, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from City of Denison at the address stated above or by calling Peter Reale, (512) 687-2184.

TRD-202401397

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 3, 2024

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Notice of District Petition

Notice issued April 2, 2024

TCEQ Internal Control No. 02082024-008 Mike A. Myers Foundation, Inc., (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 591 (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 are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 214.256 acres located within Harris 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: (1) purchase, construct, acquire, improve, extend, maintain and operate a waterworks and wastewater system for domestic and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other helpful excesses of water; and (4) purchase interests in land and purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing recreational facilities. The petition also included a request for approval of road powers Pursuant to TWC Section 54.234, approval of road powers may be requested at the time of creation. The engineering report provided with the application included a summary of the estimated costs and a map illustrating the proposed roads. The petition stated that the expression the proposed districts purposes and improvements is not intended to limit the future powers and purposes of the proposed District, or the acquisition, financing, operation and maintenance by the proposed District of such additional facilities, plants, systems, and enterprises as shall be consonant with the purposes for which the proposed District is created 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 Petitioners that the cost of said project will be approximately \$28,500,000 (\$21,250,000 for water, wastewater, and drainage and \$7,250,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site 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 web site, 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 web site at www.tceq.texas.gov.

TRD-202401396
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 3, 2024



Notice of Opportunity to Comment on an Agreed 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 Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. 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 **May 13, 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 the 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 May 13, 2024**. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: APPLIED STANDARDS INSPECTION, INC.; DOCKET NUMBER: 2018-1100-IHW-E; TCEQ ID NUMBER: RN102921160; LOCATION: 4781 Highway 69 South, Beaumont, Jefferson County; TYPE OF FACILITY: piping and casing testing and inspection business; RULES VIOLATED: 30 TAC §335.9(a)(1), by failing to maintain records of all industrial solid waste (ISW) activities; 40 Code of Federal Regulations §262.11 and 30 TAC §335.62, 335.503(a)(1), and 335.504, by failing to conduct hazardous waste determinations and waste classifications; and 30 TAC §335.6(h), by failing to submit a written notice to the TCEQ which includes the type(s) of ISW or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity 90 days prior to engaging in such activities; PENALTY: \$22,312; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202401363

Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 2, 2024



Notice of Water Quality Application

The following notice was issued on March 28, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

BC Humble Enterprises, LLC has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0014874001 to authorize the replacement of the existing plant with a decrease of flow from 100,000 gallons per day (gpd) to 50,000 gpd. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 14400 Highway 59 North, in the City of Humble, Harris County, Texas 77396.

TRD-202401395
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 3, 2024



Texas Ethics Commission

List of Delinquent 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: Semiannual report due January 16, 2024

#00067512 - Weston Martinez, 14546 Brook Hollow Ste. 312G, San Antonio, Texas 78232

#00086437 - Allan E. Meagher, 915 Colony Ridge Ct., Irving, Texas 75061

#00085801 - Frank A. Ramirez IV, 2105 Clamp Ave., San Antonio, Texas 78221

#00086314 - Kathi A. Marvel, 1115 Gemini St., Box #14, Houston, Texas 77058

#00086009 - LaDale A. Buggs, 2425 N. Central Expressway, Ste. 700, Richardson, Texas 75080

#00086047 - Michael Monreal, 923 10th St. Ste. 110 PMB 288, Floresville, Texas 78114

#00086260 - Kevin A. Morris, P.O. Box 865147, Plano, Texas 75086

#00083902 - Rebecca Moyer DeFelice, P.O. Box 6853, San Antonio, Texas 78209

#00086414 - Jonathan Hildner, 4200 Elms Run Circle Apt A, Killeen, Texas 76542

#00086327 - Daniel G. Surman III, 2301 21st St. N, Texas City, Texas 77590

#00086123 - Carl N. Sanders, 7 Hayes Court, Trophy Club, Texas 76262

#00086307 - Tracy K. Fisher, P.O. Box 282, Coppell, Texas 75019

#00041097 - Eduardo R. Rodriguez, P.O. Box 2436, Austin, Texas 78768

#00086346 - Jesse Ringness, 8700 Stonebrook Pkwy #204, Frisco, Texas 75034

#00086169 - Brittney N. Verdell, 4253 Hunt Dr. #3306, Carrollton, Texas 75010

#00086210 - Jake Collier, 2808 Stearns Ave., Wichita Falls, Texas 76308

#00069817 - Cynthia T. Cavazos, 2423 Lockhill Selma #1406, San Antonio, Texas 78230

#00086404 - Ken Morrow, P.O. Box 571, Gonzales, Texas 78629

#00086236 - Taylor M. Mondick, P.O. Box 121, Fort Worth, Texas 76102

#00086284 - Cameron A. Campbell, 9950 Westpark Dr., Ste. 103B, Houston, Texas 77063

#00082182 - Gina N. Calanni, P.O. Box 6733, Katy, Texas 77491

#00084361 - Johnny J. Betancourt, 3304 S Hill, Amarillo, Texas 79103

#00086262 - Abel R. Longoria, 6 Cadena Dr., Galveston, Texas 77554

#00085592 - Nora Stephanie Morales, 1919 Shadow Bend Dr., Houston, Texas 77043

#00085105 - Graciela Olvera, 435 W. 12th Street, Dallas, Texas 75208

#00085862 - Andrew M. Bayley, 1225 North Loop West, Suite 900, Houston, Texas 77008

#00080467 - George L. Powell, 1602 Washington Avenue, Houston, Texas 77002

#00085313 - Paula K. Knippa, 2121 Lohmans Crossing, Lakeway, Texas 78734

#00085539 - Kimberly N. McTorry, 316 E. Main St., Suite 2B, Humble, Texas 77338

#00087714 - Christopher L. Tolbert Esq., P.O. Box 130895, Dallas, Texas 75313

#00067856 - Stephani A. Walsh, 411 S. Presa, San Antonio, Texas 78205

#00085622 - Samuel L. Milledge II, 2500 East TJ Jester, Ste. 510, Houston, Texas 77008

#00084268 - Brian M. McConnell, P.O. Box 713, Georgetown, Texas 78627

#00080408 - Brent Webster, 500 E. St. Johns Ave., Suite 2.620, Austin, Texas 78752

#00086220 - Amber Cox, 1001 W. 8th Street, Houston, Texas 77007

#00085987 - Kate C. Ferrell, 2500 E. TC Jester #290, Houston, Texas 77008

#00033149 - Teresa J. Hawthorne, 5990 Lindenshire Lane 101, Dallas, Texas 75230

#00084327 - Norma J. Witherspoon, P.O. Box 14209, San Antonio, Texas 78214

#00084071 - John B. Austin, P.O. Box 461021, San Antonio, Texas 78246

#00085290 - Odus E. Evbagaru, P.O. Box 19612, Houston, Texas 77224

#00086261 - Jeremy D. Kohlwes, 1305 US-90 West #423, Castroville, Texas 78009

#00084073 - Leslie A. Peeler, 2221 Justin Rd., Ste. 119-135, Flower Mound, Texas 75028

#00086142 - Joy E. Diaz, P.O. Box 93065, Austin, Texas 78749

#00081604 - Sherry Ann Williams, P.O. Box 407, Sour Lake, Texas 77659

#00085647 - Telisa G. Moore, 1408 N. Riverfront Blvd. #541, Dallas, Texas 75207

#00082590 - Douglas M. Earnest, 20931 Joe Paul Ln., Chandler, Texas 75758

#00020514 - Estate of Michael T. McSpadden, 1701 Hermann Dr. #11, Houston, Texas 77004

#00083845 - Sarah K. Fox, 5830 Granite Parkway, Ste 100-350, Plano, Texas 75024

#00084298 - Lakesha Smith, 4108 SW Green Oaks Blvd., Arlington, Texas 76003

#00082052 - Charles R. Johnson Jr., 815 Walker St. #1047, Houston, Texas 77002

#00084904 - Lisa Uresti-Dasher, P.O. Box 241684, San Antonio, Texas 78224

#00084093 - Lucio A. Del Toro, P.O. Box 787, Round Rock, Texas 78680

#00020288 - Carmen Y. Kelsey, P.O. Box 2537, Universal City, Texas 78148

#00083605 - David R. Wilson, 800 Post Oak Blvd., Suite 82, Houston, Texas 77056

#00068085 - Ray J. Olivarri Jr., P.O. Box 830433, San Antonio, Texas 78283

#00070552 - Marisa Bono, P.O. Box #100086, San Antonio, Texas 78201

#00086277 - Damien Thaddeus Jones, P.O. Box 571422, Houston, Texas 77257

#00084423 - Christopher A. Cox, 6088 Old Decatur Road, Alvord, Texas 76225

#00083872 - Holly Newton, P.O. Box 63, Dripping Springs, Texas 78620

#00084029 - Christopher B. Watt, 1504 Blair St., Houston, Texas 77008

#00086088 - Mark F. Middleton, 365 Country Road 326, Forestburg, Texas 76239

#00069699 - Paul K. Stafford, P.O. Box 710404, Dallas, Texas 75371

#00086389 - Michael A. Vargas, 712 Yoakum Street, San Benito, Texas 78586

#00085809 - Matthew B Poole, 512 Lonestar Park Ln, Ponder, Texas 76259

#00085100 - Rashard S. Davis Baylor, 5102 Westover St., Houston, Texas 77033

#00085819 - Somtoochukwu E. Ik-Ejiofor, 1853 Pearland Pkwy Ste. 123 #304, Pearland, Texas 77581

#00082154 - Clayton R. Hunt, 8550 Glenview Dr., Houston, Texas 77017

#00085650 - Christopher Leal, 400 N Ervay St. #133013, Dallas, Texas 75313

#00084400 - Rowland Garza, 212 Santa Maria Dr., Del Rio, Texas 78840

#00085834 - Aaron M. Sorrells, P.O. Box 161009, Ft. Worth, Texas 76161

#00086043 - Isreal O. Salinas, 103 Mark Avenue, Lake City, Texas 78368

#00067878 - Dexter E. Smith, 2028 Cork St., Dickinson, Texas 77539

#00081706 - Steve Riddell, 1308 Shady Creek Drive, Euless, Texas 76040

#00084342 - Jacorion X. Randle, 60 Ruth St., Beaumont, Texas 77707

#00086453 - Staci D. Childs, 405 Main Street Suite 450, Houston, Texas 77002

#00087369 - Karthik Soora, 2809 Sherwin Street, Houston, Texas 77007

#00051407 - W. Kenneth Paxton Jr., P.O. Box 3476, McKinney, Texas 75070

#00054555 - Jared R. Woodfill, 3 Riverway Suite 750, Houston, Texas 77056

#00086146 - Dinesh Sharma, 603 Pine View Dr., Euless, Texas 76039

Deadline: 30 day pre-election report due February 5, 2024

#00084552 - Jacinto Martinez, 1230 Duke Rd., San Antonio, Texas 78264

#00084310 - Ashton P. Woods, 8419 Hearth Dr. Apt 38, Houston, Texas 77054

#00088349 - Joyce Marie Chatman, 5606 Lufkin St., Houston, Texas 77026

#00088362 - Luther Wayne Martin III, P.O. Box 20791, Beaumont, Texas 77720

#00088406 - Manuel Campos Jr., 1107 Hwy 1431 #270, Marble Falls, Texas 78645

#00088353 - Joshua Feuerstein, 15141 Markout Central, Forney, Texas 75126

#00088424 - Teresa Ramirez Gonzalez, 8051 Berkshire Drive, Fort Worth, Texas 76137

#00086410 - Stephen A. Missick, 611 Thomas Castleberry Dr., Shepard, Texas 77371

#00032740 - Ori T. White, P.O. Box 160, Fort Stockton, Texas 78735

#00085736 - James O. Guillory II, 3906 Brookston St., Houston, Texas 77045

#00088355 - Ferrel C. Bonner, P.O. Box 1063, Fresno, Texas 77545

#00082094 - Aicha Davis, P.O. Box 71, DeSoto, Texas 75123
#00087349 - James T. Matlock, 2400 Stallings Dr. N Suite 14, Nacogdoches, Texas 75964
#00085725 - Denise Brown, 770 South Post Oak Lane Ste 620, Houston, Texas 77056
#00087952 - Davis W. Ford, 1610 S 31st St. Suite 102-110, Temple, Texas 76504
Deadline: 8 day pre-election report due February 26, 2024
#00067897 - Alejandro Dominguez, 855 E. Harrison, Brownsville, Texas 78520
#00087717 - Joe E. Collins III, 2701 W 15th St., Plano Texas 75075
#00087889 - Carlos Lopez, 941 Timberwood Lane, Uvalde, Texas 78801
#00088221 - Joe S. McDaniel, P.O. Box 1476, Kilgore, Texas 75663
#00088303 - Curtis L. Laird, P.O. Box 1150, Grandview, Texas 76050
#00087888 - Jessica Rose Huang, 17424 W. Grand Pkwy S #777, Sugar Land, Texas 77479
#00087955 - Nasir H. Malik, 4008 Louetta Rd. Ste. 606, Spring, Texas 77379
#00088065 - Joseph Aragon, 1307 Nueces St., Austin, Texas 78701
#00088424 - Teresa Ramirez Gonzalez, 8051 Berkshire Drive, Fort Worth, Texas 76137
#00088406 - Manuel Campos Jr., 1107 Hwy 1431 #270, Marble Falls, Texas 78645
#00088362 - Luther Wayne Martin III, P.O. Box 20791, Beaumont, Texas 77720
#00088353 - Joshua Feuerstein, 15141 Markout Central, Forney, Texas 75126
#00088349 - Joyce Marie Chatman, 5606 Lufkin St., Houston, Texas 77026
#00084310 - Ashton P. Woods, 8419 Hearth Dr. Apt 38, Houston, Texas 77054
#00032740 - Ori T. White, P.O. Box 160, Fort Stockton, Texas 78735
#00084552 - Jacinto Martinez, 1230 Duke Rd., San Antonio, Texas 78264
#00088158 - Justice Omar McFarlane, 1710 Juniper Lane, Midlothian, Texas 76065
#00061394 - Vivian R. King, 2202 Alabama St. Ste. A, Houston, Texas 77004
#00088225 - Carol Lynn Sanchez, 301 E. New Hampshire #9, Harlingen, Texas 78586
#00085736 - James O. Guillory II, P.O. Box 451812, Houston, Texas 77245
#00084543 - Angeanette Thibodeaux, 9597 Jones Road Box 161, Houston, Texas 77065
#00086254 - Bianca Gracia, 6443 Fairmont Pkwy. 140-102, Pasadena, Texas 77505
#00087956 - Roderick D. Rodgers, 8190 Barker Cypress Rd. Ste 1900, Cypress, Texas 77433

#00085680 - David O. Lowe, 7424 Park Place Dr., North Richland Hills, Texas 76182
#00088219 - Robert C. Flores, P.O. Box 17161, San Antonio, Texas 78217
#00088321 - Emmanuel Albarado, 317 S. Clements, Gainesville, Texas 76240
#00088024 - Trent Perez, 1 E Greenway Plaza Ste. 225, Houston, Texas 77046
#00088240 - Mark H. Ritchie, P.O. Box 300087, Houston, Texas 77230
TRD-202401310
J.R. Johnson
Executive Director
Texas Ethics Commission
Filed: March 27, 2024

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Department of Family and Protective Services

Title IV-B Child and Family Services Plan

The Texas Department of Family and Protective Services (DFPS), as the designated agency to administer Title IV-B programs in the state of Texas, is developing the 2025-2029 Title IV-B Child and Family Services Plan (CFSP) for Texas. Under guidelines issued by the U.S. Department of Health and Human Services, Administration for Children and Families, DFPS is required to review the progress made in the previous year toward accomplishing the goals and objectives identified in the state's five-year CFSP for the period from October 1, 2020, through September 30, 2024.

The CFSP is required for the state to receive its federal allocation for fiscal year 2025 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, and the Child Abuse Prevention and Treatment Act (CAPTA).

The purpose of this notice is to solicit input in the development of the five-year 2025-2029 Child and Family Services Plan. This input will enable the agency to consider and include any changes in our state plan in order to best meet the needs of the children and families the agency serves. Members of the public can obtain more detailed information regarding the Child and Family Services Plan (CFSP) from the DFPS website at https://www.dfps.texas.gov/About_DFPS/Title_IV-B_State_Plan/. The web site includes a copy of the 2020-2024 CFSP and the 2024 Annual Progress Services Report.

Written comments regarding the CFSP may be faxed or mailed to: Texas Department of Family and Protective Services, Attention: Rosario G. Hernandez at Rosario.hernandez@dfps.texas.gov or P.O. Box 149030, MC W-157; Austin, Texas 78714-9030; telephone (830) 570-1772; fax (512) 339-5927. The comments must be received no later than May 12, 2024.

TRD-202401312
Quyona Gregg
Senior Policy Attorney
Department of Family and Protective Services
Filed: March 28, 2024

◆ ◆ ◆
General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 25, 2024 to March 29, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, April 5, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday May 5, 2024.

Federal License and Permit Activities:

Applicant: Coastal Bend Bays & Estuaries Program

Location: The project site is located in Aransas Bay, at Deadman's Island (the Island) approximately 1.7 miles northwest of San Jose Island and approximately 1,700 feet south of the Gulf Intercoastal Waterway.

Latitude and Longitude: 28.066317, -96.962798

Project Description: The applicant proposes to construct a breakwater and expand the Island for the development of a rookery island. The applicant proposes to construct a 1,750-foot traditional breakwater and fill in approximately 4.63 acres of open water to construct a colonial waterbird rookery. The 1,750-foot breakwater would have a crest elevation of approximately 4.5 feet and would have a 4:1 horizontal to vertical side slope. The breakwater would be constructed with graded riprap that would be approximately 7 feet wide at the crest and have an average width of 60 feet. Approximately 2.09 acres of imported sand fill material would be placed within the breakwater footprint. In addition, approximately 0.90 acre of oyster reef (approximately 45 feet wide by 650 feet long) would be created adjacent to the breakwater footprint. The proposed oyster reef would total approximately 1,700 cubic yards of approximately 6-inch-diameter rock. The applicant has stated that they have avoided and minimized the environmental impacts by avoiding all submerged aquatic vegetation and other special aquatic sites. No mitigation is proposed.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2023-00562. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1198-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202401355

Mark Havens
Chief Clerk
General Land Office
Filed: April 1, 2024



Texas Health and Human Services Commission

Notice of Public Hearing on Long-Range Planning for State Supported Living Centers -- Updated April 3, 2024

Hearing Site. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on April 22, 2024, at 9:00 a.m. in the Winters Building, Room 125W, 701 W. 51st St., Austin, Texas 78751. Building entry and check-in is through security at the main entrance, and parking is available in the visitor's lot located in front of the building.

Purpose. The purpose of the hearing is to receive public comment on the long-range planning for State Supported Living Centers including resident quality of care, services to transition back to the community, and availability of services as required by 533A.032.

Agenda.

1. Welcome and call to order
2. Long-Range Plan
3. Public comment
4. Adjourn

Oral Comments. Oral comments can be provided in person or via video or audio conferencing. Please pre-register.

Written Comments. Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, or email:

U.S. Mail

Texas Health and Human Services Commission
State Supported Living Centers
Attention: Office of Laura Cazabon-Braly, Mail Code E619
Winters Building
701 W. 51st St.
Austin, Texas 78751

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission
State Supported Living Centers
Attention: Office of Laura Cazabon-Braly, Mail Code E619
Winters Building
701 W. 51st St.
Austin, Texas 78751

Email

SSLCPlanning@hhsc.state.tx.us

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Lisa Colin at (737) 306-9085 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-202401399
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 3, 2024



Public Notice: Texas State Plan for Medical Assistance
Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 24-0009 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to remove licensure requirements for Emergency Response Services (ERS) providers of backup systems and supports under the Community First Choice State Plan Option. ERS providers are no longer subject to licensure requirements after Senate Bill 202, 84th Texas Legislature, Regular Session, 2015, repealed Texas Health and Safety Code, Chapter 781. The proposed amendment is effective April 1, 2024.

The proposed amendment is estimated to have no fiscal impact.

To obtain copies of the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Health

and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the Access and Eligibility Services for local benefit offices.

TRD-202401366

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 2, 2024



Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of February 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	Amendment Number	Date of Action
THROUGHOUT TX	MAGRYM CONSULTING INC	L07213	MIDLAND	00	02/16/24
THROUGHOUT TX	CARDINAL NDT LLC	L07214	SAN ANTONIO	00	02/16/24

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ADDISON	TEXAS CENTER FOR INTERVENTIONAL SURGERY LLC	L07062	ADDISON	05	02/28/24
ANGLETON	ISOTHERAPEUTIC S GROUP LLC	L05969	ANGLETON	53	02/23/24
ARLINGTON	COLUMBIA MEDICAL CENTER OF ARLINGTON SUBSIDIARY LP DBA MEDICAL CENTER OF ARLINGTON	L02228	ARLINGTON	94	02/16/24
AUSTIN	UROLOGY AUSTIN PLLC	L06798	AUSTIN	04	02/21/24
BISHOP	TICONA POLYMERS INC	L02441	BISHOP	70	02/29/24
BORGER	WRB REFINING LP	L02480	BORGER	73	02/22/24
COLLEGE STATION	SCOTT & WHITE HOSPITAL- COLLEGE STATION DBA BAYLOR SCOTT & WHITE MEDICAL CENTER - COLLEGE STATION	L06557	COLLEGE STATION	16	02/26/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

CORPUS CHRISTI	CHRISTUS TRINITY CLINIC DBA CHRISTUS TRINITY CLINIC - THOMAS SPANN	L05733	CORPUS CHRISTI	10	02/20/24
CORPUS CHRISTI	CHRISTUS TRINITY CLINIC	L04611	CORPUS CHRISTI	31	02/20/24
CORPUS CHRISTI	RADIOLOGY ASSOCIATES LLP	L04169	CORPUS CHRISTI	64	02/26/24
DALLAS	ALLIANCE IMAGING INC	L05336	DALLAS	23	02/16/24
DALLAS	TEXAS ONCOLOGY PA	L04878	DALLAS	75	02/21/24
EDINBURG	MCALLEN HOSPITALS LP DBA SOUTH TEXAS HEALTH SYSTEM EDINBURG	L04262	EDINBURG	30	02/28/24
EL PASO	AKUMIN IMAGING TEXAS LLC DBA SOUTHWEST X-RAY	L05207	EL PASO	28	02/16/24
EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE EAST CAMPUS	L06152	EL PASO	41	02/26/24
FORT WORTH	NORTH TEXAS MCA LLC DBA MEDICAL CITY ALLIANCE	L06687	FORT WORTH	13	02/27/24
GATESVILLE	CORYELL COUNTY MEMORIAL HOSPITAL AUTHORITY DBA CORYELL MEMORIAL HEALTHCARE SYSTEM	L02391	GATESVILLE	43	02/26/24
HARLINGEN	THE UNIVERSITY OF TEXAS RIO GRANDE VALLEY	L06754	HARLINGEN	11	02/20/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

HOUSTON	CARDIOLOGY CONSULTANTS OF HOUST PLLC	L06757	HOUSTON	02	02/21/24
HOUSTON	HALLIBURTON ENERGY SERVICES INC	L02113	HOUSTON	147	02/29/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L03772	HOUSTON	178	02/28/24
HUMBLE	NORTH HOUSTON FAMILY MEDICINE PLLC	L05671	HUMBLE	15	02/23/24
LAKE JACKSON	THE COMMUNITY HOSPITAL OF BRAZOSPORT DBA CHI ST LUKES HEALTH - BRAZOSPORT	L03027	LAKE JACKSON	34	02/27/24
PASADENA	CHCA BAYSHORE LP DBA HCA HOUSTON HEALTHCARE SOUTHEAST	L00153	PASADENA	109	02/26/24
PLANO	COLUMBIA MEDICAL CENTER OF PLANO SUBSIDIARY LP DBA MEDICAL CITY PLANO	L02032	PLANO	131	02/20/24
SAN ANTONIO	UNIVERSITY OF TEXAS AT SAN ANTONIO	L01962	SAN ANTONIO	74	02/28/24
SUGAR LAND	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST SUGAR LAND HOSPITAL	L06232	SUGAR LAND	21	02/21/24
SUNRAY	DIAMOND SHAMROCK REFINING COMPANY LP	L04398	SUNRAY	27	02/28/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

SWEENY	PHILLIPS 66 COMPANY	L06524	SWEENY	19	02/29/24
TAYLOR	SCOTT & WHITE HOSPITAL - TAYLOR DBA BAYLOR SCOTT & WHITE MEDICAL CENTER TAYLOR	L03657	TAYLOR	40	02/26/24
THROUGHOUT TX	THERMO ELECTRON NORTH AMERICA LLC	L07111	AUSTIN	01	02/23/24
THROUGHOUT TX	TRISPEC LLC	L06642	CORPUS CHRISTI	08	02/28/24
THROUGHOUT TX	IRISNDT INC	L06435	HOUSTON	36	02/23/24
THROUGHOUT TX	DIGIRAD IMAGING SOLUTIONS INC	L05414	HOUSTON	51	02/27/24
THROUGHOUT TX	CORE LABORATORIES LP DBA PROTECHNICS DIVISION OF CORE LABORATORIES LP	L03835	HOUSTON	68	02/29/24
THROUGHOUT TX	BAKER HUGHES OILFIELD OPERATIONS LLC	L00446	HOUSTON	205	02/28/24
THROUGHOUT TX	FIXED EQUIPMENT RELIABILITY LLC	L07168	INGLESIDE	03	02/16/24
THROUGHOUT TX	PRIME INSPECTIONS INC	L07122	KATY	05	02/21/24
THROUGHOUT TX	CUTTER TECHNICAL SERVICES LLC	L07052	KILGORE	05	02/28/24
THROUGHOUT TX	BRAUN INTERTEC CORPORATION	L06643	SAN ANTONIO	10	02/23/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AMARILLO	CARDIOLOGY CENTER OF AMARILLO LLP	L05736	AMARILLO	17	02/20/24
SAN ANTONIO	CARDIOVASCULAR CONSULTANTS OF SAN ANTONIO PLLC	L06569	SAN ANTONIO	03	02/27/24
THROUGHOUT TX	HUNTING TITAN INC	L06610	PAMPA	10	02/27/24
THROUGHOUT TX	TEXAS MPM PRODUCTS INC	L00967	LILLARD	44	02/23/24

TRD-202401362
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: April 2, 2024



Texas Department of Insurance

Company Licensing

Application for Catholic Financial Life, a foreign life, accident, and/or health company, to change its name to Trusted Fraternal Life. The home office is in Milwaukee, Wisconsin.

Application for incorporation in the state of Texas for Homebound Insurance Exchange, a domestic reciprocal. The home office is in Dallas, Texas.

Application for Windhaven National Insurance Company, a foreign fire and/or casualty company, to change its name to ODIN Insurance Company. The home office is in Salt Lake City, Utah.

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-202401393
 Justin Beam
 Chief Clerk
 Texas Department of Insurance
 Filed: April 3, 2024



Texas Department of Motor Vehicles

Correction of Error

The Texas Department of Motor Vehicles (department) proposed amendments to 43 TAC §206.41 and 43 TAC §221.112 in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8192 and 48

TexReg 8278, respectively). Due to an error by the department, some of the text of the rules was published incorrectly.

For 43 TAC §206.41, the closing punctuation was omitted. The rule should read as follows:

Any interested person may petition the department requesting the adoption of a rule. The [Such] petition must be in writing [directed] to the executive director [at the department's headquarters building in Austin] and [shall] contain the person's physical address in Texas, [and] a clear and concise statement of the substance of the requested [proposed] rule, and [together with] a brief explanation of the purpose of the requested rule [to be accomplished through such adoption]. Within 60 days after receipt, the department will either deny the petition in writing, stating its reasons therefore, or will initiate rulemaking proceedings in accordance with [the Administrative Procedure Act (] Government Code, Chapter 2001, Subchapter B[)].

For 43 TAC §221.112(21), the semicolon following "vehicle" and the word "or" were omitted at the end of the paragraph. The paragraph should read as follows:

[(21) dismantles a salvage motor vehicle or a nonrepairable motor vehicle; or]

TRD-202401364
 Laura Moriaty
 General Counsel
 Texas Department of Motor Vehicles
 Filed: April 2, 2024



Texas State Board of Public Accountancy

Correction of Error

The Texas State Board of Public Accountancy adopted amendments to 22 TAC §501.62 in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2193). Due to an error by the Texas Register, the subchapter name was published incorrectly in the print version of this issue. The online versions were not affected by this error.

The correct text is as follows:

◆ ◆ ◆
State Securities Board

Correction of Error

The State Securities Board (Board) proposed amendments to 7 TAC §§109.1 - 109.8, 109.11, 109.13, 109.14 and 109.17 in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2021). Due to errors by the Texas Register, some of the text of the rules were published incorrectly. The correct text follows.

For 7 TAC §109.11(d):

(d) In lieu of the three requirements in subsections (a)-(c) of this section, the section 4005.023(b)(1) and (b)(2) [section 5-S(1)] guarantee requirements will be satisfied if the option is issued by a clearing corporation recognized by the State Securities Board as satisfying all the following standards.

For 7 TAC §109.13(a)(2):

(2) Limited Offering Exemptions. The term "Limited Offering Exemptions" refers to the two limited offering exemptions found in subsections (a)(1) and (a)(2) of §4005.012 of the Act. The term "Limited Offering Exemption (a)(1)" refers to the exemption in subsection (a)(1) of §4005.012 of the Act, and the term "Limited Offering Exemption (a)(2)" refers to the exemption in subsection (a)(2) of §4005.012 of the Act. [In determining who is a sophisticated investor at least the following factors should be considered.]

For 7 TAC §109.13(e):

(e) Other exemptions. The phrase "exempt under another provision of this subchapter [other provisions of this §5]" in §4005.012(b)(1) [§5-I(e)] means exempt under any provisions of the Act, other than the Limited Offering Exemption (a)(1) [§5-I(a)], and subsections (k) and (l) of this section.

For 7 TAC §109.13(g):

(g) Sales made under §4005.013 of the Act. [Compensatory or benefit plan sales.] Only the employer and its participating subsidiaries, parents, or subsidiaries of such parents, if any, may offer or sell securities in connection with the employee plan without registration as dealers. For purposes of §4005.013 of the Act [the Act, §5-I(b)], the term "issuer" includes a general partner of a limited partnership with respect to a security sold or distributed by such limited partnership in a transaction otherwise meeting the requirements of §4005.013 of the Act [§5-I(b)]. An employee of the issuer or its participating subsidiary who aids in offering or selling such securities in connection with the plan is not required to be registered as an agent provided the employee meets all of the following conditions:

For 7 TAC §109.13(h):

(h) Section 4005.013 [Compensatory or benefit] plans for counting purposes. A noncontributory stock ownership plan or stock ownership trust that holds securities of the issuer for the benefit of the participants in that issuer's plan shall be counted as one security holder under the Limited Offering Exemption (a)(1) [§5-I(a)]. Plan participants in such a stock ownership plan or trust will not be deemed security holders of the issuer for purposes of counting security holders under the Limited Offering Exemption (a)(1) [§5-I(a)] solely because of their participation in the plan or trust. However, participants receiving distributions

of securities from the plan or trust will be deemed security holders of the issuer on receipt of securities of the issuer from the plan or trust.

For 7 TAC §109.13(1)(1):

(1) The sale is made, without the use of any public solicitation or advertisements, as set forth in subsection (a) and subsection (b) of this section to:

For 7 TAC §109.13(1)(7):

(7) This subsection may not be combined with either of the Limited Offering Exemptions [the Securities Act, §5-I(a) or §5-I(e)], or subsection (k) of this section to make sales to more than 35 unaccredited security holders during a 12-month period. Except for accredited investors who became security holders pursuant to this subsection, security holders who purchase in sales made in compliance with this subsection are included in the count of security holders under the Limited Offering Exemption (a)(1) [§5-I(a)] or purchasers under the Limited Offering Exemption (a)(2) [§5-I(e)], but this subsection may be used to exceed the numbers of security holders or purchasers allowed by such sections over an extended period of time.

For 7 TAC §109.13(1)(10):

(10) Accredited investor security holders who purchase in sales made under this exemption are not counted as security holders under the Limited Offering Exemption (a)(1) [§5-I(a)] or purchasers under the Limited Offering Exemption (a)(2) [§5-I(e)] in determining whether any other sales to other security holders or purchasers are exempt under the Private Offering Exemptions [§5-I]. That is to say, this exemption for sales to accredited investors is cumulative with and in addition to the Private Offering Exemptions [exemptions contained in §5-I], and sales made under paragraph (1)(B) of this subsection are not considered in determining whether sales made in reliance on the exemptions contained in the Private Offering Exemptions [§5-I] would be within the numerical limits on the number of security holders or purchasers contained in the Private Offering Exemptions [§5-I].

For 7 TAC §109.14(a):

(a) It is the intent of the State Securities Board that §109.13(a)-(c) and (j) of this title (relating to Limited Offering Exemptions) apply to transactions made pursuant to the Securities Act, §4005.021 [§5-Q], and that the terms defined in §109.13(a)-(c) and (j) of this title (relating to Limited Offering Exemptions) have the same meanings for purposes of §4005.021 [§5-Q] as they do for exemptions set forth in §4005.012 and §4005.013 of the Securities Act [§5-I].

For 7 TAC §109.14(c):

(c) In addition to sales made under the Securities Act, §4005.021 [§5-Q], the State Securities Board, pursuant to the Act, §4005.024 [§5-T], exempts from the registration requirements of the Act, Chapter 4003, Subchapters A, B, and C [§7], the sale of interests in and under oil, gas, and mining leases, fees, or titles, or contracts relating thereto (hereinafter called securities), by the owner itself, or by a registered dealer acting as agent for the owner, provided all of the conditions of §109.13(k) or (l) of this title (relating to Limited Offering Exemptions) are met. The purpose of this subsection is to provide a mechanism which will allow for sales of the securities listed herein to accredited investors where the conditions of §109.13(k) or (l) of this title (relating to Limited Offering Exemptions) are met.

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)

SALES AND CUSTOMER SUPPORT

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