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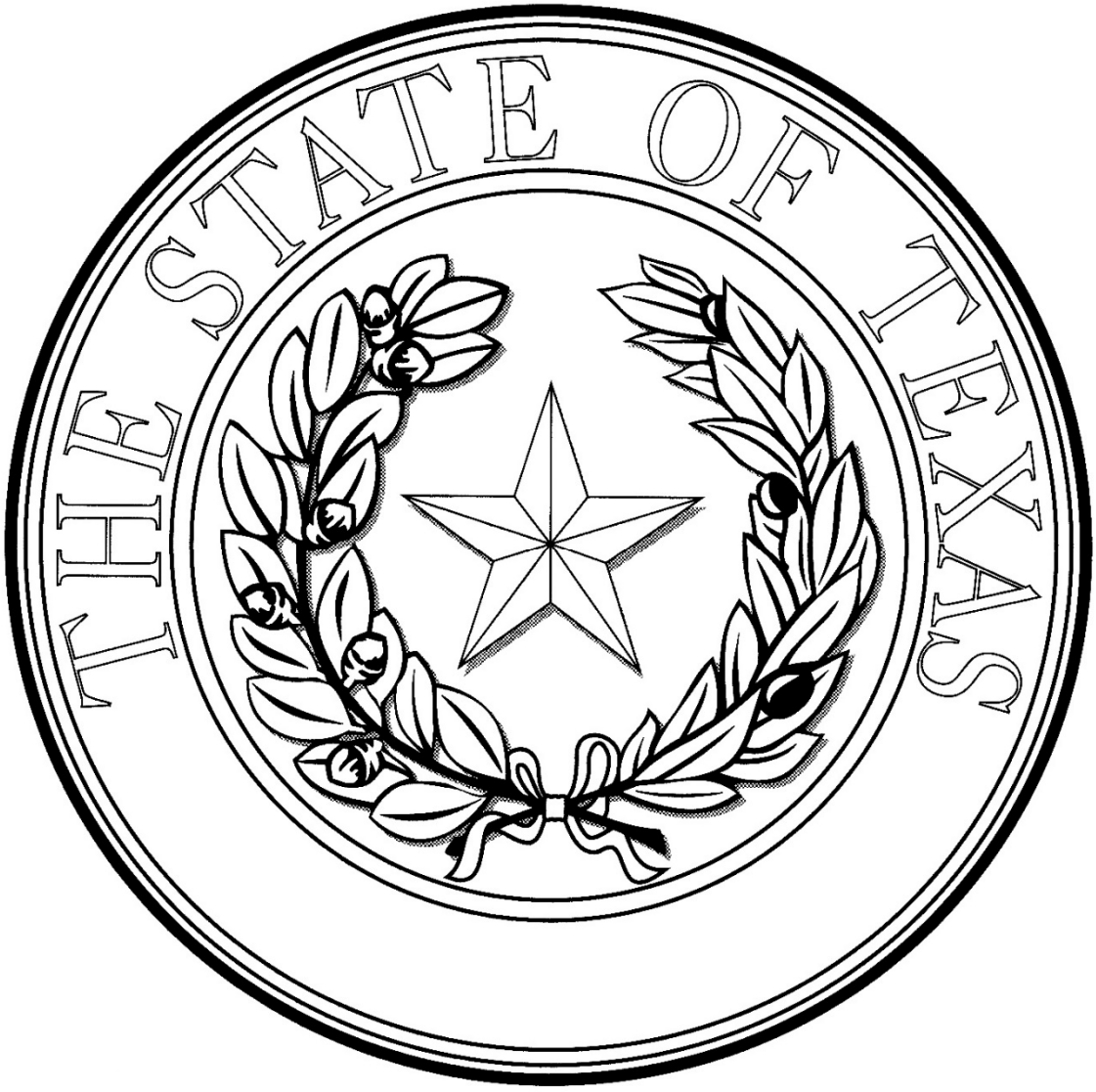

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

https://www.sos.texas.gov
register@sos.texas.gov

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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 February 10, 2021

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2027, Stanley M. Duchman, M.D. of Houston, Texas (Dr. Duchman is being reappointed).

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2027, Sherron D. Franks-Meeks, Ph.D. of Odessa, Texas (Ms. Franks-Meeks is being reappointed).

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2027, Shilpa Shamapant of Austin, Texas (Ms. Shamapant is being reappointed).

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2027, Maricela "Marcie" Gonzalez Wilson of Lakeway, Texas (Ms. Wilson is being reappointed).

Appointed to the Texas State Board of Social Worker Examiners, for a term to expire February 1, 2025, Jennifer B. Swords of Haltom City, Texas (replacing Maria G. Castro of Weslaco, whose term expired).

Appointed to the Texas State Board of Social Worker Examiners, for a term to expire February 1, 2027, Brian C. Brumley of Sumner, Texas (Mr. Brumley is being reappointed).

Appointed to the Texas State Board of Social Worker Examiners, for a term to expire February 1, 2027, Benny W. "Ben" Morris of Cleburne, Texas (Mr. Morris is being reappointed).

Appointments for February 11, 2021

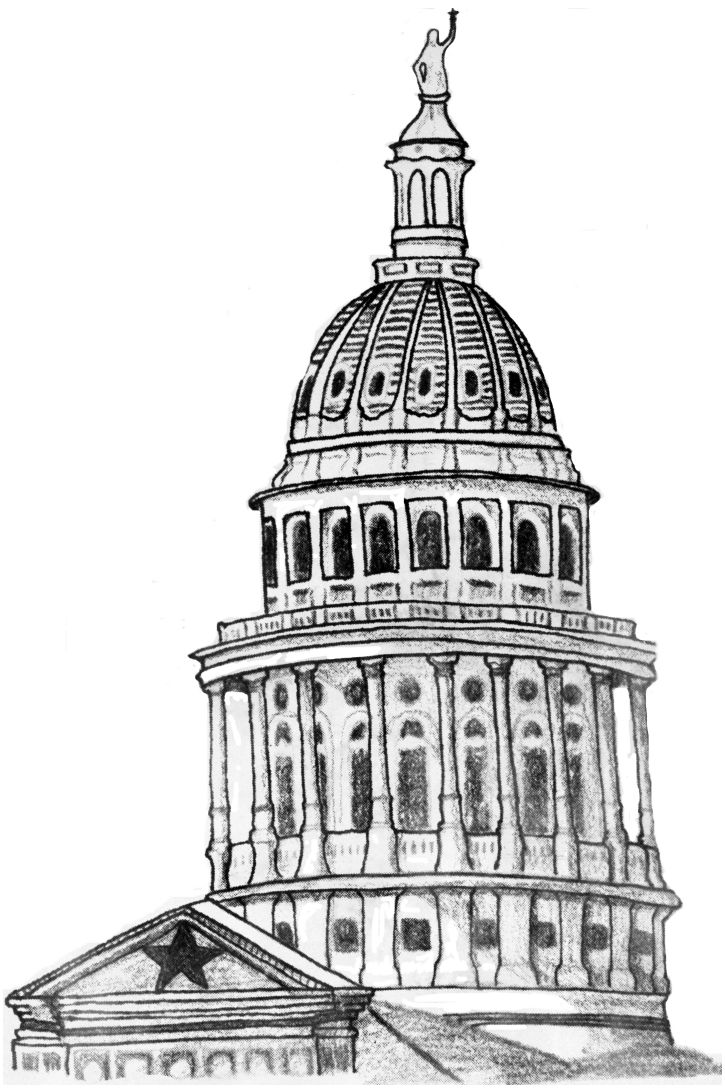
Appointed as presiding officer of the Brazos County Regional Mobility Authority, for a term to expire February 1, 2023, Daniel B. "Barry" Moore of College Station, Texas (replacing Tedi L. Ellison of College Station, whose term expired).

Appointed as the Commissioner of Workers' Compensation, for a term to expire February 1, 2023, Cassandra J. "Cassie" Brown of Austin, Texas (Commissioner Brown is being reappointed).

Greg Abbott, Governor

TRD-202100677

♦ ♦ ♦



Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

25 TAC §417.47

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25 Texas Administrative Code, Chapter 417, Agency and Facility Responsibilities, amended §417.47, concerning an emergency rule in response to COVID-19 to ensure necessary state hospital staffing levels and infection control training during the COVID-19 pandemic. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this standard operating procedures.

To protect individuals served by the state hospitals and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC previously adopted emergency rules concerning staff training in order to efficiently and effectively deploy staff to meet basic needs during the COVID-19 pandemic, without posing risk to the individuals served. As the COVID-19 pandemic and the Governor's proclamation of disaster have continued, so has the need for training requirements that ensure adequate training and staffing levels at state hospitals. This emergency rule updates those training requirements to require training of infection control specific to COVID-19, including prevention, screening, isolation, and the use of personal protective equipment.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §552.052. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §552.052 authorizes the Executive Commissioner of HHSC to adopt rules governing training of state hospital employees.

The amended section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 552.

§417.47. Training Requirements for State Mental Health Facilities.

(a) All State Hospital Employees. As required by Texas Health and Safety Code, §552.052(b), before performing the employee's duties without direct supervision, all state mental health facility (SMHF) staff members shall receive competency training and instruction on general duties. Training shall include the prevention, screening, isolation, and use of personal protective equipment related to COVID-19. Due to the COVID-19 pandemic declared disaster, the competency training, instruction, and evaluation may be modified and expedited to ensure the employee has achieved competency essential to perform the employee's duties.

(b) Direct Care Employees. Before an employee who provides direct delivery of services to a patient begins to perform direct care duties without direct supervision, a SMHF staff member shall receive training and instruction, in addition to the training outlined in subsection (a) of this section, on implementation of the interdisciplinary treatment program for each patient, a person admitted to a state hospital under the management and control of the department, for whom they will provide care.

(c) Specialized Training. Direct care employees shall receive additional training and instructional information in accordance with the specialized needs of the population being served, including services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients within a reasonable period of time after the staff member begins employment.

(d) All SMHF staff members shall receive annual refresher training on the topics outlined in subsection (a) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or due to the COVID-19 pandemic declared disaster.

(e) Direct Care Employees whose duties require delivery of services to a patient shall receive annual refresher training on the topics outlined in subsections (a) and (b) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or due to the COVID-19 pandemic declared disaster.

(f) Direct Care Employees whose duties require delivery of services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients shall receive annual refresher training on the topics outlined in subsections (a), (b), and (c) of this section, throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or due to the COVID-19 pandemic declared disaster.

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

Filed with the Office of the Secretary of State on February 11, 2021.

TRD-202100583
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: February 15, 2021
Expiration date: June 14, 2021
For further information, please call: (512) 438-1049

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

SUBCHAPTER A. HOSPITALS

26 TAC §500.3

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.3 for a 60-day period. The text of the emergency rule was originally published in the October 30, 2020, issue of the *Texas Register* (45 TexReg 7659).

Filed with the Office of the Secretary of State on February 12, 2021.

TRD-202100626
Nycia Deal
Attorney
Health and Human Services Commission
Original effective date: October 20, 2020
Expiration date: April 17, 2021
For further information, please call: (512) 834-4591

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SUBCHAPTER D. CHEMICAL DEPENDENCY TREATMENT FACILITIES

26 TAC §§500.41 - 500.44

The Health and Human Services Commission is renewing the effectiveness of emergency new §§500.41 - 500.44 for a 60-day period. The text of the emergency rule was originally published in the October 30, 2020, issue of the *Texas Register* (45 TexReg 7660).

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Nycia Deal
Attorney
Health and Human Services Commission
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Expiration date: April 14, 2021
For further information, please call: (512) 834-4591

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SUBCHAPTER E. LICENSED CHEMICAL DEPENDENCY COUNSELORS

26 TAC §500.51

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.51 for a 60-day period. The text of the emergency rule was originally published in the October 30, 2020, issue of the *Texas Register* (45 TexReg 7662).

Filed with the Office of the Secretary of State on February 11, 2021.

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Nycia Deal
Attorney
Health and Human Services Commission
Original effective date: October 17, 2020
Expiration date: April 14, 2021
For further information, please call: (512) 834-4591

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CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §551.46

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Part 1, Texas Administrative Code, Chapter 551, Subchapter C, new §551.46, concerning an emergency rule to mitigate and contain COVID-19 in an intermediate care facility for individuals with an intellectual disability (ICF/IID) or related condition. As authorized by Texas Government Code §2001.034,

the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of this emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for ICF/IID Provider Response to COVID-19 - Mitigation.

To protect individuals receiving ICF/IID services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to mitigate and contain COVID-19. The purpose of the new rule is to describe requirements for ICF/IID Provider Response to COVID-19.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §§252.031 - 252.033 and §242.043. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §§252.031 - 252.033 require the Executive Commissioner of HHSC to establish rules prescribing the minimum standards and process for licensure as an intermediate care facility. Texas Health and Safety Code §252.043 establishes HHSC's authority to conduct an inspection, survey, or investigation at an intermediate care facility to determine if the intermediate care facility is in compliance with the minimum acceptable levels of care for individuals who are living in an intermediate care facility, and the minimum acceptable life safety code and physical environment requirements.

The new rule implements Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§551.46. ICF/IID Provider Response to COVID-19 - Mitigation.

(a) The following words and terms, when used in this section, have the following meanings.

(1) Cohort--A group of individuals placed in rooms, halls, or sections of an intermediate care facility with others who have the same COVID-19 status or the act of grouping individuals with other individuals who have the same COVID-19 status.

(2) COVID-19 negative--A person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--A person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

(5) Individual--A person enrolled in the ICF/IID Program.

(6) Isolation--The separation of people who are COVID-19 positive from those who are COVID-19 negative and those whose COVID-19 status is unknown.

(7) PPE--Personal protective equipment means specialized clothing or equipment worn by intermediate care facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

(8) Quarantine--The separation of people with unknown COVID-19 status from those who are COVID-19 positive and those who are COVID-19 negative.

(9) Unknown COVID-19 status--A person who is a new admission, readmission, or has spent one or more nights away from the facility, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(b) An intermediate care facility must have a protocol in place included in their COVID-19 response plan that describes how the facility will transfer a COVID-19 positive individual to another facility capable of isolating and caring for the COVID-19 positive individual, if the facility cannot successfully isolate the individual.

(1) An intermediate care facility must have contracts or agreements with alternative appropriate facilities to ensure care for COVID-19 positive individuals.

(2) An intermediate care facility must assist the individual and family members as needed to transfer the individual to the alternate facility.

(c) An intermediate care facility must have a COVID-19 response plan that includes:

(1) Designated space for:

(A) COVID-19 negative individuals;

(B) Individuals with unknown COVID-19 status; and

(C) COVID-19 positive individuals, when the facility is able to care for an individual at this level or until arrangements can be made to transfer the individual to a higher level of care.

(2) Spaces for staff to don and doff PPE that minimize the movement of staff through other areas of the facility.

(3) Individual transport protocols.

(4) Plans for obtaining and maintaining a two-week supply of PPE, including surgical facemasks, gowns, gloves, and goggles or face shields.

(5) If the facility houses COVID-19 positive individuals, an individual recovery plan for continuing care after an individual is recovering from COVID-19 as per CDC guidelines on recovery.

(d) An intermediate care facility must screen all individuals, staff, and people who come to the facility in accordance with the following criteria:

(1) fever, defined as a temperature of 100.4 Fahrenheit and above, or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) other signs or symptoms of COVID-19, including chills, new or worsening cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) any other signs and symptoms as outlined by the CDC in Symptoms or Coronavirus at cdc.gov; and

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, unless the person is entering the facility to provide critical assistance.

(e) An intermediate care facility must screen individuals according to the following timeframes:

(1) for the criteria in subsection (d) of this section, upon admission or readmission to the facility; and

(2) for the criteria in subsection (d)(1)-(3) of this section, at least twice a day.

(f) An intermediate care facility must screen each employee or contractor for the criteria in subsection (d) of this section before entering the facility at the start of their shift. Staff screenings must be documented in a log kept at the facility entrance, and must include the name of each person screened, the date and time of the evaluation, and the results of the evaluation. Staff who meet any of the criteria must not be permitted to enter the facility and must be sent home.

(g) An intermediate care facility must assign each individual to the appropriate cohort based on the individual's COVID-19 status.

(h) An individual with unknown COVID-19 status must be quarantined and monitored for fever and other symptoms of COVID-19 per CDC guidance.

(i) A COVID-19 positive individual must be isolated until the individual meets CDC guidelines for the discontinuation of transmission-based precautions, if cared for in the facility.

(j) If a COVID-19 positive individual must be transferred for a higher level of care, the facility must isolate the individual until the individual can be transferred.

(k) An intermediate care facility must implement a staffing policy requiring the following:

(1) the facility must designate staff to work with each cohort and not change designation from one day to another, unless required in order to maintain adequate staffing for a cohort;

(2) staff must wear appropriate PPE based on the cohort with which they work;

(3) staff must inform to the facility per facility policy prior to reporting for work if they have known exposure or symptoms;

(4) staff must perform self-monitoring on days they do not work; and

(5) the facility must develop and implement a policy regarding staff working with other long-term care (LTC) providers that:

(A) limits the sharing of staff with other LTC providers and facilities, unless required in order to maintain adequate staffing at a facility;

(B) maintains a list of staff who work for other LTC providers or facilities that includes the names and addresses of the other employers;

(C) requires all staff to inform the facility immediately if there are COVID-19 positive cases at the staff's other place of employment;

(D) requires the facility to notify the staff's other place of employment if the staff member is diagnosed with COVID-19; and

(E) requires staff to inform the facility which cohort they are assigned to at the staff's other place of employment. The facility must maintain the same cohort designation for that employee in all facilities in which the staff member is working, unless required to maintain adequate staffing for a cohort.

(l) All intermediate care facility staff must wear a facemask while in the facility. Staff who are caring for COVID-19 positive individuals and those caring for individuals with unknown COVID-19 status must wear an N95 mask, gown, gloves, and goggles or a face shield. All facemasks and N95 masks must be in good functional condition as described in COVID-19 Response Plan for Intermediate Care Facilities, and must be worn appropriately, completely covering the nose and mouth, at all times.

(1) A facility must comply with CDC guidance on the optimization of PPE when supply limitations require PPE to be reused.

(2) A facility must document all efforts made to obtain PPE, including each organization contacted and the date of each attempt.

(m) COVID-19 activity must be reported to the Texas Health and Human Services Commission (HHSC) Complaint and Incident Intake as described below:

(1) A facility must report the first confirmed case of COVID-19 in staff or individuals, and the first confirmed case of COVID-19 after a facility has been without cases for 14 days or more, to HHSC Complaint and Incident Intake (CII) through TULIP, or by calling 1-800-458-9858, within 24 hours of the positive confirmation.

(2) A facility must submit a Form 3613-A Provider Investigation Report to HHSC Complaint and Incident Intake, through TULIP or by calling 1-800-458-9858, within five days from the day a confirmed case is reported to CII.

(n) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority that is more restrictive than this rule or any minimum standard relating to an intermediate care facility, the intermediate care facility must comply with the executive order or other direction.

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

Filed with the Office of the Secretary of State on February 9, 2021.

TRD-202100565
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 10, 2021
Expiration date: June 9, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §551.47

The Health and Human Services Commission is renewing the effectiveness of emergency new §551.47 for a 60-day period. The text of the emergency rule was originally published in the October 30, 2020, issue of the *Texas Register* (45 TexReg 7663).

Filed with the Office of the Secretary of State on February 11, 2021.

TRD-202100594
Nycia Deal
Attorney
Health and Human Services Commission
Original effective date: October 16, 2020
Expiration date: April 13, 2021
For further information, please call: (512) 438-3161

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26 TAC §551.48

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Part 1, Texas Administrative Code, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions, Subchapter C, new §551.48. HHSC is adopting this emergency rule to track vaccinations of staff and residents in intermediate care facilities in Texas in response to COVID-19. As authorized by Texas Government Code, §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for ICF/IID Provider COVID-19 Vaccination Data Reporting Requirement.

To protect individuals receiving ICF/IID services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require ICF/IIDs to accurately report COVID-19 vaccination data for staff and residents in the format established by HHSC within 24 hours of completing or receiving a round of vaccinations. The emergency rule is necessary to accurately track vaccinations of staff and residents in intermediate care facilities in Texas.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code, §2001.034 and §531.0055, and Texas Health and Safety Code §§252.031 - 252.033 and 242.043. Texas Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code, §531.0055, authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §§252.031 - 252.033 require the Executive Commissioner of HHSC to establish rules prescribing the minimum standards and process for licensure as an intermediate care facility. Texas Health and Safety Code §252.043 establishes HHSC's authority to conduct an inspection, survey or investigation at an intermediate care facility to determine if the intermediate care facility is in compliance with the minimum acceptable levels of care for individuals who are living in an intermediate care facility, and the minimum acceptable life safety code and physical environment requirements.

The new rule implements Texas Government Code §531.0055 and §531.021 and Texas Health and Safety Code Chapter 252.

§551.48. ICF/IID Provider COVID-19 Vaccination Data Reporting Requirement.

(a) An intermediate care facility must accurately report COVID-19 vaccination data for staff and individuals in the format established by the Texas Health and Human Services Commission.

(b) This rule does not apply to state supported living centers.

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

Filed with the Office of the Secretary of State on February 12, 2021.

TRD-202100665
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 12, 2021
Expiration date: June 11, 2021
For further information, please call: (512) 438-3161

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CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES
SUBCHAPTER K. COVID-19 EMERGENCY RULES

26 TAC §553.2003

The Health and Human Services Commission is renewing the effectiveness of emergency new §553.2003 for a 60-day period. The text of the emergency rule was originally published in the October 30, 2020, issue of the *Texas Register* (45 TexReg 7668).

Filed with the Office of the Secretary of State on February 11, 2021.

TRD-202100584

Nycia Deal
Attorney
Health and Human Services Commission
Original effective date: October 16, 2020
Expiration date: April 13, 2021
For further information, please call: (512) 438-3161

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES

SUBCHAPTER D. TRAINING

40 TAC §§3.401 - 3.403

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40 Texas Administrative Code, Chapter 3, Responsibilities of State Facilities, amended §3.401 - §3.403, concerning emergency rules in response to COVID-19 to ensure necessary state supported living center staffing levels and infection control during the COVID-19 pandemic. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these training rules.

To protect individuals served by the state supported living centers and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC previously adopted emergency rules concerning staff training to efficiently and effectively deploy staff to meet basic needs during the COVID-19 pandemic, without posing risk to the individuals served. As the COVID-19 pandemic and the Governor's proclamation of disaster have continued, so has the need for training requirements that ensure adequate training and staffing levels at state supported living centers. These emergency rules update training requirements to require training of infection control specific to COVID-19, including prevention, screening, isolation, and the use of personal protective equipment.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §555.024. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §555.024 authorizes the Executive Commissioner of HHSC to adopt rules governing training of state supported living center employees.

The amended sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 555.

§3.401. Training for New Employees.

(a) Before an employee performs employment duties without direct supervision, the employee shall receive competency training and instruction on general duties. Due to the COVID-19 pandemic declared disaster, the competency training, instruction, and evaluation may be modified and expedited to ensure the employee has achieved competency essential to perform the employee's duties [~~a facility must provide the employee with basic orientation~~].

(b) The focus of the basic orientation must be on:

(1) the uniqueness of each individual with whom the employee will work;

(2) techniques for improving the quality of life and promoting the integration, independence, person-directed choices, and health and safety of individuals; and

(3) the conduct expected of employees.

(c) The basic orientation must include instruction and information on the following topics:

(1) the general operation and layout of the facility, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals as specified in 40 Texas Administrative Code (TAC) Part 1, Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability), including the right to live in the least restrictive setting appropriate to the individual's needs and abilities;

(6) respecting personal choices made by individuals;

(7) the safe and proper use of restraints;

(8) abuse, neglect, and exploitation of individuals;

(9) unusual incidents;

(10) illegal drug use in the workplace;

(11) workplace violence;

(12) sexual harassment in the workplace;

(13) preventing and treating infection, including the prevention, screening, isolation, and use of personal protective equipment related to COVID-19;

(14) responding to emergencies, including information about first aid and cardiopulmonary resuscitation procedures;

(15) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(16) the rights of facility employees.

§3.402. Additional Training for Direct Support Professionals.

(a) Before a direct support professional performs employment duties without direct supervision, a facility must provide relevant training essential to perform the employee's duties. Direct support professionals will be provided basic instructional information on these statutorily required topics [~~that covers at least the following topics to the direct support professional~~]:

(1) implementation and data collection requirements for the individual support plan for each individual with whom the direct support professional will work;

(2) communication styles and strategies for each individual with whom the direct support professional will work;

(3) prevention and management of aggressive or violent behavior;

(4) observing and reporting changes in behavior, appearance, or health of individuals;

(5) positive behavior support;

(6) emergency response;

(7) development of individual support plans;

(8) self-determination;

(9) seizure safety;

(10) working with aging individuals;

(11) assisting individuals with personal hygiene;

(12) physical and nutritional management plans;

(13) home and community-based services, including the principles of community inclusion and participation in the community living options information process; and

(14) procedures for securing evidence following an incident of suspected abuse, neglect, or exploitation.

(b) If training on any of the following topics is relevant to working with a particular individual, a facility must provide that training to the direct support professional before performing duties related to that individual without direct supervision:

(1) using techniques for lifting, positioning, moving and increasing mobility;

(2) assisting individuals with visual, hearing, or communication impairments or who require adaptive devices and specialized equipment;

(3) recognizing appropriate food textures; and

(4) using proper feeding techniques to assist individuals with meals.

§3.403. Refresher Training.

(a) A facility must provide training on:

(1) [~~(a) A facility must provide training on~~] abuse, neglect, and exploitation to an employee annually;[~~.~~]

(2) [~~(b) A facility must provide training on~~] unusual incidents to an employee annually;[~~.~~]

(3) [~~(c) A facility must provide training on~~] the rights of individuals as specified in 40 Texas Administrative Code (TAC) Part 1, Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability) to a direct care professional annually and to an employee who is not a direct care professional every two years; and[~~.~~]

(4) [~~(d) A facility must provide training on~~] restraints to a direct support professional annually.

(b) During the COVID-19 pandemic declared disaster, trainings required by subsection (a) of this section must be provided at the earliest opportunity.

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

Filed with the Office of the Secretary of State on February 11, 2021.

TRD-202100582
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: February 15, 2021
Expiration date: June 14, 2021
For further information, please call: (512) 438-3049

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TEXAS
Lone Star State

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 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

13 TAC §26.3

The Texas Historical Commission (Commission) proposes amendments to §26.3, relating to Practice and Procedure, Title 13, Part 2, Chapter 26 of the Texas Administrative Code by authority of Government Code, Title 4, Subtitle D, Chapter 442, Section 442.005, which requires that the Texas Historical Commission is responsible for the administration of the Antiquities Codes of Texas.

Section 26.3 clarifies the interpretation of terms and phrases used in the Antiquities Code of Texas but not defined therein.

The proposed definition §26.3(41) distinguishes between "Landmarks," defined under this Chapter as State Antiquities Landmarks, and aluminum "Markers" erected in cooperation with the Texas Historical Commission under Chapter 21, Subchapter B. Since markers are not considered to be structures, work on markers will not be issued Historic Buildings and Structures Antiquities Permits under this definition.

The proposed revision to §26.3(43) fully elaborates upon the physical characteristics of "Monuments" while retaining the existing rule's focus on structures commemorating an event, person, or place. The revision clarifies that monuments may include landscape elements, as well as built or installed features. The previous reference to the Capitol grounds has been omitted to reflect the commission's absence of authority over this location under these rules.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed. The proposed amendments distinguish between monuments and markers, including the regulator processes that apply to each. These definitions and regulatory processes will not impose a fiscal impact on state or local governments because they do not implicate the use of public funds.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be a clear distinction between the regulatory processes that apply to markers and monuments.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses, as a result of implementing these amendments and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. Because the proposed amendments only differentiate the regulatory treatment of markers and monuments, the amendments will not result in an economic impact to rural communities, small businesses, or micro-businesses.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Bess Graham, Division Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY AND STATEMENT ON AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code

§442.0045(12), which authorizes the Commission to approve the designation and removal of Official Texas Historical Markers; and Texas Government Code §442.006, which establishes the State Historical Marker program to be administered by the Commission.

No other code, article, or regulation is affected.

§26.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. These definitions also clarify the interpretation of terms and phrases used in the Antiquities Code of Texas but not defined therein.

(1) Accession--The formal acceptance of a collection and its recording into the holdings of a curatorial facility and generally includes a transfer of title. For held-in-trust collections, stewardship but not title is transferred to the curatorial facility.

(2) Antiquities Advisory Board--A ten-member board that advises the commission in reviewing matters related to the Antiquities Code of Texas.

(3) Antiquities Permit or Permit--Authorization for work on a designated or potential State Antiquities Landmark, or survey investigations to determine if cultural resources are present. Permit types include Archeological Permits (§26.15 of this title) and Historic Buildings and Structures Permits (§26.22 of this title).

(4) Applicant--Relative to an Antiquities Permit, an applicant is the controlling agency, organization, or political subdivision having administrative control over a publicly owned landmark or the owner of a privately owned landmark. Applicant may also refer to an individual or private group that desires to nominate a building or site for landmark designation.

(5) Archeological site--Any land or marine-based place containing evidence of prehistoric or historic human activity, including, but not limited to, the following:

(A) Habitation sites. Habitation sites are areas or structures where people live or have lived on a permanent or temporary basis.

(B) Native American open campsites which were occupied on a temporary, seasonal, or intermittent basis.

(C) Rock shelters, in general, are a special kind of campsite. These sites are located in caves or under rock overhangs and have been occupied either: temporarily, seasonally, or intermittently.

(D) Non-Native American campsites are the cultural remains of activities by people who are not Native American.

(E) Residence sites are those where routine daily activities were carried out and which were intended for year-round use.

(F) Non-Native American sites may include, in addition to the main structure, outbuildings, water systems, trash dumps, garden areas, driveways, and other remains that were an integral part of the site when it was inhabited.

(G) Non-habitation sites. Non-habitation sites result from use during specialized activities and may include standing structures.

(i) Rock art and graffiti sites consist of symbols or representations that have been painted, ground, carved, sculpted, scratched, or pecked on or into the surface of rocks, wood, or metal, including, but not limited to, Native American pictographs and petroglyphs, historical graffiti and inscriptions.

(ii) Mines, quarry areas, and lithic procurement sites are those from which raw materials such as flint, clay, coal, minerals, or other materials were collected or mined for future use.

(iii) Game procurement and processing sites are areas where game was killed or butchered for food or hides.

(iv) Fortifications, battlefields, training grounds and skirmish sites including fortifications of the historic period and the central areas of encounters between opposing forces, whether a major battleground or areas of small skirmishes.

(v) Cache--A collection of artifacts that are deliberately hidden for future use. Caches are often discovered in burials or in caves and usually consist of ceremonial and ritual objects, functional objects or emergency food supplies.

(6) Archeological Survey Standards for Texas--Minimum survey standards developed by the commission in consultation with the Council of Texas Archeologists.

(7) Artifacts--The tangible objects of the past that relate to human life and culture. Examples include, but are not limited to, projectile points, tools, documents, art forms, and technologies.

(8) Board--The Antiquities Advisory Board.

(9) Building--A structure created to shelter any form of human activity, such as a courthouse, city hall, church, hotel, house, barn, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

(10) Burials and burial pits--Marked and unmarked locales of a human burial or burials. Burials and burial pits may contain the remains of one or more individuals located in a common grave in a locale. The site area may contain gravestones, markers, containers, coverings, garments, vessels, tools, and other grave objects or could be evidenced by the presence of depressions, pit feature stains, or other archeological evidence.

(11) Cemetery--A place that is used or intended to be used for interment, and includes a graveyard, burial park, unknown cemetery, abandoned cemetery, mausoleum, or any other area containing one or more graves or unidentified graves.

(A) Abandoned cemetery--A non-perpetual care cemetery containing one or more graves and possessing cemetery elements for which no cemetery organization exists and which is not otherwise maintained by any caretakers. It may or may not be recorded in the deed records of the county in which it lies.

(B) Unidentified grave--A grave that is not marked in a manner that provides the identity of the interment.

(C) Unknown cemetery--An abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records.

(12) Commission--The Texas Historical Commission and its staff.

(13) Committee, or Antiquities Committee, or Texas Antiquities Committee--As redefined by the 74th Texas Legislature within §191.003 of the Texas Natural Resources Code, committee means the commission and/or staff members of the commission.

(14) Conservation--Scientific laboratory processes for cleaning, stabilizing, restoring, preserving artifacts, and the preservation of buildings, sites, structures and objects.

(15) Council of Texas Archeologists--A non-profit voluntary organization that promotes the goals of professional archeology in the State of Texas.

(16) Council of Texas Archeologists Guidelines--Professional and ethical standards which provide a code of self-regulation for archeological professionals in Texas with regard to field methods, reporting, and curation.

(17) Cultural landscape--A geographic area, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values. Cultural landscapes include historic sites, historic designed landscapes, and historic vernacular landscapes, as further described in the National Park Service's Preservation Brief 36: Protecting Cultural Landscapes.

(18) Cultural resource--Any building, site, structure, object, artifact, historic shipwreck, landscape, location of historical, archeological, educational, or scientific interest, including, but not limited to, prehistoric and historic Native American or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure embedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of the contents thereof, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants' prehistory, history, government, or culture. Examples of cultural resources include Native American mounds and campgrounds, aboriginal lithic resource areas, early industrial and engineering sites, rock art, early cottage and craft industry sites, bison kill sites, cemeteries, battlegrounds, all manner of historic buildings and structures, local historical records, cultural landscapes, etc.

(19) Curatorial facility--A museum or repository.

(20) Default--Failure to fulfill all conditions of a permit or contract, issued or granted to permittee(s), sponsors, and principal investigator or investigative firm, before the permit has expired.

(21) Defaulted permit--A permit that has expired without all permit terms and conditions having been met before the permit expiration date.

(22) Designated historic district--An area of archeological, architectural, or historical significance that is listed in the National Register of Historic Places, either individually or as a historic district; designated as a landmark, or nominated for designation as a landmark; or identified by State agencies or political subdivisions of the State as a historically sensitive site, district, or area. This includes historical designation by local landmark commissions, boards, or other public authorities, or through local preservation ordinances.

(23) Destructive analysis--Destroying all or a portion of an object or sample to gain specialized information. For purposes of this chapter, it does not include analysis of objects or samples prior to their being accessioned by a curatorial facility.

(24) Discovery--The act of locating, recording, and reporting a cultural resource.

(25) Disposal--The discard of an object or sample after being recovered and prior to accession, or after deaccession.

(26) District--A significant concentration, linkage, or continuity of sites, buildings, structures, or objects unified historically or aesthetically by plan or physical development. See also "designated historic district."

(27) Eligible--Archeological sites or other historic properties that meet the criteria set forth in §§26.10 - 26.12 and §26.19 [~~26.19~~] of these titles [~~this title~~] (relating to Criteria for Evaluating Archeological Sites and Verifying Cemeteries, Criteria for Evaluating Shipwrecks, Criteria for Evaluating Caches and Collections, and Criteria for Evaluating Historic Buildings and Structures, respectively) [~~,~~] are eligible for official landmark designation.

(28) Exhumation--The excavation of human burials or cemeteries and its associated funerary objects by a professional archeologist, or principal investigator.

(29) Groundbreaking--Construction or earth moving activities that disturb lands owned or controlled by state agencies or political subdivisions of the state.

(30) Held-in-trust collection--Those state-associated collections under the authority of the commission that are placed in a curatorial facility for care and management; stewardship is transferred to that curatorial facility but not ownership.

(31) Historic buildings and structures permit--Historic buildings and structures permits are those issued for work to buildings, structures, cultural landscapes, and non-archeological sites, objects, and districts designated or nominated for designation as landmarks.

(32) Historic property--A district, site, building, structure or object significant in American history, architecture, engineering, archeology or culture.

(33) Historic time period--For the purposes of landmark designation, this time period is defined as extending from A.D. 1500 to 50 years before the present.

(34) Human remains--The body of a decedent.

(35) Integrity--The authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period, including the property's location, design, setting, materials, workmanship, feeling, and association.

(36) Interment--The intended permanent disposition of human remains by entombment, burial, or placement in a niche.

(37) Investigation--Archeological or architectural activity including, but not limited to: reconnaissance or intensive survey, testing, exhumation, or data recovery; underwater archeological survey, test excavation, or data recovery excavations; monitoring; measured drawings; or photographic documentation.

(38) Investigative firm--A company or scientific institution that has full-time experienced research personnel capable of handling investigations and employs a principal investigator, and/or project architect, or other project professional as applicable under "professional personnel" in paragraph (52) [~~(49)~~] of this section. The company or institution holds equal responsibilities with the professional personnel to complete requirements under an Antiquities Permit.

(39) Land-owning or controlling agency--Any state agency or political subdivision of the state that owns or controls the land(s) in question.

(40) Landmark--A State Antiquities Landmark.

(41) Marker--An informational aluminum sign erected by or with the permission of the Texas Historical Commission.

(42) [~~(41)~~] Mitigation--The amelioration of the potential total or partial loss of significant cultural resources. For example, mitigation for removal of a deteriorated historic building feature might include photographs and drawings of the feature, and installing a replacement that matches the original in form, material, color, etc. Mitigation for the loss of an archeological site might be accomplished through data recovery actions, to preserve or recover an appropriate amount of

data by application of current professional techniques and procedures, as defined in the permit's scope of work.

(43) Monument--Includes features planted, built, or installed that commemorate or designate the importance of an event, person, or place, which may or may not be located at the site(s) they commemorate, such as stone or metal monuments and statuary as well as trees, shrubs, designed landscapes, and other plantings located on public grounds such as courthouse squares and parks. Aluminum markers erected by or with the permission of the commission are not included in this definition.

[(42) Monuments--Includes markers and structures erected to commemorate or designate the importance of an event, person, or place, which may or may not be located at the sites they commemorate. Included in this category are certain markers erected by the commission and county historical commissions, and markers and statuary located on public grounds such as courthouse squares, parks, and the Capitol grounds.]

(44) [(43)] National Register of Historic Places--A register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture maintained by the United States Secretary of the Interior. Information concerning the National Register of Historic Places is available through the commission or from the National Park Service at www.nps.gov/nr.

(45) [(44)] Object--The term "object" can refer to artifacts or is a type of structure that is primarily artistic in nature or are relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment. Examples of objects include artifacts, monuments, markers, and sculpture.

(46) [(45)] Permit application offense--Failure to properly apply for a permit and/or receive authorization for an emergency permit by the commission, prior to the actual performance of an archeological investigation or other project work.

(47) [(46)] Permit censuring--A restriction in the ability of a principal investigator or other professional personnel and/or an investigative firm or other professional firm to be issued a permit under the auspices of the Antiquities Code of Texas.

(48) [(47)] Permittee--The landowning or controlling individual or public agency and/or a project sponsor that is issued an Antiquities Permit for an archeological investigation or other project work.

(49) [(48)] Political subdivision--A unit of local government created and operating under the laws of this state, including a city, county, school district, or special district created under the Texas Constitution.

(50) [(49)] Prehistoric time period--For the purpose of landmark designation, a time period that encompasses a great length of time beginning when humans first entered the New World and ending with the arrival of the Spanish Europeans, which has been approximated for purposes of these guidelines at A.D. 1500.

(51) [(50)] Professional firm--A company or scientific institution that has professional personnel who meet the required qualifications for specific types of work. The company or institution holds equal responsibilities with the professional personnel to complete requirements under an Antiquities Permit.

(52) [(51)] Professional personnel--Trained specialists who meet the professional qualifications standards in §26.4 of this title (relating to Professional Qualifications and Requirements) and are required to perform archeological and architectural investigations and project work.

(53) [(52)] Project--Activity on a cultural resource including, but not limited to: investigation, survey, testing, excavation, restoration, demolition, scientific or educational study.

(54) [(53)] Project sponsor--A public agency, individual, institution, investigative firm or other professional firm, organization, corporation, contractor, and/or company paying costs of archeological investigation or other project work, or that sponsors, funds, or otherwise functions as a party under a permit.

(55) [(54)] Public agency--Any state agency or political subdivision of the state.

(56) [(55)] Public lands--Non-federal, public lands that are owned or controlled by the State of Texas or any of its political subdivisions, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

(57) [(56)] Recorded archeological site--Sites that are recorded, listed, or registered with an institution, agency, or university, such as the Texas Archeological Research Laboratory of the University of Texas at Austin.

(58) [(57)] Register of professional archeologists--A voluntary national professional organization of archeologists which registers qualified archeologists.

(59) [(58)] Research design--A written theoretical approach and a plan for implementing fieldwork that also explains the goals and methods of the investigation. A research design is developed prior to the implementation of the field study and submitted with a completed Archeological Permit Application.

(60) [(59)] Ruins--A historic or prehistoric site, composed of both archeological and structural remains, in which the building or structure is in a state of collapse or deterioration to the point that the original roof and/or flooring and/or walls are either missing, partially missing, collapsed, partially collapsed, or seriously damaged through natural forces or structural collapse. Ruins are considered archeological sites, and historic buildings or structures recently damaged or destroyed are not classified as ruins.

(61) [(60)] Scope of work--A summary of the methodological techniques used to perform the archeological investigation or outline of other project work under permit.

(62) [(63)] Shipwrecks--The wrecks of naval vessels, Spanish treasure ships, coastal trading schooners, sailing ships, steamships, and river steamships, among other remains of any waterborne craft that sank, ran aground, was beached or docked.

(63) [(61)] Significance--Importance attributed to sites, buildings, structures and objects of historical, architectural, and archeological value which are landmarks and eligible for official designation and protection under the Antiquities Code of Texas. Historical significance is the importance of a property to the history, architecture, archeology, engineering or culture of a community, state or the nation, and is a trait attributable to properties listed or determined eligible for listing in the National Register of Historic Places or for state landmark designation.

(64) [(62)] Site--Any place or location containing physical evidence of human activity. Examples of sites include: the location of prehistoric or historic occupations or activities, a group or district of buildings or structures that share a common historical context or period of significance, and designed cultural landscapes such as parks and gardens.

(65) [(64)] State agency--A department, commission, board, office, or other agency that is a part of state government and

that is created by the constitution or a statute of this state. The term includes an institution of higher education as defined by the Texas Education Code, §61.003.

(66) [~~(65)~~] State Antiquities Landmark--An archeological site, archeological collection, ruin, building, structure, cultural landscape, site, engineering feature, monument or other object, or district that is officially designated as a landmark or treated as a landmark under the interim protection described in §26.8(d) of this title (relating to Designation Procedures for Publicly Owned Landmarks).

(67) [~~(66)~~] State Archeological Landmark--A State Antiquities Landmark.

(68) [~~(67)~~] State associated collections--The collections owned by the State and under the authority of the commission. This includes the following:

(A) Permitted collections--Collections that are the result of work governed by the Antiquities Code of Texas on land or under waters belonging to the State of Texas or any political subdivision of the State requiring the issuance of a permit by the commission.

(B) Non-permitted collections--Collections that are the result of work governed by the Antiquities Code of Texas on land or under waters belonging to the State of Texas or any political subdivision of the State conducted by commission personnel without the issuance of a permit.

(C) Purchased collections--Collections that are the result of the acquisition of significant historical items by the commission through Texas Historical Artifacts Acquisition Program or use of other State funds.

(D) Donated collections--Collections that are the result of a gift, donation, or bequest to the commission.

(E) Court-action collections--Collections that are awarded to the commission by a court through confiscation of illegally-obtained archeological artifacts or any other material that may be awarded to the commission by a court of law.

(F) Legislative action collections--Collections that are transferred to the commission through legislative action.

(69) [~~(68)~~] Structure--A work made up of interdependent and interrelated parts in a definite pattern of organization. The term "structure" is used to distinguish from buildings, whose [~~those~~] functional constructions were made usually for purposes other than creating human shelter. Constructed by man, it is often an engineering project. Examples of structures include bridges, power plants, water towers, silos, windmills, grain elevators, etc. As used herein, "structure" is also understood to include all non-archeological cultural resources that are not buildings, including cultural landscapes and non-archeological sites, objects, and districts.

(70) [~~(69)~~] Treasures embedded in the earth--In this context, "treasures" refers to artifacts and objects from submerged archeological sites. This can reference artifacts that are either contained within a ship's hull or are isolated yet associated with submerged historic and/or prehistoric archeological sites. The term "treasures" is not meant to imply that objects of monetary value, such as gold and silver, are separately protected under Antiquities Code of Texas. Additionally, "embedded in the earth" refers to artifacts or objects buried or partially covered in underwater sediments.

(71) [~~(70)~~] Unverified cemetery--A location having some evidence of human burial interments, but in which the presence of one or more unmarked graves has not been verified by a person described by §711.0105(a) of the Health and Safety Code of Texas or by the commission.

(72) [~~(71)~~] Verified cemetery--The location of a human burial interment or interments as verified by the commission.

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 February 4, 2021.

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Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 463-6218

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SUBCHAPTER D. HISTORIC BUILDINGS AND STRUCTURES

13 TAC §26.22

The Texas Historical Commission (Commission) proposes amendments to §26.22, relating to Practice and Procedure, Title 13, Part 2, Chapter 26 of the Texas Administrative Code by authority of Government Code, Title 4, Subtitle D, Chapter 442, Section 442.005, which requires that the Texas Historical Commission is responsible for the administration of the Antiquities Codes of Texas.

Section 26.22 provides Antiquities permit categories under which all work done on historic buildings or structures and their sites will be reviewed under Chapter 26.

To clarify the application of Historic Buildings and Structures Antiquities Permits, the proposed provisions clarify that monuments may be permitted under the Antiquities Code (§26.22(10)) while markers must comply with Chapter 21 as they are not considered to be structures (§26.22(11)).

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed. The proposed amendments distinguish between monuments and markers, including the regulator processes that apply to each. These definitions and regulatory processes will not impose a fiscal impact on state or local governments because they do not implicate the use of public funds.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be a clear distinction between the regulatory processes that apply to markers and monuments.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses, as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. Because the proposed amendments only differentiate the regulatory treatment of markers and monuments, the amendments will not result in an economic impact to rural communities, small businesses, or micro-businesses.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute and taking under Texas Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Bess Graham, Division Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY AND STATEMENT ON AUTHORITY. These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.0045(12), which authorizes the Commission to approve the designation and removal of Official Texas Historical Markers; and Texas Government Code §442.006, which establishes the State Historical Marker program to be administered by the Commission.

No other code, article, or regulation is affected.

§26.22. Historic Buildings and Structures Permit Categories.

All work done on historic buildings or structures and their sites will be reviewed, and issued permits when appropriate, in accordance with one or more of the following permit categories. Section 191.054 of the Texas Natural Resources Code authorizes the commission to issue permits for survey and discovery, excavation, restoration, demolition, or study. The following permit categories clarify specific scopes of work within these areas. Restoration is herein understood to include preservation, rehabilitation, restoration, and reconstruction as defined in the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards), per §26.20(b) of this title (relating to Application for Historic Buildings and Structures Permits).

(1) Preservation permit. Preservation is the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a cultural resource, including preliminary measures to protect and stabilize the building, structure, or site. Preservation consists of maintenance and repair of materials, features, or landforms of cultural resources, rather than extensive replacement and new construction. Preservation also includes the conservation of buildings, sites, structures, and objects.

(2) Rehabilitation permit. Rehabilitation is the act or process of making possible a compatible use for a property through repair, alterations, or additions, while preserving those portions or features of the property which convey its historical, architectural, or cultural values.

(3) Restoration permit. Restoration is the act or process of accurately depicting the form, features, and character of a property and its setting as it appeared at a particular period of time by means of the removal of features from later periods in its history and reconstruction of missing features from the restoration period.

(4) Reconstruction permit. Reconstruction is the act or process of depicting, by means of new construction, the exact form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. Reconstruction of a non-surviving cultural resource, or any part thereof within the described limits of a designated landmark, will be reviewed and permitted in light of its impact on the historical, architectural, or cultural integrity of that site. Reconstruction permits may be required for any reconstruction within the boundaries of a landmark that is significant as an archeological site, in addition to other applicable permits described in §26.15 of this title (relating to Archeological Permit Categories).

(5) Architectural investigation permit. If the applicant can demonstrate that careful investigation of a building or structure through controlled dismantling or sampling and testing of historic material or later modifications will contribute to the understanding of that building or structure's history, or of the history and culture of Texas in general, a permit for architectural investigation may be issued. This type of permit does not indicate approval for rehabilitation, demolition, or any other type of work, but may require replacement of removed materials or storage of selected samples.

(6) Hazard abatement permit. If hazardous materials exist in a historic building or structure and must be abated or removed in a project unrelated to other preservation, restoration or rehabilitation work, then a permit for hazard abatement may be issued. This type of permit does not indicate approval for rehabilitation, demolition, or any other type of work, but may require replacement of removed materials.

(7) Relocation permit. Under most circumstances, a permit to relocate a building or structure from its original site will not be issued unless the commission has been satisfied that there is a real and unavoidable threat to the building or structure's existence, and that the applicant has made a thorough effort to find the means to preserve the building or structure on its original site. If relocation is unavoidable, the building or structure should be relocated to a site that resembles its original setting as closely as possible. A relocation permit will require thorough documentation of the relationship between the building or structure and its existing site and documentation of the proposed new site and placement of the building or structure to demonstrate that the new site and setting are comparable to the original. An archeolog-

ical investigation of both the old and new site locations may also be required.

(8) Demolition permit. Under most circumstances, a permit to demolish a building or structure will not be issued unless the commission is satisfied that there is a necessity due to deterioration of the building or structure that constitutes a threat to the health, safety, or welfare of citizens or a real and unavoidable threat to the building or structure's existence. The applicant must show that he or she has made a thorough effort to find the means to preserve the building or structure on its original site or, failing that, to relocate the building or structure to another site with a comparable setting. The applicant must show evidence that he or she has, in good faith, conducted a feasibility study and obtained estimates from appropriate professionals, invited and considered alternative suggestions and proposals, and otherwise explored all reasonable possibilities other than demolition. A demolition permit will require thorough documentation of the building or structure and its relationship to its existing site, as well as archeological investigation, as defined and required by the commission.

(9) New construction permit. Any new construction to be built within the described limits of a landmark must be reviewed and permitted in light of its impact on the historical, architectural, and cultural integrity of that cultural resource and its site. The applicant must submit plans, elevations, and sections that adequately describe the full scope of the project and its relationship to the existing building or structure and its site. New construction permits may be required for construction within the boundaries of a landmark that is significant as an archeological site, in addition to other applicable permits described in §26.15 of this title (relating to Archeological Permit Categories).

(10) Monuments are considered structures. As such permits for work on monuments, or for their removal or relocation shall fall under one or more of the permit categories listed above.

(11) Markers are not considered structures and any proposed work on or related to markers must comply with Chapter 21 herein.

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 February 4, 2021.

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Mark Wolfe
Executive Director
Texas Historical Commission
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For further information, please call: (512) 463-6218

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER D. APPLICATION PROCESS

DIVISION 13. ADDITIONAL CONSIDERATIONS FOR CERTAIN RESIDENTIAL OPERATIONS

26 TAC §§745.491, 745.493, 745.495, 745.497

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§745.491, 745.493, 745.495, and 745.497, in Texas Administrative Code (TAC), Title 26, Part 1, Chapter 745, Licensing, Subchapter D, new Division 13, concerning Additional Considerations for Certain Residential Operations.

BACKGROUND AND PURPOSE

The purpose of the proposal is to add new rules in Chapter 745 that address the subject matter of emergency rules adopted in December 2020, as the emergency rules may only be effective for 120 days and for an extension of not more than 60 days. Those emergency rules require Child Care Regulation (CCR) to consider the previous five-year compliance history of related operations when evaluating an application for a new residential child-care operation license, if the applicant intends to contract with the Department of Family and Protective Services (DFPS) or a Single Source Continuum Contractor (SSCC) to care for children in the conservatorship of DFPS. These proposed rules are virtually the same as the emergency rules, with the following exceptions: 1) an update of the references of "CCR" to "Licensing" to be consistent with how Child Care Regulation is referenced throughout Chapter 745; and 2) not including the terms and definitions for "Licensing" and "Controlling person" that are in emergency rule §745.10201, because those terms are already defined in §745.11 and §745.21 respectively.

These rules require CCR to conduct the review when an applicant has been operating in a different location, has previously closed an operation, or has significant ties to another operation when changing ownership. The rules also require the continuation of heightened monitoring as a condition of a new license if a previous or related operation is on heightened monitoring, met the criteria for heightened monitoring in the previous five years but was not placed on heightened monitoring, or was placed on heightened monitoring in the previous five years and did not successfully complete it.

The Executive Commissioner of HHSC adopted the emergency rules because of a December 18, 2020, order in the *MD v. Abbott* litigation. In that order, the federal court identified the need for CCR to evaluate compliance histories and continuity of heightened monitoring in evaluation of license applications to ensure children in the conservatorship of DFPS who are placed in residential child-care operations licensed by HHSC are not placed at an unreasonable risk of serious harm in violation of their Fourteenth Amendment substantive due process rights.

The emergency rules and these proposed rules comply with this order, and other orders by the same federal court finding that an unreasonable risk of serious harm exists in the absence of certain actions by HHSC.

SECTION-BY-SECTION SUMMARY

Proposed new §745.491 provides terms used in new Division 13, Additional Considerations for Certain Residential Operations.

Proposed new §745.493 establishes to whom the rules apply.

Proposed new §745.495 outlines the previous compliance history of an applicant that CCR must consider when evaluating an

application for a new license to operate a residential child-care operation.

Proposed new §745.497 addresses the conditions that apply when CCR issues a new license to a residential child-care operation that was previously on heightened monitoring.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

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

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

(5) the proposed rules will create new rules;

(6) the proposed rules will not expand existing rules;

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

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

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

Trey Wood has also determined that there is no anticipated adverse economic effect on small businesses, micro-businesses, or rural communities. Some applicants for residential child-care licenses operate small businesses or micro-businesses; however, HHSC is unable to provide an estimate of the number that are small businesses and micro-businesses.

The proposed rules do not impose any additional costs on small businesses or micro-businesses required to comply, nor require any change to current business practices. HHSC is unaware of any rural communities considering applying for a residential childcare license.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to comply with federal law via a court order.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be to improve the safety of children in care and to comply with court orders.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules do not impose any fees or costs on those required to comply and do not require any change in current business practices.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCLrules@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R062" in the subject line.

STATUTORY AUTHORITY

The new rules 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new rules implement Texas Human Resources Code §§42.001 and 42.042.

§745.491. What do the following terms mean when used in this division?

The following terms have the following meanings when used in this division:

(1) Change in ownership--As stated in §745.437 of this chapter (relating to What is a change in ownership of an operation?).

(2) Heightened monitoring--An increase in oversight of a residential child-care operation that has a pattern of deficiencies relating to minimum standard deficiencies weighted medium or higher, confirmed abuse or neglect findings, or Texas Department of Family and Protective Services (DFPS) contract violations. Heightened monitoring is mandated by a court order in the *MD vs. Abbott* litigation dated March 18, 2020.

(3) Single source continuum contractor--A child-placing agency that contracts with DFPS to provide community-based care, including contractual supervision over other child-placing agencies and their child-placing activities.

§745.493. Who does this division apply to?

This division applies to an applicant for a general residential operation or child-placing agency license that demonstrates an intent to obtain a contract with the Texas Department of Family and Protective Services

(DFPS) or a single source continuum contractor to provide care to children in the conservatorship of DFPS.

§745.495. What previous compliance history of a residential child-care operation must Licensing consider when evaluating an application for a license to operate a residential child-care operation?

(a) When evaluating an application for a residential child-care license, Licensing must consider the previous five-year compliance history of a residential child-care operation that:

(1) Is applying for a new license in a different location;

(2) Is re-applying for a new license after voluntarily closing; or

(3) Had a change in ownership; and

(A) Any controlling person from the previous operation serves or intends to serve as a controlling person in the new operation; or

(B) A new owner, including a sole proprietor, either partner of a partnership, or any member of the governing body of a corporation, is related to a controlling person of the previous operation by a third degree of consanguinity or second degree of affinity as defined in §745.21 of this chapter (relating to What do the following words and terms mean when used in this chapter?).

(b) The five-year compliance history consideration required by this section must include and document information concerning a related residential child-care operation, including:

(1) The number of abuse, neglect, or exploitation intakes in the previous five years;

(2) The number of confirmed abuse, neglect, or exploitation findings in the previous five years;

(3) The number of citations issued for corporal punishment in the previous five years; and

(4) A narrative description of how this data and information was or will be considered.

(c) The five-year compliance history consideration required by this section is a component of the application evaluation and must be completed prior to the on-site inspection related to the application for a new license.

(d) The five-year compliance history collected under subsection (b) of this section may be considered in future extended compliance history reviews of a license granted pursuant to an application subject to subsection (a) of this section.

§745.497. May Licensing issue a new license to a residential child-care operation that was previously on heightened monitoring?

(a) When issuing an initial license to a residential child-care operation that is on or otherwise meets the criteria for heightened monitoring and is applying for a new license in a different location, Licensing must include a condition on the license that the operation is on heightened monitoring.

(b) When issuing an initial license to a residential child-care operation that was on heightened monitoring at the time of voluntary closure or otherwise met the criteria for heightened monitoring in the five years before voluntarily closing and reapplying for a new license at the same or a different location, Licensing must include a condition on the license that the operation is on heightened monitoring.

(c) When issuing an initial license to a residential child-care operation that had a change in ownership while on heightened monitoring or otherwise met the criteria for heightened monitoring in the five years before the change in ownership, Licensing must include a condition on the license that the operation is on heightened monitoring if:

(1) Any controlling person from the previous operation serves or intends to serve as a controlling person in the new operation; or

(2) A new owner, including a sole proprietor, either partner of a partnership, or any member of the governing body of a corporation, is related to a controlling person of the previous operation by a third degree of consanguinity or second degree of affinity as defined in §745.21 of this chapter (relating to What do the following words and terms mean when used in this chapter?).

(d) If an operation successfully completed heightened monitoring in the five years prior to the relocation, voluntary closure, or change of ownership, Licensing will not include a condition on the license that the operation is on heightened monitoring, unless the operation again met the criteria for heightened monitoring after successfully completing it.

(e) When issuing an initial license to a residential child-care operation, if Licensing determines that the applicant has employed or intends to employ a substantial number of employees from a previous operation, Licensing as a condition of the license may include employee screening requirements or training requirements that must be met before employees may have contact with children.

(f) The timeframes for an initial license in §745.347 of this chapter (relating to How long is an initial license valid?) may be extended for an initial license issued with conditions as described by this section.

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

Filed with the Office of the Secretary of State on February 11, 2021.

TRD-202100595
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 438-3269

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§749.801, 749.867, 749.869, 749.881, 749.882, 749.883, 749.885, 749.933, 749.935, 749.937, 749.941, 749.943, 749.944, 749.947, 749.949, 749.2447, 749.2449, 749.2470, 749.2473, 749.2489, 749.2495, 749.2497, 749.2520, 749.2961, and 749.3391; new §§749.811, 749.813, 749.833, 749.863, 749.864, 749.868, 749.887, 749.889, 749.911, 749.913, 749.915, 749.930 - 749.932, 749.939, 749.945, 749.2401, 749.2526, 749.2533, 749.2535, 749.2537, and 749.2539; and the repeal of §§749.833, 749.863, 749.868, 749.901, 749.903, 749.931, 749.939, 749.945, 749.951, 749.981, 749.983, 749.985, 749.987, 749.989, 749.991, and 749.2401 in Title

26, Texas Administrative Code (TAC), Chapter 749, Minimum Standards for Child-Placing Agencies.

BACKGROUND AND PURPOSE

The purpose of this proposal is to implement Senate Bill (S.B.) 195, House Bill (H.B.) 2363, and H.B. 2764 from the 86th Legislature, Regular Session, 2019, as these bills apply to TAC Chapter 749.

S.B. 195 amends Texas Family Code §162.007(a) to require HHSC Child Care Regulation (CCR) to update the health history requirements in the Health, Social, Educational, and Genetic History adoptive report, to include a child's diagnosis of fetal alcohol spectrum disorder when the Department of Family and Protective Services has this information.

H.B. 2363 amends Texas Human Resources Code (HRC) §42.042(e-1) to require CCR to update the minimum standards to allow a foster home to store a firearm and ammunition together in the same locked location if the firearms have a trigger locking device.

H.B. 2764 adds HRC §42.042(t), which requires CCR to develop minimum standards to grant child-placing agencies (CPAs) the authority to waive certain pre-service and annual training requirements for a foster home in certain situations.

H.B. 2764 also adds HRC §42.042(b-1), which requires CCR to simplify, streamline, and provide greater flexibility in the application of the minimum standards to child-placing agencies, foster homes, and adoptive homes. In response to this legislation, the many proposed changes (1) reorganize the Divisions for consistency and clarity; (2) update many issues relating to pre-service and annual training, including (A) clarifying which trainings may be "self-instructional" or must be instructor-led; (B) simplifying the pre-service and annual training standards by separating the standards for caregivers and employees and incorporating more charts; (C) increasing the training hours that may be carried over to the next year; and (D) adding topics that are appropriate for annual training; (3) update the pediatric first aid and pediatric CPR requirements; and (4) allow a CPA to (A) verify a separated spouse as a foster home in certain situations; (B) omit an interview with an adult child during a foster home screening if the CPA documents unsuccessful diligent efforts to locate the adult child; and (C) provisionally verify a foster home that is transferring from one CPA to another and will continue care for a foster child already in the home.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §749.801 (1) clarifies the definition of "instructor-led training" by stating that the training does not have to be in person and allows blended learning; (2) adds a definition of "normalcy" that cross-references a citation; and (3) adds a definition of "single source continuum contractor."

Proposed new Division 2 adds new rules relating to an Overview of Training and Experience Requirements.

Proposed new §749.811 provides a summary of the training and experience requirements for a caregiver.

Proposed new §749.813 provides a summary of the training requirements for an employee.

The proposed amendment to Division 3 renumbers the Orientation division from two to three for organizational purposes.

The proposed repeal of §749.833 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §749.833, with non-substantive changes.

Proposed new §749.833 simplifies and streamlines the proposed repeal of §749.833 by refocusing the rule on when a caregiver or employee may be exempt from orientation, without changing the content of the rule.

The proposed amendment to Division 4 renumbers the Pre-Service Experience and Training division, from three to four, for organizational purposes.

The proposed repeal of §749.863 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §749.863 and §749.864, with substantive changes.

Proposed new §749.863 incorporates a part of the proposed repeal of §749.863 into an updated table that clarifies the pre-service training requirements for a caregiver. The new table (1) clarifies what type of pre-service training is required; (2) offers more flexibility for when a foster parent must complete the training; (3) clarifies that except for a short personal restraint, a foster parent may not administer any form of emergency behavior intervention before completing the required training; and (4) incorporates into the table pre-service training requirements for safe sleeping and administering psychotropic medication, which is being deleted from the proposed amendments to §749.883 and §749.885.

Proposed new §749.864 (1) incorporates a part of the proposed repeal of §749.863 into an updated table that clarifies the pre-service training requirements for an employee; and (2) simplifies when a foster parent must complete normalcy training.

The proposed amendment to §749.867 (1) simplifies and streamlines this rule by refocusing the content on when a caregiver or employee is exempt for pre-service training requirements; (2) incorporates the proposed repeal of §749.868 relating to when an employee is exempt from normalcy training and extends this exemption to caregivers; and (3) clarifies when a caregiver or employee is exempt for pre-service training for emergency behavior intervention.

The proposed repeal of §749.868 deletes the rule as no longer necessary, because the content of the rule is being added to the proposed amendment to §749.867 with substantive changes.

Proposed new §749.868 allows a CPA, including a single source continuum contractor, to waive certain pre-service training for a foster parent if the CPA determines the training it is not related to the ages and number of children the foster home will care for and the type of services the home will provide. The CPA must reevaluate the determination if the ages or number of children the home can care for, or the types of services the home can provide, changes within the first year.

The proposed amendment to §749.869 (1) simplifies the rule title; (2) clarifies that instructor-led training and self-instructional training must include objectives, an evaluation or assessment, and a completion certificate; (3) simplifies and streamlines the relevant instructor requirements throughout the rule; and (4) clarifies that only pre-service training relating to administering psychotropic medication and emergency behavior intervention must be instructor-led.

The proposed amendment to Division 5 (1) renames the division to "Curriculum Components for Pre-Service Training" to reflect the proposed rule changes in the division; and (2) renumbers the division, from four to five, for organizational purposes.

The proposed amendment to §749.881 updates the language of the rule to be consistent with other rules in this chapter.

The proposed amendment to §749.882 updates the language of the rule to be consistent with other rules in this chapter.

The proposed amendment to §749.883 (1) streamlines the rule so it only includes the curriculum components for safe sleeping pre-service training; and (2) deletes the safe-sleeping pre-service training requirement and incorporates the requirement into proposed new §749.863.

The proposed amendment to §749.885 (1) streamlines the rule so it only includes the curriculum components for administering psychotropic medication pre-service training; and (2) deletes the administering psychotropic medication pre-service training requirement and incorporates the requirement into proposed new §749.863.

Proposed new §749.887 replaces the proposed repeal of §749.901, to incorporate into Division 5 the curriculum components for pre-service training for emergency behavior intervention when a CPA does not allow the use of emergency behavior intervention.

Proposed new §749.889 replaces the proposed repeal of §749.903, to incorporate into Division 5 the curriculum components for pre-service training for emergency behavior intervention when a CPA allows the use of emergency behavior intervention.

The proposed repeal of Division 5 deletes the Pre-Service Training for Emergency Behavior Intervention division because the content of the rules in this division are being added to proposed new Division 5, Curriculum Components for Pre-Service Training, for organizational purposes.

The proposed repeal of §749.901 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §749.887, without any changes.

The proposed repeal of §749.903 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §749.889, without any changes.

Proposed New Division 6, Pediatric First Aid and Pediatric CPR Certification, (1) replaces the proposed repeal of Division 7, to better organize the divisions in this subchapter; (2) incorporates new rules from the proposed repeal of Division 7; and (3) renames the Division to "Pediatric First Aid and Pediatric CPR Certification".

Proposed new §749.911 incorporates into this one rule the proposed repeal of §§749.981, 749.983, 749.985, and 749.987 and: (1) simplifies the rule to make it easier to understand; (2) clarifies that the first aid and CPR training each must be pediatric; (3) clarifies that a caregiver may complete pediatric first aid training through instructor-led training or self-instructional training; (4) clarifies that a caregiver may complete pediatric CPR training through blended learning, as long as the caregiver meets the other requirements; (5) combines the employment exemption and the military service exemption into one exemption; and (6) requires pediatric first aid and pediatric CPR certification by one foster parent before a CPA may place a child in the home and certification by other caregivers, including a second foster parent, within 90 days after the CPA places the child in the home.

Proposed new §749.913 (1) incorporates the part of the exemption from the proposed repeal of §749.951, relating to current pediatric first aid and pediatric CPR certifications when a caregiver is on an extended absence from the home due to employment or military service; (2) updates and clarifies that the caregiver must obtain the certifications within 90 days of returning home; and (3) incorporates the proposed repeal of §749.991 exempting child-placement staff members that only transport children from pediatric CPR certification.

Proposed new §749.915 incorporates, with minor changes, the proposed repeal of §749.989 on what documentation a CPA must maintain for pediatric first aid and pediatric CPR certifications.

The proposed amendment to Division 7 renumbers the Annual Training division from six to seven for organizational purposes.

Proposed new §749.930 incorporates a part of the proposed repeal of §749.931 on the annual training requirements for caregivers, and: (1) adds a new table that specifies the annual training hours for each type of caregiver and removes any break down of annual training hours for one-parent and two-parent foster homes; (2) adds a second table that lists the mandated annual training topics and the hours that a caregiver must complete; (3) increases the number of annual training hours for trauma informed care that a caregiver must complete, from one hour to two hours, which is consistent with the number of hours the Department of Family and Protective Services requires for contractors; (4) decreases the number of annual training hours for normalcy from two hours to one hour; (5) replaces a part of the proposed repeal of §749.945 by adding into the second table the mandated annual training requirements for administering psychotropic medication if the caregiver administers such medication; (6) clarifies that to meet the mandated annual training requirements, the training must follow the applicable curriculum requirements in Division 8 of this subchapter; (7) clarifies that caregivers who only care for children receiving treatment services for primary medical needs, and are exempt from the four hours of emergency behavior intervention training, must still complete the 10 hours of annual training; and (8) clarifies that any other non-mandated annual training must be in areas appropriate to the needs of children for whom the caregiver provides care.

The proposed repeal of §749.931 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §749.930 and §749.931, with substantive changes.

Proposed new §749.931 incorporates a part of the proposed repeal of §749.931 on the annual training requirements for employees, and: (1) adds a new table that specifies the annual training hours for each type of employee; (2) adds a second table that lists the mandated annual training topics and the hours that an employee must complete; and (3) decreases the number of annual training hours for normalcy, from two hours to one hour, to be consistent with the change made for caregivers.

Proposed new §749.932 (1) incorporates part of the exemption from the proposed repeal of §749.951, relating to annual training for a caregiver that is on an extended absence from the home due to employment or military service; (2) updates and clarifies that the caregiver's annual training hours are prorated based on the number of months out of the year that the caregiver is at the home, or is exempt for all annual training hours if the caregiver is absent for an entire year; (3) adds a statutorily required waiver process that allows a CPA, including a single source continuum contractor, to waive certain mandated annual training requirements for a foster home or foster parents if the foster home has been verified by the CPA for the past two years, the home has

no cited deficiencies and no pending allegations, and the CPA determines the training it is not related to the care of any foster child in the home; and (4) clarifies that a CPA may not waive the same type of mandated training in consecutive years.

The proposed amendment to §749.933 (1) updates the language of the rule to make it easier to understand; and (2) clarifies that a caregiver in the home that is not an employee or foster parent must also complete annual training within 12 months of beginning to provide care to a child in the home.

The proposed amendment to §749.935 (1) clarifies that a person may complete annual training through instructor-led training or self-instructional training; (2) deletes the exclusion for self-instructional annual emergency behavior intervention training and CPR training because those issues are more accurately addressed in proposed new §749.939 and §749.911(b); (3) deletes the exclusion of self-instructional training for first aid training because this is now allowed in proposed new §749.911(a); (4) deletes counting annual emergency behavior intervention training as annual training because it is redundant; (5) updates first aid and CPR to pediatric first aid and pediatric CPR; (6) increases the number of pre-service hours that a person may carry over and use as annual training hours, from 10 hours to 15 hours; (7) increases the number of annual training hours that may come from self-instructional training, from 50 percent to 80 percent; and (8) increases the number of annual training hours that a person may carry over to the next year, from 10 hours to 15 hours.

The proposed amendment to §749.937 (1) deletes subsection (b), because it is already incorporated into the proposed amendment to §749.941; and (2) moves the requirements for instructor-led and self-instruction training in subsection (c) to new proposed §749.939(a), because this information is more germane to that rule.

The proposed repeal of §749.939 deletes the rule as no longer necessary, because the content of the rule, relating to transportation safety training in foster group homes, is no longer relevant.

Proposed new §749.939 (1) adds requirements for instructor-led and self-instruction training from proposed amended §749.937; (2) clarifies that annual training for emergency behavior intervention and administering psychotropic medication must be instructor-led; and (3) describes the requirements for annual emergency behavior intervention and administering psychotropic medication training.

Proposed new Division 8 creates a new division titled Topics and Curriculum Components for Annual Training, for organization purposes.

The proposed amendment to §749.941 (1) clarifies what areas or topics are appropriate for caregivers and employees; (2) adds extra areas or topics for annual training for both caregivers and employees; (3) clarifies that annual topics for employees must be in areas appropriate to the needs of children for whom the CPA provides care; and (4) adds emergency behavior intervention as an appropriate area or topic for annual training for employees.

The proposed amendment to §749.943 updates the language of the rule to make it easier to understand.

The proposed amendment to §749.944 (1) updates the language of the rule to make it easier to understand; and (2) adds "exploitation" to the rule to make it consistent with similar rules in this chapter.

The proposed repeal of §749.945 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §749.945, with substantive changes. The part of the proposed repeal of §749.945 that required a caregiver to take the annual administering psychotropic medication training no later than 12 months from the caregiver's previous training on the topic is not being included in proposed new §749.945.

Proposed new §749.945 incorporates part of the proposed repeal of §749.945, relating to the curriculum component for annual training for administering psychotropic medication.

The proposed amendment to §749.947 (1) updates the language of the rule to make it easier to understand; (2) updates a citation; and (3) deletes the requirement that a caregiver must take the annual emergency behavior intervention training no later than 12 months from the caregiver's previous training on the topic.

The proposed amendment to §749.949 clarifies that a CPA may keep documentation of annual training in a foster home record.

The proposed repeal of §749.951 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §749.913(b) and §749.932(a), with substantive changes.

The proposed repeal of Division 7 deletes the First Aid and Pediatric CPR division as no longer necessary, because the content of the rules in this division are being added to proposed new Division 7, Pediatric First Aid and Pediatric CPR Certification, for organizational purposes.

The proposed repeal of §§749.981, 749.983, 749.985, and 749.987 deletes the rules as no longer necessary, because the content of the rules is being added to proposed new §749.911, with substantive changes.

The proposed repeal of §749.989 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §749.915, with non-substantive changes.

The proposed repeal of §749.991 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §749.913(b), with substantive changes.

The proposed repeal of §749.2401 deletes the rule as no longer necessary, because the content of the rule that does not allow a CPA to verify one spouse is no longer accurate considering proposed new §749.2401.

Proposed new §749.2401 establishes the circumstances when a CPA may verify an individual spouse as a foster parent if: (1) the spouse will be the only one involved in the care of foster children; (2) the spouses have been living apart for at least two years; and (3) the spouse living outside of the foster home will not have unsupervised access to foster children and will not be regularly or frequently present at the foster home. Any change in these circumstances is a major life change in the foster family that requires an update to the foster home screening and closure of the foster home or adding the spouse to the verification.

The proposed amendment to §749.2447 (1) updates a citation; (2) deletes the requirement to verify the ages of the foster parents because this information is already included in requests for background checks; (3) clarifies how to screen a foster parent without a high school diploma or G.E.D.; (4) improves the readability and understanding of the chart; and (5) clarifies the background information that a CPA must request, assess, and maintain from other CPAs.

The proposed amendment to §749.2449 (1) allows a CPA to omit an interview with an adult child if the CPA documents the diligent efforts to locate the adult child; and (2) requires diligent efforts to include at least three attempts to locate the adult child, using multiple methods, and having discussions with the foster parents and other persons regarding the location of the adult child.

The proposed amendment to §749.2470 (1) updates the language of the rule to make it easier to understand; and (2) clarifies that a CPA may verify a foster home before completing the pre-service training requirements, but the foster parents must complete the applicable pre-service training requirements before the CPA places a child in the home.

The proposed amendment to §749.2473 adds a reference for provisional verifications.

The proposed amendment to §749.2489 (1) corrects the grammar in the rule; and (2) adds a requirement to notify CCR within two working days of provisionally verifying a foster home or when the verification is no longer provisional.

The proposed amendment to §749.2495 adds provisional verification as a type of verification that has an expiration date.

The proposed amendment to §749.2497 (1) updates the language of the rule to make it easier to understand; (2) clarifies that a closing summary is also required when a CPA does not issue a non-expiring verification to a foster home with a time-limited verification, temporary verification, or provisional verification; and (3) clarifies that a CPA must forward a transfer summary to a requesting CPA as soon as the CPA completes it; and (4) updates the numbering of the subsections.

The proposed amendment to §749.2520 deletes the purpose of a time-limited verification and moves it, with minor changes, to proposed new §749.2526.

Proposed new §749.2526 incorporates the purpose of a time-limited verification from the proposed amendment to §749.2520 for better organization of the rules.

Proposed new §749.2533 adds a purpose of a provisional verification to permit continued care of foster children in a foster home that is transferring from one CPA to another, whether in the current residence or a new residence.

Proposed new §749.2535 establishes the requirements to issue a provisional verification, including (1) the foster home will continue to care for children previously placed in the home; (2) the CPA requests and receives background information from the former CPA; (3) based on the background information and any current screening or evaluation conducted, the CPA determines the home does not present a potential risk to the health and safety of children; (4) the CPA inspects any new home and determines the home meets the health and safety standards; (5) the home must meet the same rules as any other home, except for any screening requirements that have not been completed; (6) the provisional verification must include any condition or restriction that was in the previous CPA's verification; and (7) the child placement staff reviews and approves the provisional verification.

Proposed new §749.2537 clarifies that a provisional verification is valid for (1) six months from the date the CPA issues it; or (2) until the CPA issues the foster home a non-expiring verification or closes the home.

Proposed new §749.2539 clarifies that only children in care at the time the foster family is transferring from one CPA to another may continue to live in the foster home while the provisional verification is in effect. A CPA may not make new placements to a foster home with a provisional verification.

The proposed amendment to §749.2961 (1) updates the language of the rule to make it easier to read; and (2) clarifies that another option to storing weapons and ammunition separately is when each firearm contains a trigger locking device attached to the firearm.

The proposed amendment to §749.3391 (1) updates the health history requirements in the Health, Social, Educational, and Genetic History adoptive report to include whether the child has been diagnosed with fetal alcohol spectrum disorder if the Department of Family and Protective Services knows this information; and (2) updates the language of the rule to make it easier to understand.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

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

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

(5) the proposed rules will create new rules;

(6) the proposed rules will expand existing rules;

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

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

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

Trey Wood has also determined that there will not be an adverse economic effect on small businesses, micro-businesses, or rural communities, because there is no requirement to alter current business practices in the proposed rule.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impost a cost on regulated persons, and implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that there will be more foster homes to care for children as a result of CPAs having

more options to verify foster homes and better compliance resulting in improved safety of children in foster homes because minimum standards have been streamlined and made easier to understand. CCR will also be in compliance with statutory requirements.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gerry Williams by email at Gerry.Williams@hhsc.state.tx.us.

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCLrules@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R101" in the subject line.

SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT
DIVISION 1. DEFINITIONS

26 TAC §749.801

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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendment affects Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.801. What do certain words and terms mean in this subchapter?

The words and terms used in this subchapter have the following meanings:

(1) CPR--Cardiopulmonary resuscitation.

(2) Hours--Clock hours.

(3) Instructor-led training--Training that is characterized by the communication and interaction that takes place between the student and the instructor. Instructor-led training does not have to be in person, but it [~~It~~] must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must be able to answer questions, provide feedback on skills practice, provide guidance or information on additional resources, and proactively interact with students. Examples of this type of training include classroom training, online [~~on-line~~] distance learning, blended learning video-conferencing, or other group learning experiences.

(4) Normalcy--See §749.2601 of this chapter (relating to What is "normalcy"?).

(5) [~~(4)~~] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(6) [~~(5)~~] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours, see §749.935(d) [~~749.935(d)~~] of this subchapter [~~title~~] (relating to What types of hours or instruction can be used to complete the annual training requirements?).

(7) Single source continuum contractor--A child-placing agency that contracts with the Department of Family and Protective Services to provide community-based care, including contractual supervision over other child-placing agencies and their child-placing activities.

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 February 12, 2021.

TRD-202100605
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 438-3269

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DIVISION 2. OVERVIEW OF TRAINING AND EXPERIENCE REQUIREMENTS [~~ORIENTATION~~]

26 TAC §749.811, §749.813

STATUTORY AUTHORITY

The new sections 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new sections affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.811. What are the training and experience requirements for a caregiver?

(a) A caregiver must complete the following training requirements, unless the caregiver meets the requirements of an exemption or a waiver for the training that is provided in this subchapter:
Figure: 26 TAC §749.811(a)

(b) You must ensure that a caregiver who provides care to a child receiving treatment services meets the pre-service experience requirements specified in §749.861 of this subchapter (relating to What are the pre-service experience requirements for caregivers?).

§749.813. What are the training requirements for an employee?

An employee must complete the following training requirements, unless the employee meets the requirements of an exemption for the training that is provided in this subchapter:
Figure: 26 TAC §749.813

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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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 438-3269

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DIVISION 2. ORIENTATION

26 TAC §749.833

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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.833. Must I provide orientation to a person who was previously a caregiver or an employee at my agency?

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

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DIVISION 3. ORIENTATION [~~PRE-SERVICE EXPERIENCE AND TRAINING~~]

26 TAC §749.833

STATUTORY AUTHORITY

The new section 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new section affects Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.833. When may a caregiver or employee be exempt from orientation?

(a) A person who was a caregiver or employee at your agency during the past 12 months may be exempt from orientation if you meet the following requirements:

(1) You discuss with the person any changes in your services or programs that have occurred since the person was previously a caregiver or employee;

(2) If the person is an employee, you ensure the employee received training during the past 12 months from your agency on prevention, recognition, and reporting on child abuse, neglect, and exploitation; and

(3) If the person is acting as a caregiver, you do not allow the person to be the only caregiver for a group of children before you meet the requirement in paragraph (1) of this subsection.

(b) You must document the discussion and the previous training in the person's foster home record or personnel record.

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

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DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

26 TAC §749.863, §749.868

STATUTORY AUTHORITY

The repeals 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, and

§531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeals affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.863. What are the pre-service hourly training requirements for caregivers and employees?

§749.868. Must I provide pre-service training regarding normalcy to a child-placing agency administrator, treatment director, child placement staff, child placement management staff, or full-time professional service provider who was previously employed by a residential child-care operation?

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

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DIVISION 4. PRE-SERVICE EXPERIENCE AND TRAINING

26 TAC §§749.863, 749.864, 749.867 - 749.869

STATUTORY AUTHORITY

The new sections and 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new sections and amendments affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.863. What are the pre-service training requirements for a caregiver?

(a) A caregiver must complete the following applicable types of pre-service training within the noted timeframe:
Figure: 26 TAC §749.863(a)

(b) A caregiver who cares exclusively for children receiving treatment services for primary medical needs is exempt from the pre-service emergency behavior intervention training requirement.

(c) To meet the pre-service training requirements, the training must comply with the applicable curriculum requirements in Division 5 of this subchapter (relating to Curriculum Components for Pre-Service Training).

(d) You must document the completion of each training requirement in the appropriate foster home record or personnel record.

§749.864. What are the pre-service training requirements for an employee?

(a) An employee must complete the following applicable training types and hours within the noted timeframes:
Figure: 26 TAC §749.864(a)

(b) To meet the pre-service training requirements, the training must comply with the applicable curriculum requirements in Division 5 of this subchapter (relating to Curriculum Components for Pre-Service Training).

(c) You must document the completion of each training requirement in the appropriate personnel record.

§749.867. What caregivers or employees are exempt from certain [~~Must I provide~~] pre-service training requirements [~~to a caregiver or employee who was previously a caregiver or employee for a residential child-care operation~~]?

(a) A caregiver is exempt from completing the eight hours of general pre-service training if the caregiver has been a caregiver for a residential child-care operation during the past 12 months.

(b) A caregiver or employee is exempt from completing the two hours of normalcy training if the foster parent or employee has:

(1) Been a caregiver for or employed by a residential child-care operation during the past 12 months;

(2) Received training on normalcy during the past 12 months; and

(3) Can document that the training was received.

(c) [~~(b)~~] A caregiver or employee is exempt from completing the pre-service training for [~~regarding~~] emergency behavior intervention if the caregiver or employee:

(1) Has been a caregiver for or employed by a residential child-care operation during the past 12 months;

(2) Has received emergency behavior intervention training during the past 12 months that meets the required curriculum components of the following applicable rule: [~~in the types of emergency behavior intervention used at your agency; and~~]

(A) §749.887 of this subchapter (relating to If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?); or

(B) §749.889 of this subchapter (relating to If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?); and

(3) Can demonstrate knowledge and competency of the training material [~~, both~~] in writing and, if the child-placing agency allows the use of emergency behavior intervention, in physical techniques.

(d) [~~(c)~~] You must document the exemption factors in the appropriate foster home record or personnel record.

§749.868. Can a child-placing agency waive pre-service training requirements for a foster parent?

(a) A child-placing agency, including a single source continuum contractor, may waive any of the following pre-service training requirements for a foster parent if the agency determines that the requirement is not directly related to the ages and number of children the foster home will care for and the types of services the home will provide:

(1) General pre-service training;

(2) Normalcy; or

(3) Emergency behavior intervention.

(b) After waiving a pre-service training requirement for a foster parent, an agency must reevaluate the waiver if, within the first year, there is a change in the foster home's verification with respect to the ages or number of children the home can care for or the types of services the home can provide. If the agency determines that the waived pre-service training is directly related to the ages or number of children the home can care for, or the types of services the home can provide, the foster parent must complete the training.

§749.869. How must [~~What are the instructor requirements for providing~~] pre-service training be conducted?

(a) Instructor-led training and self-instructional training must include: [~~The training must be instructor-led.~~]

(1) Specifically stated learning objectives;

(2) An evaluation or assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(3) A certificate, letter, or a signed and dated statement of successful completion from the training source.

(b) Pre-service training must be provided by an instructor who: [~~A qualified instructor must deliver the pre-service training. A qualified instructor must hold a generally recognized credential or possess documented knowledge and/or experience relevant to the training the instructor will provide.~~]

(1) Holds a generally recognized credential; or

(2) Possesses documented knowledge or experience relevant to the training the instructor will provide.

(c) Training on administering psychotropic medication must be instructor-led, as defined in §749.801(3) of this subchapter (relating to What do certain words and terms mean in this subchapter?). The instructor must be a health-care professional or pharmacist.

[~~(c) A health-care professional or a pharmacist must provide training in administering psychotropic medication. The trainer must assess each participant after the training to ensure that the participant has learned the course content.~~]

(d) Training on [~~To provide training in~~] emergency behavior intervention must [~~the~~]:

(1) Be instructor-led with each instructor [~~Instructor must be~~] certified in a recognized method of emergency behavior intervention[~~,~~] or otherwise [~~be~~] able to document knowledge of:

(A) Emergency [~~The emergency~~] behavior intervention;

(B) The course material;

(C) Methods for delivering the training, including physical techniques for restraints, if applicable [~~Training delivery methods and techniques~~]; and

(D) Methods for evaluating and assessing a participant's knowledge and competency of the training material and physical [~~Training evaluation or assessment methods and~~] techniques, if applicable;

(2) Be [~~Training must be~~] competency-based [~~and require participants to demonstrate skill and competency at the end of the training~~] ; and

(3) At the end of the training, require each participant participants to demonstrate knowledge, skill, and competency of the training material:

(A) In writing; and

(B) If the child-placing agency allows the use of emergency behavior intervention, by demonstrating the physical technique the participant is allowed to use.

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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Karen Ray
Chief Counsel
Health and Human Services Commission
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DIVISION 5. CURRICULUM COMPONENTS FOR [~~REGARDING GENERAL~~] PRE-SERVICE TRAINING[~~, AND PRE-SERVICE TRAINING REGARDING NORMALCY~~]

26 TAC §§749.881 - 749.883, 749.885, 749.887, 749.889

STATUTORY AUTHORITY

The new sections and 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new sections and amendments affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.881. What curriculum components must be included in the general pre-service training?

The general pre-service training [~~curriculum~~] must include the following curriculum components:

(1) Topics appropriate to the needs of children for whom the caregiver will be providing care, such as developmental stages of children, fostering children's self-esteem, constructive guidance and discipline of children, water safety, and strategies and techniques for monitoring and working with these children;

(2) Trauma informed care;

(3) The different roles of caregivers;

(4) Measures to prevent, recognize, [~~identify, treat,~~] and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation;

(5) Procedures to follow in emergencies, such as weather related emergencies, volatile persons, and severe injury or illness of a child or adult; and

(6) Preventing the spread of communicable diseases.

§749.882. What curriculum components must be included in the pre-service training for [~~regarding~~] normalcy?

The pre-service training for [~~regarding~~] normalcy must include the following curriculum components:

(1) A discussion of the definitions of normalcy and the reasonable and prudent parent standard;

(2) The developmental stages of children, including a discussion of the cognitive, social, emotional, and physical development of children;

(3) Age appropriate activities for children, including unsupervised childhood activities;

(4) The benefits of childhood activities to a child's well-being, mental health, and social, emotional, and developmental growth;

(5) How to apply the reasonable and prudent parent standard to make decisions; and

(6) The child's and the caregiver's responsibilities when participating in childhood activities.

§749.883. What curriculum components must be included in the [~~Are there additional general~~] pre-service training for safe sleeping [~~requirements for a caregiver who will care for children younger than two years old~~]?

The pre-service training for safe sleeping must include the following curriculum components [~~Yes. You must ensure that each caregiver providing care for children younger than two years old receives training on~~]:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding safe sleeping practices and preventing [~~Preventing~~] sudden infant death syndrome; and

(3) Understanding early childhood brain development.

§749.885. What curriculum components must be included in the [~~Are there additional general~~] pre-service training for administering [~~requirements for a caregiver that administers~~] psychotropic medication?

The pre-service training for administering [~~Yes. You must ensure that each caregiver that administers~~] psychotropic medication must include the following curriculum components [~~receives training on~~]:

(1) Identification of psychotropic medications;

(2) Basic pharmacology (the actions and side effects of, and possible adverse reactions to, various psychotropic medications);

(3) Techniques and methods of administering medications;

(4) Who is legally authorized to provide consent for the psychotropic medication; and

(5) Any related policies and procedures.

§749.887. If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?

If you do not allow the use of emergency behavior intervention, the pre-service training for emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques for less restrictive interventions, including the following curriculum components:

(1) Developing and maintaining an environment that supports positive and constructive behaviors;

(2) The causes of behaviors potentially harmful to a child, including aspects of the environment;

(3) Early signs of behaviors that may become dangerous to a child or others;

(4) Strategies and techniques a child can use to avoid harmful behaviors;

(5) Teaching a child to use the strategies and techniques of your agency's de-escalation protocols to avoid harmful behavior, and supporting the children's efforts to progress into a state of self-control;

(6) Less restrictive strategies caregivers can use to intervene in potentially harmful behaviors;

(7) Less restrictive strategies caregivers can use to work with an oppositional child;

(8) Addressing circumstances when all de-escalation strategies fail; and

(9) The risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia.

§749.889. If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?

(a) If you allow the use of emergency behavior intervention, at least 75 percent of the pre-service training for emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques for less restrictive interventions, including the curriculum components listed in §749.887 of this division (relating to If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?).

(b) The training does not have to address the use of any type of emergency behavior intervention that your policies do not allow.

(c) The other 25 percent of the pre-service training curriculum for emergency behavior intervention must include the following components:

(1) Different roles and responsibilities of caregivers qualified in emergency behavior intervention, versus employees or volunteers who are not qualified in emergency behavior intervention;

(2) Escape and evasion techniques to prevent harm to the child and caregiver without requiring the use of an emergency behavior intervention;

(3) Safe implementation of the restraint techniques and procedures that are appropriate for the age and weight of children served and permitted by the rules in this chapter and your policies and procedures;

(4) The physiological impact of emergency behavior intervention;

(5) The psychological impact of emergency behavior intervention, such as flashbacks from prior abuse;

(6) How to adequately monitor the child during the administration of an emergency behavior intervention to prevent injury or death;

(7) Monitoring physical signs of distress and obtaining medical assistance;

(8) Health risks for children associated with the use of specific techniques and procedures;

(9) Drawings, photographs, or videos of each personal restraint permitted by your policy; and

(10) Strategies for re-integration of children into the environment after the use of emergency behavior intervention, including the debriefing of caregivers and the child.

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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Karen Ray
Chief Counsel
Health and Human Services Commission
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DIVISION 5. PRE-SERVICE TRAINING REGARDING EMERGENCY BEHAVIOR INTERVENTION

26 TAC §749.901, §749.903

STATUTORY AUTHORITY

The repeals 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeals affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.901. If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?

§749.903. If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?

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Karen Ray
Chief Counsel
Health and Human Services Commission
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DIVISION 6. PEDIATRIC FIRST AID AND PEDIATRIC CPR CERTIFICATION [~~ANNUAL TRAINING~~]

26 TAC §§749.911, 749.913, 749.915

STATUTORY AUTHORITY

The new sections 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new sections affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.911. Who must have pediatric first aid and pediatric CPR training?

(a) Each caregiver must have a current certificate of training with an expiration or renewal date in pediatric first aid with rescue breathing and choking. This training may be through instructor-led training or self-instructional training.

(b) Each caregiver must have a current certificate of training with an expiration or renewal date in pediatric CPR. The pediatric CPR training:

(1) Must adhere to the guidelines for CPR for a layperson established by the American Heart Association, and consist of a curriculum that incudes use of a CPR manikin and both written and hands-on skill-based instruction, practice, and testing; and

(2) May be provided through blended learning that utilizes online technology, including self-instructional training, as long as the criteria in paragraph (1) of this subsection is met.

(c) One foster parent must be certified in pediatric first aid and pediatric CPR before you place a child in the home. Other caregivers, including a second foster parent, must be certified in pediatric first aid and pediatric CPR within 90 days after you place the child in the home.

(d) In lieu of either or both certifications, a caregiver may provide documentation of the following:

(1) Training as a health professional that includes the knowledge covered in either pediatric first aid or pediatric CPR, or both; and

(2) The caregiver's employment as a health professional requires that the relevant skills remain current.

§749.913. Are there any exemptions from pediatric first aid and pediatric CPR certification?

(a) If a caregiver is absent from the home on an extended basis as a condition of the caregiver's employment or military service, the caregiver is exempt from obtaining current certification in pediatric first aid and pediatric CPR during this time of absence. The caregiver must obtain pediatric first aid and pediatric CPR certifications within 90 days after returning home.

(b) A child-placement staff member who meets the definition of a caregiver only because the staff member provides transportation for children in foster care, must obtain pediatric first-aid certification, but is exempt from pediatric CPR certification.

§749.915. What documentation must I maintain for pediatric first-aid and pediatric CPR certifications?

(a) You must document the caregiver's completion of each training requirement in the appropriate foster home record or personnel record. The documentation may be a certificate, letter, or a signed and dated statement of successful completion from the training source. You may maintain a photocopy of the original pediatric first-aid or pediatric CPR certificate or letter in the foster home record or personnel record, as long as the caregiver can provide an original document upon request by Licensing.

(b) The documentation must include:

(1) The participant's name;

(2) Date of the training;

(3) Title or subject of the training;

(4) The trainer's name and qualifications;

(5) The expiration date of the certification as determined by the organization providing the certification; and

(6) Length of the training in hours.

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Chief Counsel
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DIVISION 7. ANNUAL TRAINING [~~FIRST-AID AND CPR CERTIFICATION~~]

26 TAC §§749.930 - 749.933, 749.935, 749.937, 749.939

STATUTORY AUTHORITY

The new sections and 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new sections and amendments affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.930. What are the annual training requirements for a caregiver?

(a) A caregiver must complete the number of annual training hours described in the following chart:
Figure: 26 TAC §749.930(a)

(b) For a home with two foster parents, the foster parents may combine their individual training hours to meet the total number of required annual training hours. If each foster parent is required to complete 10 hours, they must collectively complete 20 hours. If each foster parent is required to complete 25 hours, they must collectively complete 50 hours. But the foster parents do not have to split the total number of required hours equally, if:

(1) Each foster parent completes each of the required annual training hours noted in subsection (c) of this section; and

(2) They complete the combined total number of required hours for annual training.

(c) For the annual training hours described in subsection (a) of this section, each caregiver must complete the following specific types of training and hours:
Figure: 26 TAC §749.930(c)

(d) To meet the mandated annual training requirements in subsection (c) of this section, the training must comply with the applicable curriculum requirements in Division 8 of this subchapter (relating to Topics and Curriculum Components for Annual Training).

(e) A caregiver who cares exclusively for children receiving treatment services for primary medical needs is exempt from the four hours of emergency behavior intervention training. The caregiver must still complete the total 10 hours of annual training.

(f) After completing the type of annual training required in subsection (c) of this section, any remaining number of annual training hours must be in areas appropriate to the needs of children for whom the caregiver provides care, as required by §749.941 of this subchapter (relating to What areas or topics are appropriate for annual training?).

§749.931. What are the annual training requirements for an employee?

(a) Each type of employee in the chart must complete the following number of annual training hours:
Figure: 26 TAC §749.931(a)

(b) For the annual training hours described in subsections (a)(1), (2), and (3) of this section, each employee must complete the following specific types of training and hours:
Figure: 26 TAC §749.931(b)

(c) About the annual training hours for an employee described in subsection (a)(4) of this section:

(1) The hours must include one hour of training on prevention, recognition, and reporting on child abuse, neglect, and exploitation, unless the employee is an executive director; and

(2) The employee may use annual training hours that the employee completes to maintain a relevant professional license, if the hours include the necessary components of subsection (c)(1) of this section or completes those components separately.

(d) There are no annual training requirements for emergency behavior intervention. However, the employee must be retrained whenever there is a substantial change in techniques, types of intervention, or agency policies for emergency behavior intervention.

§749.932. What exemptions or waivers may apply to the annual training requirements for a caregiver?

(a) If a caregiver is absent from the home on an extended basis as a condition of the caregiver's employment or military service, you must prorate the caregiver's annual training requirements based on the number of months out of the year that the caregiver will be at the home. If a caregiver is absent for an entire year, the caregiver is exempt for the annual training hours for that year.

(b) A child-placing agency, including a single source continuum contractor, may waive certain annual training requirements for a foster parent or for a foster home as described in subsection (c) of this section if:

(1) The foster parent or foster home has been verified by the child-placing agency the previous two years; and

(2) During that timeframe, the child-placing agency was not cited for any deficiencies related to the foster parent or the foster home and there are no pending allegations related to the foster parent or the foster home.

(c) For a foster parent or foster home that meets the requirements described in subsection (b) of this section, the agency may waive the following types of training upon determining that the training is not directly related to the care of any foster child in the home:

(1) Emergency behavior intervention;

(2) Trauma informed care; or

(3) Normalcy.

(d) A child-placing agency that waives certain annual training requirements for a foster home under subsection (c) of this section may waive the training for one or both foster parents and any other caregiver in the home.

(e) A child-placing agency may not waive a foster parent's annual training for emergency behavior intervention, trauma informed care, or normalcy during consecutive years.

(f) You must document the basis of the exemption, proration, or waiver in the appropriate foster home record or personnel record.

§749.933. When must an employee or caregiver complete the annual training?

(a) Each person must complete the annual training:

(1) Within 12 months from when:

(A) You [~~you~~] hire the person as an employee, including employees hired or acting as a [~~or~~] caregiver; [~~or~~]

(B) You verify the person as a foster parent;[~~,~~] or

(C) A caregiver in the home, that is not an employee or foster parent, begins providing care to a child [~~whichever is applicable~~]; and

(2) During each subsequent 12-month period after the anniversary date of hire, [~~or~~] verification, or beginning the provision of care.

(b) Alternatively, you have the option of prorating the person's annual training requirements from the date of hire or verification to the end of the calendar year or the end of the agency's fiscal year and then beginning a new 12-month period that coincides with the calendar or fiscal year.

(c) Whether an agency uses subsection (a) or (b) of this section as your [~~The~~] method for completing annual training requirements, you must use the method consistently [~~must be consistent~~] throughout your agency.

§749.935. What types of hours or instruction can be used to complete the annual training requirements?

(a) If the training complies with the other rules in this division (relating to Annual Training), annual training may include hours or Continuing Education Units earned through:

(1) Workshops or courses offered by local school districts, colleges or universities, or Licensing;

(2) Conferences or seminars;

(3) Instructor-led training, as defined at §749.801(3) of this subchapter (relating to What do certain words and terms mean in this subchapter?);

(4) [~~(3)~~] Self-instructional training as defined at §749.801(4) of this subchapter [~~, excluding training on emergency behavior intervention, first-aid, and CPR~~];

(5) [~~(4)~~] Planned learning opportunities provided by child-care associations or Licensing;

(6) [~~(5)~~] Planned learning opportunities provided by a child-placing agency administrator, professional contract service provider, professional service provider, treatment director, child placement management staff, child placement staff, contractor, or caregiver who meets minimum qualifications in the rules of this chapter; or

(7) [~~(6)~~] Completed college courses for which a passing grade is earned, with three college credit hours being equivalent to 50 clock hours of required training. College courses do not substitute for required CPR or first-aid certification or required annual training on emergency behavior intervention or psychotropic medication.

(b) For annual training hours, you may count:

(1) The hours of annual training that a person received at another residential child-care operation, if the person:

(A) Received the training within the time period you are using to calculate the person's annual training; and

(B) Provides documentation of the training;

[~~(2) Annual emergency behavior intervention training;~~]

(2) [~~(3)~~] Pediatric first-aid [~~First-aid~~] and pediatric CPR [~~training~~];

(3) [~~(4)~~] Any hours of pre-service training that the person earned in addition to the required pre-service hours, although you may not carry over more than 15 [~~10~~] hours of a person's pre-service training hours for use as annual training hours during the upcoming year;

(4) [~~(5)~~] Half of the hours spent developing initial training curriculum that is relevant to the population of children served. No additional credit hours for training curriculum development are permitted for repeated training sessions; and

(5) [~~(6)~~] One-fourth of the hours spent updating and making revisions to training curriculum that is relevant to the population of children served.

(c) For annual training hours, you may not count:

(1) Orientation training;

(2) Required pre-service training;

(3) The hours involved in case staffings and conferences with the supervisor; or

(4) The hours presenting training to others.

(d) No more than 80 percent [~~one-half~~] of the required annual training hours may come from self-instructional training as defined at §749.801(4) of this subchapter. No more than three of those self-instructional hours may come from self-study training as defined at §749.801(5) of this subchapter.

(e) If a person earns more than the minimum number of annual training hours required during a particular year, the person can carry over to the next year a maximum of 15 [~~10~~] annual training hours.

§749.937. Does Licensing approve training resources or trainers for annual training hours?

[~~(a)~~] [~~No.~~] We do not approve or endorse training resources or trainers for training hours.

[(b) However, you must ensure the employees and caregivers receive reliable training relevant to the population of children served.]

[(c) Instructor-led training and self-instructional training, excluding self-study training, must include:]

[(1) Specifically stated learning objectives;]

[(2) A curriculum, which includes experiential or applied activities;]

[(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and]

[(4) A certificate, letter, or a signed and dated statement of successful completion from the training source.]

§749.939. How must annual training be conducted?

(a) Instructor-led training and self-instructional training, excluding self-study training, must include:

(1) Specifically stated learning objectives;

(2) A curriculum that includes experiential or applied activities;

(3) An evaluation or assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate, letter, or a signed and dated statement of successful completion from the training source.

(b) Training on emergency behavior intervention and administering psychotropic medication must be instructor-led, as defined at §749.801(3) of this subchapter (relating to What do certain words and terms mean in this subchapter?).

(c) Training on emergency behavior intervention must:

(1) Be led by an instructor who is certified in a recognized method of emergency behavior intervention or otherwise able to document knowledge of:

(A) Emergency behavior intervention;

(B) The course material;

(C) Methods for delivering the training, including physical techniques for restraints, if applicable; and

(D) The methods for evaluating and assessing a participant's knowledge and competency of the training material and physical techniques, if applicable;

(2) Be competency-based; and

(3) At the end of the training, require each participant to demonstrate knowledge and competency of the training material:

(A) In writing; and

(B) If the child-placing agency allows the use of emergency behavior intervention, by demonstrating the physical techniques that the participant may use.

(d) A health-care professional or a pharmacist must lead the training in administering psychotropic medication. The trainer must assess each participant after the training to ensure that the participant has learned the course content.

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DIVISION 6. ANNUAL TRAINING

26 TAC §§749.931, 749.939, 749.945, 749.951

STATUTORY AUTHORITY

The repeals 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeals affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.931. What are the annual training requirements for caregivers and employees?

§749.939. What are the instructor requirements for providing annual training?

§749.945. For a caregiver who administers psychotropic medication, what annual training is required?

§749.951. What are the annual training requirements if a caregiver is absent from the home on an extended basis for military service or as a condition of his employment?

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DIVISION 8. TOPICS AND CURRICULUM COMPONENTS FOR ANNUAL TRAINING [ANNUAL TRAINING]

26 TAC §§749.941, 749.943 - 749.945, 749.947, 749.949

STATUTORY AUTHORITY

The new sections and 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new sections and amendments affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.941. What areas or topics are appropriate for annual training?

(a) Other than the mandated topics, annual training for caregivers must be in areas appropriate to the needs of children for whom the caregiver provides care, which may include:

(1) Developmental stages of children;

(2) Constructive guidance and discipline of children;

(3) Fostering children's self-esteem;

(4) Positive interaction with children;

(5) Strategies and techniques for working with the population of children served;

(6) Supervision and safety practices in the care of children, including making reasonable and prudent parenting decisions for [~~regarding~~] a foster child's participation in childhood activities;

(7) Preventing the spread of communicable diseases;

(8) Water Safety; [~~or~~]

(9) Administration of medication[~~.~~];

(10) Medical-related training to help children receiving treatment services for primary medical needs;

(11) Helping children experience grief or loss;

(12) Prevention, recognition, and reporting of child abuse, neglect, and exploitation; or

(13) Safe sleeping as specified in §749.883 of this subchapter (relating to What curriculum components must be included in the pre-service training for safe sleeping?).

(b) Other than mandated topics, annual training for employees must be in areas appropriate to the needs of children for whom the child-placing agency provides care, which may include:

(1) The areas listed in subsection (a) of this section; and

(2) Emergency behavior intervention.

§749.943. What curriculum components must be included in the annual training for normalcy [~~training~~]?

(a) The annual training for [~~regarding~~] normalcy must include the curriculum components covered in the pre-service training for [~~regarding~~] normalcy, see §749.882 of this subchapter [~~title~~] (relating to What curriculum components must be included in the pre-service training for [~~regarding~~] normalcy?).

(b) Subsequent annual training for [~~regarding~~] normalcy should include curriculum components that further develops and refines the [~~develop and refine an~~] employee's knowledge and understanding of normalcy, including how to implement normalcy [~~and how it should be implemented~~].

§749.944. What curriculum components must be included in the annual training for employees on the [~~related to~~] prevention, recognition, and reporting of [~~on~~] child abuse, [~~and~~] neglect, and exploitation?

The annual training for the [~~related to~~] prevention, recognition, and reporting of [~~on~~] child abuse, [~~and~~] neglect, and exploitation must include the following curriculum components:

(1) The factors indicating a child is at risk for abuse, [~~or~~] neglect , or exploitation;

(2) The warning signs indicating a child may be a victim of abuse, [~~or~~] neglect, or exploitation;

(3) The procedures for reporting child abuse, [~~or~~] neglect, or exploitation; and

(4) A list of community organizations that have training programs available to child-placing agency staff members, children, and parents.

§749.945. What curriculum components must be included in the annual training for administering psychotropic medication?

The annual training for administering psychotropic medication must include the curriculum components identified in §749.885 of this subchapter (relating to What curriculum components must be included in the pre-service training for administering psychotropic medication?).

§749.947. What curriculum components must be included in the annual training [~~is required~~] for [~~regarding~~] emergency behavior intervention?

(a) The annual training for [~~regarding~~] emergency behavior intervention must include curriculum components that:

(1) Reinforce [~~reinforce~~] basic principles covered in the pre-service training identified in §749.887 of this subchapter [~~, see §749.901 of this title~~] (relating to If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for [~~regarding~~] emergency behavior intervention?) and §749.889 [~~§749.903~~] of this subchapter [~~title~~] (relating to If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for [~~regarding~~] emergency behavior intervention?)[~~,~~]; and

(2) Develop [~~develop~~] and refine the caregiver's skills.

(b) You may determine the content of the training based on your evaluation of your emergency behavior intervention programs.

(c) The training may repeat pre-service training components, including training in the proper use and implementation of emergency behavior intervention.

[~~(d) Each caregiver who is required to obtain annual emergency behavior intervention training must obtain each annual training no later than 12 months after his last emergency behavior intervention training.~~]

§749.949. What documentation must I maintain for annual training?

(a) You must keep documentation verifying completion of annual training in the appropriate foster home record or personnel record. The documentation may be a certificate, letter, or a signed and dated statement of successful completion from the training source. The documentation may also be a transcript from an accredited college or university.

(b) The documentation for training other than college courses must include the following information:

(1) The participant's name;

(2) Date of the training;

(3) Title or subject of the training;

(4) The trainer's name and qualifications, or the source of the training for self-instructional training; and

(5) Length of the training in hours.

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

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

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DIVISION 7. FIRST-AID AND CPR CERTIFICATION

26 TAC §§749.981, 749.983, 749.985, 749.987, 749.989, 749.991

STATUTORY AUTHORITY

The repeals 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeals affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.981. What first-aid and cardiopulmonary resuscitation (CPR) certification must caregivers have?

§749.983. When must a caregiver renew first-aid and CPR certification?

§749.985. Who can provide first-aid and CPR certification?

§749.987. What must the first-aid and CPR training include?

§749.989. What documentation must I maintain for first-aid and CPR certification?

§749.991. How do the rules in this division apply to child-placement staff?

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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Karen Ray
Chief Counsel
Health and Human Services Commission
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SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS

DIVISION 1. GENERAL REQUIREMENTS

26 TAC §749.2401

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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.2401. If one spouse will not be involved in the care of foster children, may I verify the spouse who will provide care individually as a foster parent?

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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Karen Ray
Chief Counsel
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26 TAC §749.2401

STATUTORY AUTHORITY

The new section 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new section affects Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.2401. In what circumstances may I verify an individual spouse as a foster parent?

(a) You may verify only one spouse if:

(1) The spouse whom you verify will be the only one involved in the care of any foster child in the home;

(2) The spouses have been living apart for at least two years; and

(3) After interviewing the spouse living outside of the foster home as part of the screening process, you determine that the spouse will not:

(A) Have unsupervised access to foster children, as "unsupervised access" is defined in §745.601 of this title (relating to What words must I know to understand this subchapter); or

(B) Regularly or frequently be present at the foster home, as defined in §745.601 of this title.

(b) If the requirements in subsection (a) of this section are not met, you must verify both spouses to provide foster care.

(c) If at any time the requirements in subsection (a) of this section are no longer being met, the change in circumstances:

(1) Is considered a "major life change in the foster family";

(2) Requires an update to the foster home screening, as required by §749.2453 of this chapter (relating to When must I update the foster home screening?); and

(3) Requires closure of the foster home or adding the spouse to the verification certificate.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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DIVISION 2. FOSTER HOME SCREENINGS

26 TAC §749.2447, §749.2449

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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.2447. What information must I obtain for the foster home screening?

You must obtain, document, and assess the following information about a prospective foster home:

Figure: 26 TAC §749.2447

[~~Figure:~~ ~~40 TAC §749.2447~~]

§749.2449. Whom must I interview when conducting a foster home screening?

(a) Interviews for a foster home screening must be documented and must include at least:

(1) One individual interview with each prospective foster parent;

(2) One individual interview with each child three years old or older living in the home either full- or part-time;

(3) One individual interview with each other person living in the home either full- or part-time;

(4) One joint interview with the prospective foster parents;

(5) One family group interview with all family members living in the home;

(6) One interview, by telephone, in person, or by letter, with each minor child 12 years old or older or adult child of the prospective foster parents not living in the home;

(7) A minimum of one interview, by telephone, in person, or by letter with a family member not living in the home and not already interviewed; and

(8) A minimum of two interviews, by telephone, in person, or by letter with neighbors, school personnel if the prospective foster parents have school age children, clergy, or any other member of the prospective foster parents' community who are unrelated to the foster parents and can provide a description of the prospective foster parents' suitability to provide care for children.

(b) You must visit the home at least once when all members of the household are present.

(c) For subsection (a)(6) of this section, if you are unsuccessful in contacting an adult child, you may omit the interview with the adult child if you document your diligent efforts to locate the adult child in the home screening. Diligent efforts require at least three attempts to locate the adult child, multiple methods of contact (i.e. in person or virtual, by telephone, or by letter), as applicable, and discussions with the prospective foster parents and any other relevant persons about the location of the adult child.

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Karen Ray
Chief Counsel
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DIVISION 3. VERIFICATION OF FOSTER HOMES

26 TAC §§749.2470, 749.2473, 749.2489, 749.2495, 749.2497

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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.2470. What must I do to verify a foster family home?

(a) You must take the following steps to verify a foster family home:

(1) Complete and document the requirements for §749.2447 of this subchapter (relating to What information must I obtain for the foster home screening?);

(2) Complete and document the required interviews as specified in §749.2449 of this subchapter (relating to Whom must I interview when conducting a foster home screening?);

(3) Obtain the following:

(A) A floor plan of the home that shows the dimensions and purposes of all rooms in the home and identifies the indoor areas for children's use; and

(B) A sketch or photo of the outside areas that shows the buildings, driveways, fences, storage areas, gardens, recreation areas, and pools, ponds, or other bodies of water;

(4) Inspect the home to ensure and document that the home meets the appropriate rules of this chapter, including:

(A) Subchapter K of this chapter (relating to Foster Care Services: Daily Care, Problem Management); and

(B) Subchapter O of this chapter (relating to Foster Homes: Health and Safety Requirements, Environment, Space and Equipment), including a:

(i) Health inspection; and

(ii) Fire inspection;

(5) If the home will provide a transitional living program, ensure the home complies with the policies developed according to §749.125 of this chapter (relating to What policies must I develop for foster parents who offer a transitional living program?);

(6) Evaluate all areas required in this subchapter and make recommendations about [~~regarding~~] the home's ability to care for and work with children with respect to a child's gender and age, the number of children, and the types of services to be provided;

(7) If there are any indicators of potential risk to children based on the assessment and evaluation of an area required in this subchapter, document the indicators and how you addressed them with the prospective foster family before approval and verification of the home;

(8) Obtain from the child placement management staff the review and approval of the home screening, and the recommended verification of the home; and

(9) Issue a verification certificate that specifies the:

(A) Name of the foster family home;

(B) Foster family home address and location;

(C) Foster family home's total capacity, which includes the biological and adopted children of the caregivers who live in the foster family home, any children receiving foster care or respite child-care, and any children for whom the family provides day care;

(D) Foster family home's foster care capacity, a subset of the total capacity, which includes only children placed for foster care or respite child-care;

(E) Gender and ages of children for which the home is verified to provide foster care or respite child-care;

(F) Types of services the foster family home will provide;

(G) Agency's main office or branch office, which issued the verification; and

(H) Expiration date of a time-limited verification, if applicable.

(b) You can verify a foster home before the foster parents complete the pre-service training. However, foster parents must comply with the training requirements described in §749.863 of this subchapter (relating to What are the pre-service training requirements for a caregiver?) before you may place a child in the home.

§749.2473. What must I do to verify a foster home that another child-placing agency has previously verified?

(a) When a home has previously been verified by another agency, you must conduct and complete an entirely new home screening and comply with all of the requirements in §749.2471 of this title (relating to What must I do to verify a foster home?).

(b) If the foster home is transferring from another child-placing agency, you must submit a written request to the agency that the foster home is transferring from requesting the background information required in §749.2447(23) of this title (relating to What information must I obtain for the foster home screening?).

(c) If the foster home is transferring from another child-placing agency, with a child in care, you may verify the foster home prior to completion of the background check.

(d) For a provisional verification, see Division 4 of this subchapter (relating to Temporary, Time-Limited, and Provisional Verifications).

§749.2489. What information must I submit to Licensing about a foster home's verification status?

You must submit information to us within two working days of:

(1) Verifying a new foster home;

(2) Temporarily verifying [~~Temporary verification of~~] a foster home and when the verification is no [~~not~~] longer temporary;

(3) Putting a foster home on inactive status or taking a foster home off of inactive status;

(4) Changing conditions of the verification for an existing home;

(5) Extending a time-limited verification;

(6) Changing a time-limited verification to a non-expiring verification; [~~or~~]

(7) Provisionally verifying a foster home and when the verification is no longer provisional; or

(8) [~~(7)~~] Closing a foster home, including:

(A) The reason the foster home closed; and

(B) The name and contact information of a person at your agency who may be contacted by another child-placing agency to obtain records relating to the closed foster home.

§749.2495. Do foster home verifications expire?

Only temporary, [~~and~~] time-limited, and provisional verifications have expiration dates. All other verifications are non-expiring.

§749.2497. What requirements are there for a transfer or closing summary [~~Are transfer/closing summaries required for foster homes~~]?

(a) You [~~Yes, you~~] must have either a transfer summary or closing summary when a [~~for each~~] foster home [~~that~~] transfers to another child-placing agency or closes. This includes when you do not issue a non-expiring verification to a foster home with a time-limited verification, temporary verification, or provisional verification.

(b) [(1)] A transfer summary must be completed by the 10th day after you receive a written request to transfer, and you must forward it immediately to the requesting child-placing agency.

(c) [(2)] A closing summary must be completed by the 20th day after the foster home is closed.

(d) [(3)] A transfer or [and] closing summary must include:

(1) [(A)] A copy of the verification certificate;

(2) [(B)] The foster home addresses for the past two years and, as needed, directions for rural addresses [and/or location for the past two years];

(3) [(C)] The length of time the foster parents have been fostering with you;

(4) [(D)] For the children that were in care for the last two years, the:

(A) [(i)] Number of children fostered;

(B) [(ii)] Type of treatment services provided to each child; and

(C) [(iii)] Reason for each child's discharge from care;

(5) [(E)] A description of any limitations on verification that were in place for the foster home in caring for and working with children (such as gender, age, number of children, treatment services, special needs, or type of abuse or neglect experienced by the child), regardless of whether the limitation was requested by the foster parent or imposed by you;

(6) [(F)] For a closing summary, the reason the foster home is closing, including whether you required the foster home to close;

(7) [(G)] For a transfer summary, any pending investigations or [and/or] unresolved deficiencies;

(8) [(H)] For a closing summary, any unresolved deficiencies that had not been corrected and what those deficiencies were;

(9) [(I)] Any indicators of risk to children at the time of the transfer or closing [transfer/closing] and what those indicators are;

(10) [(J)] Any plan to achieve compliance or other type of development plan that was in place within the previous 12 months of the date of the transfer or closing [transfer/closing];

(11) [(K)] Any corrective action or adverse action plan that was in place at the time of the transfer or closing [transfer/closing]; and

(12) [(L)] A statement concerning whether you would recommend the foster home for verification in the future, including whether you would recommend any limitations or restrictions on the verification, and the basis of your recommendation or lack thereof.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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DIVISION 4. TEMPORARY, [AND] TIME-LIMITED, AND PROVISIONAL VERIFICATIONS

26 TAC §§749.2520, 749.2526, 749.2533, 749.2535, 749.2537, 749.2539

STATUTORY AUTHORITY

The new sections and 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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new sections and amendments affect Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.2520. What is the purpose of a temporary verification [and a time-limited verification]?

[(a)] The purpose of a temporary verification is to permit continued care of foster children in a verified foster home when a foster family moves from one residence to another and there is a short-term delay in ensuring the foster home will continue to meet all minimum standards in the new location. For example, fire and health inspections cannot be obtained prior to the move.

[(b) The purpose of a time-limited verification is to permit you to limit the length of time a home will be verified to provide foster care by assigning the verification a pre-determined end date, after which the home will no longer be verified to provide foster care. Foster homes with time-limited verifications must meet the same rules as foster homes with non-expiring verifications.]

§749.2526. What is the purpose of a time-limited verification?

The purpose of a time-limited verification is to permit you to limit the length of time a home will be verified by assigning the verification a pre-determined end date, after which the home will no longer be verified to provide foster care. Foster homes with time-limited verifications must meet the same rules as foster homes with non-expiring verifications.

§749.2533. What is the purpose of a provisional verification?

The purpose of a provisional verification is to permit continued care of foster children in a foster home that is transferring from one child-placing agency to another, whether in the current residence or a new residence.

§749.2535. What must I do prior to issuing a provisional verification?

(a) You may only issue a provisional verification if the foster home will continue to care for foster children that the previous agency placed in the home.

(b) You may only issue a provisional verification after:

(1) You request and receive the background information from the foster home's former child-placing agency, which the agency is required to send according to §749.2475 of this subchapter (relating to To whom must I release information regarding a family on which I previously conducted a foster home screening, pre-adoptive home screening, or post placement adoptive report?);

(2) Based on the background information you receive from the former child-placing agency, and any current screening and evalu-

ation that your agency has conducted up to this point, you determine that the home does not present a potential risk to the health or safety of children;

(3) If the foster home is moving to a new residence, you:

(A) Inspect the new location; and

(B) Determine that the home meets the minimum standards, including the standards in Subchapter O of this chapter (relating to Foster Homes: Health and Safety Requirements, Environment, Space and Equipment); and

(4) The child placement management staff reviews and approves the provisional verification by signing and dating it.

(c) A foster home with a provisional verification must meet the same rules as a foster home with a non-expiring verification, except for any screening requirements that have not been completed.

(d) A provisional verification must include any condition (number of children, age, gender, services provided) or any other restriction that was in the previous child-placing agency's verification.

§749.2537. For what length of time can I issue a provisional verification?

(a) A provisional verification is valid:

(1) For six months from the date it is issued; or

(2) Until the foster home is issued a non-expiring verification or closed.

(b) You may not renew the provisional verification.

§749.2539. Can foster children remain in the foster home while a provisional verification is in effect?

Children who are in the care of a foster family that is transferring from one child-placing agency to another may continue to live in the foster home while the provisional verification is in effect. However, you may not make new placements of children into a home that is provisionally verified.

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Karen Ray
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Health and Human Services Commission
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SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT
DIVISION 3. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

26 TAC §749.2961

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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendment affects Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.2961. Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?

(a) Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows), are permitted, however, there are some specific restrictions:

(1) If you allow weapons, firearms, explosive materials, projectiles, or toys that explode or shoot, you must develop and enforce a policy identifying specific precautions to ensure that a child does [~~children do~~] not have unsupervised access to them, including:

(A) Weapons [~~Locked storage for the weapons~~] and the ammunition must be kept in locked storage;

(B) The locked [~~Locked~~] storage must be made of strong, unbreakable material, except that the storage may have a glass or another breakable front or enclosure;

(C) Any gun placed in a [~~If the~~] locked storage that has a glass or another breakable front or enclosure[~~, guns~~] must be secured with a locked cable or chain placed through the trigger guard [~~guards~~]; and

(D) Weapons and ammunition must be separately stored and locked unless: [~~Separate locked storage for the weapons and the ammunition. Ammunition may be stored with weapons in the same location.~~]

(i) A person cannot obtain access [~~such as a gun cabinet, provided that access~~] to both the weapon and ammunition [~~and weapons cannot be obtained~~] by using the same key or [~~and/or~~] combination; or

(ii) Each firearm is stored with a trigger locking device attached to the firearm.

(2) You must determine that it is appropriate for a specific child to use the weapons, firearms, explosive materials, projectiles, or toys that explode or shoot; and

(3) No child may use a weapon, firearm, explosive material, projectile, or toy that explodes or shoots, unless the child is directly supervised by an adult knowledgeable about the use of the weapon, firearm, explosive material, projectile, or toy that explodes or shoots that is to be used by the child.

(b) Your policies must require foster parents [~~parents/caregivers~~] to notify you if there is a change in the type of or an addition to weapons [~~weapon~~], firearms, explosive materials, [~~or~~] projectiles, or toys that explode or shoot that are on the property where the foster home is located.

(c) Firearms that are inoperable and solely ornamental are exempt from the storage requirements in this rule.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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SUBCHAPTER Q. ADOPTION SERVICES: CHILDREN
DIVISION 5. REQUIRED INFORMATION

26 TAC §749.3391

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, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendment affects Texas Government Code §531.0055, Texas Family Code §162.007, and Texas Human Resources Code, §42.042.

§749.3391. What information must I compile for a child I am considering for adoptive placement?

(a) As part of the Health, Social, Educational, and Genetic History report, you must compile the following information for a child you are considering for adoption placement:
Figure: 26 TAC §749.3391(a)
[~~Figure: 26 TAC §749.3391(a)~~]

(b) In addition, you must document the following in the child's record:
Figure: 26 TAC §749.3391(b)
[~~Figure: 26 TAC §749.3391(b)~~]

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 355. RESEARCH AND PLANNING FUND
SUBCHAPTER C. REGIONAL WATER PLANNING GRANTS

31 TAC §355.91 - 355.93

The Texas Water Development Board ("TWDB" or "board") proposes an amendment to 31 TAC §355.91, concerning Notice of Funds and Submission and Review of Applications, §355.92 concerning Use of Funds, and 355.93, concerning Board Consideration of Applications; Applicant's Responsibilities; and Contract.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The purpose of the proposed amendments to 31 TAC Chapter 355 are to address concerns raised by the regional water planning groups, which was also identified as a recommendation from the Interregional Planning Council, established by House Bill 807 of the 86th Legislature, to allow for the limited reimbursement of certain labor costs for regional water planning administrative agents. The revisions also clarify language throughout the section.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Subchapter C. Regional Water Planning Grants.

Section 355.91 Notice of Funds and Submission and Review of Applications

Section 355.91(a) is revised to remove the requirement that the request for funding applications be published in the Texas Register. Eligible applicants are limited to the Political Subdivision designated by each regional water planning group. These entities will be notified directly by the Executive Administrator (EA) that funding is available.

Section 355.91(b) is revised to add clarity to the rule.

Section 355.91(c) is revised to comply with 357.21 as modified by the current rulemaking project.

New §355.91(d) is added clarify the statutory requirements to be included in a funding application.

Renumbered §355.91(e) is revised to remove the requirement for multiple applications during the five-year planning cycle. The Board has discretion to amend the regional water planning grant contracts to add additional funds and scope of work tasks without a new application for funding during the same planning cycle.

Renumbered §355.91(f) is revised to closely adhere to the statutory requirements.

Section 355.92 Use of Funds

Section 355.92(a)(5) is renumbered as §355.92(a)(4) and is revised to clarify that the EA may deem an analysis of benefits and costs of water management strategies eligible for funding at their discretion and specifies items the EA must consider. Section 355.92(d) is removed, as the EA consideration is now addressed in new §355.92(a)(4).

Section 355.92(a)(4) is renumbered as §355.92(b) and provides clarification on ineligible expenses for RWPG members and the RWPGs' designated political subdivisions.

Section 355.92(b) is renumbered as §355.92(c) and clarifies certain eligible administrative costs that are specifically limited by the regional water planning grant contract. This includes a new eligible cost for limited reimbursement of the RWPG's political subdivision's personnel costs associated with RWPG meetings and hearings.

Section 355.92(c) is renumbered as §355.92(d) and is revised to clarify that the subcontracting process is through the RWPG's political subdivision.

Section 355.93 Board Consideration of Applications; Applicant's Responsibilities; and Contract

Sections 355.93(a), (b), and (c) are revised to clarify rule language.

Section 355.93(d) is revised to clarify that the contracts and subcontracts for regional water planning must, at the direction of the EA, include either a scope of work provided by the EA or a scope of work developed by the RWPG if requested by the EA and a budget subdivided into task budgets.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules may result in reductions in costs to local governments because some limited personnel costs will be reimbursable by the state. There is no change in costs for state governments to comply with the proposed revision. These rules are not expected to have any impact on state or local revenues. These rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rules.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it will clarify rule language and provide reimbursement for certain personnel costs related to the administration of Regional Water Plans and Regional Water Planning Groups.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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. The intent of the rulemaking is to define eligible expenses and clarify existing language.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed the a standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under the authority of Texas Water Code § 16.053. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule revision is to clarify language and to provide for some reimbursement of labor costs for regional water planning administration.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that collects, analyzes, and disseminates water-related data and provides

other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rules will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to *rulescomments@twdb.texas.gov,* or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register.* Include reference to Chapter 355 in the subject line of any comments submitted.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of the Texas Water Code § 6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The rulemaking is proposed under the additional authority of Texas Water Code § 15.403 which provides the TWDB with the authority to adopt rules necessary to carry out the purposes of the Research and Planning Program and Texas Water Code § 15.4061 which provides the TWDB with the authority to enter into contracts with political subdivisions and pay from the research and planning fund, all or part of the cost of developing or revising Regional Water Plans in accordance with the statute.

§355.91. Notice of Funds and Submission and Review of Applications.

(a) The EA will notify the [~~publish notice in the *Texas Register* advising~~] RWPGs that funds are available and that applications will be accepted from eligible applicants for grants to develop a scope of work or to develop or revise regional water plans. The notice will describe the form and manner for applications. A RWPG may not receive grant funds unless the RWPG has provided the EA with a copy of the RWPG's adopted by-laws.

(b) The RWPG shall provide a written designation to the EA naming the political subdivision that is authorized to apply for grant funds on behalf of the RWPG. The RWPG shall ensure that the designated political subdivision has the legal authority to conduct the procurement of professional services and enter into the contracts necessary for regional water planning.

(c) The political subdivision shall provide notice that an application for funding is being submitted in accordance with §357.21[~~(e)~~] of this title (relating to Notice and Public Participation).

(d) The application must include: the name of the political subdivision; citation to the laws under which the political subdivision was created and is operating, specific citation of all laws providing authority to develop and implement a regional water plan; the amount of funding requested; and any other relevant information requested by the EA.

(e) [~~(d)~~] The EA may request clarification from the political subdivision if necessary to evaluate the application. Incomplete applications may be rejected and returned to the applicant. [~~After the initial round of planning grant funds, an eligible applicant may submit additional applications for tasks not previously funded. The EA may fund additional applications under this subchapter, but is not required to provide such additional funding.~~]

(f) [~~(e)~~] The applications shall be evaluated by the following criteria:

(1) degree to which proposed planning does not duplicate previous or ongoing water planning;

(2) project [~~organization and~~] budget;

(3) scope of work [~~of project~~];

[~~(4) eligibility of tasks for funding under this subchapter;~~]

(4) [~~(5)~~] the relative need of the political subdivision for the money based [~~upon an assessment of~~] on the [~~necessary~~] scope of work and cost to develop the regional water plan [~~as compared to statewide needs for development of all regional water plans~~];

(5) [~~(6)~~] the legal authority of the political subdivision to participate in the development and implementation of a regional water plan; and

(6) [~~(7)~~] the degree to which regional water planning by the RWPG will address the water supply needs in the regional water planning area.

§355.92. Use of Funds.

(a) Limitations of Funding. The Board has sole discretion in determining which activities are necessary for the development or revision of regional water plans. However, no funds will be provided for the following:

(1) activities for which the Board determines existing information or data is sufficient for the planning effort including:

(A) detailed evaluations of cost of water management strategies where recent information for planning is available to evaluate the cost associated with the strategy;

(B) evaluations of groundwater resources for which a desired future condition has been submitted to the Board pursuant to Texas Water Code §36.108(d) (relating to Joint Planning in a Management Area);

(C) evaluations of groundwater resources for which current information is available from the Board or other entity sufficient for evaluation of the resource;

(D) determination of water savings resulting from standard conservation practices for which current information is available from the Board;

(E) revision of the adopted state population and demand projections;

(F) revision of state environmental planning criteria for new surface water supply projects; and

(G) collection of data describing groundwater or surface water resources where information for evaluation of the resource is currently available;

(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;

(3) activities related to planning for individual system facility needs other than identification of those facilities necessary to transport water from the source of supply to a regional water treatment plant or to a local distribution system;

(4) analyses of benefits and costs of water management strategies are not eligible for funding, unless the EA at his or her discretion, has deemed an analysis necessary and appropriate, or specifically authorizes reimbursement. In determining whether to authorize reimbursement for a cost benefit analysis for a water management strategy, the EA will consider:

(A) whether the water management strategy requires a state or federal permit and the RWPG has completed the analysis required by §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies);

(B) whether these analyses are needed to determine the selection of the water management strategy;

(C) whether the analysis is for strategies that serve the same demand, but the costs and benefits differ significantly among the strategies; and

(D) the overarching benefits to the state when determining whether to provide such funding.

(b) [~~(4)~~] Costs [~~costs~~] associated with participation on a RWPG and certain administrative activities by the RWPG's Political Subdivision and RWPG members are not eligible for funding. Ineligible costs include but are not [~~administration of the plan's development, including but not~~] limited to:

(1) [~~(A)~~] compensation for the time or expenses of RWPGs members' service on or for the RWPG, including attendance at RWPG meetings and hearings;

[~~(B) costs of administering the RWPGs;~~]

[~~(C) costs of public notice and meetings, including time and expenses for attendance at such meetings;~~]

(2) [~~(D)~~] costs for training;

(3) costs associated with the development of an application for a regional water planning grant;

(4) [~~(E)~~] costs of reviewing products developed due to this grant; and

(5) [~~(F)~~] costs of administering the regional water planning grant and associated contracts.[~~; and~~]

[~~(5) analyses of benefits and costs of water management strategies unless the water management strategy requires a state or federal permit and the RWPG has completed the analysis required by §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies), and the RWPG demonstrates to the satisfaction of the executive administrator that these analyses are needed to determine the selection of the water management strategy.~~]

(c) [~~(b)~~] Funding Administrative Costs. The following administrative costs are eligible for funding as specifically limited by the expense budget included in the regional water planning grant contract between the TWDB and the RWPG's political subdivision and if the RWPG or its chairperson certifies, during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:

(1) travel expenses, as authorized by the General Appropriations Act are available only for attendance at a posted meeting of the RWPG unless the travel is specifically authorized by the RWPG and EA;

(2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RWPGs and certified by the chairperson;

(3) direct costs, not including personnel costs, for [~~placing public notices in newspapers for the legally required public hearings and of~~] providing copies of information for the public and for members of the RWPGs as needed for the efficient performance of planning work; [~~and~~]

(4) direct costs, not including personnel costs, of public notice postings including a maintaining a website and for postage for mailing notices of public meetings and hearings, including in newspapers [~~and other actions to persons and entities listed in~~] pursuant to Chapter 357 of this title (relating to Regional Water Planning); and

(5) the RWPG's political subdivision's personnel costs, for the staff hours that are directly spent providing, preparing for, and posting public notice for RWPG meetings and hearings, including time and direct expenses for their support of and attendance at such RWPG meetings and hearings.

(d) [~~(c)~~] Subcontracting. A RWPG through the [~~eligible applicant's~~] political subdivision's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional water plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas Government Code Chapter 2254.

[~~(d) Notwithstanding limitations on funding described in this section, the EA may, in his sole discretion, authorize funding for a cost benefit analysis of water management strategies. The EA shall consider funding such an analysis when the strategies serve the same demand, but the costs and benefits differ significantly among the strategies. The EA shall consider the overarching benefits to the state when determining whether to provide such funding. The EA may provide cost benefit analysis in other situations, as he deems necessary and appropriate.~~]

§355.93. Board Consideration of Applications; Applicant's Responsibilities; and Contract.

(a) The EA shall provide [~~submit~~] a summary of regional water planning funding applications with recommendations for approval to the Board for consideration at a regularly scheduled public meeting of the Board. The EA shall notify the applicants [~~and other persons who have provided comments~~] of the time and place of such meeting. [~~The Board agenda is published on the Web site at *www.twdb.texas.gov*.~~]

(b) Board Review. The Board may [has discretion to] approve, deny [disapprove], amend, or continue consideration of an application. If the Board approves the application for funding, then the RWPG's political subdivision [eligible applicant] will be notified of the amount of funds available and [about] the deadline for executing a contract with the Board. If the applicant does not enter into a contract by the specified deadline, then the Board's approval expires and no funds will be provided. The political subdivision [applicant] may request an extension of time for good cause shown prior to the contract execution deadline.

(c) Eligible Applicant's Responsibility. The RWPG's political subdivision [eligible applicant] must demonstrate the availability of matching funds when applicable. However, the Board may in its discretion award up to 100% of the necessary and direct costs of the development or revision of a regional water plan.

(d) The [A] contracts and subcontracts for regional planning funds shall include:

(1) a detailed statement of the purpose for which the money is to be used;

(2) a scope of work provided by the EA or a scope of work developed by the RWPG if requested by the EA;

(3) [(2)] the total amount of money to be paid from the research and planning fund under the contract and, as determined by the EA, subdivided into task budgets;

(4) [(3)] the time for completion; and

(5) [(4)] any other terms and conditions required by the EA or agreed to by the contracting parties.

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 February 11, 2021.

TRD-202100579
Ashley Harden
General Counsel
Texas Water Development Board
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 463-7686

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CHAPTER 357. REGIONAL WATER PLANNING

SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

31 TAC §357.21

The Texas Water Development Board ("TWDB" or "board") proposes an amendment to 31 TAC §357.21, concerning notice and public participation.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The purpose of this proposed rule change is to simplify regional water planning public notice requirements and remove redundant references in the section to notice requirements. The revisions closely align with the new flood planning public notice rules, where applicable, to reduce confusion among public notice requirements of the two planning processes administered by the agency.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Subchapter B. Guidance Principles and Notice Requirements

§357.21 Notice and Public Participation

Sections 357.21(b) - (e) are rescinded and the requirements within those subsections are rewritten as §357.21(g) - (h). Section 357.21(e) is fully removed to no longer require a costly public notice for a non-competitive funding process.

New subsection §357.21(b) requires that each Regional Water Planning Group (RWPG) maintain a website where public notice and meeting materials are posted. This is currently already required by the regional water planning contract scopes of work.

New subsection §357.21(c) clarifies that oral public comment must be accepted at each public meeting or hearing and the RWPGs must specify when and how the public may submit written comment.

New subsection §357.21(d) requires the RWPGs to maintain a list of interested parties of who will receive electronic notice of public meetings and hearings.

New subsections §357.21(e) - (f) specify the minimum requirements for all meeting and hearing notices. RWPGs may add additional notice requirements above the requirements specified by rule to their bylaws.

New subsection §357.21(g)(1) specifies that regular RWPG meetings, and any committee or subcommittee meetings, are subject to a minimum seven-day public notice. Additional RWPG actions that would be subject to the seven-day notice are specified in this rule. This revises the previous requirement that regular RWPG meetings occur with a minimum three-day public notice. A seven-day public notice allows for increased public transparency of upcoming meetings. As referenced in the TWDB's Best Practices Guide for RWPG Political Subdivisions, the TWDB's Regional Water Planning Public Notice tool, developed in coordination with a RWPG political subdivision, recommends providing public notice at least seven days prior to a RWPG meeting. The rule also specifies the minimum time for posting meeting materials as three days prior to and seven days following a public meeting.

New subsection §357.21(g)(2) specifies certain actions that are subject to a minimum 14-day public notice and public comment period. The rule also specifies the minimum time for posting meeting materials as seven days prior to and 14 days following the public meeting. This subsection revises the previous 14-day public notice requirements by requiring adoption of the final regional water plan to be subject to a 14-day notice, removes the requirement for a 14-day follow up comment period after a RWPG takes action, and removes the requirement to submit public comments on minor amendments to the TWDB from the public notice section. The requirement to provide public comments on minor amendments to the TWDB will be moved to Section 357.50 during a subsequent rulemaking to occur in 2021.

New subsection §357.21(g)(3) specifies public hearings requirements for declarations to pursue simplified planning and major amendments. These hearings are subject to a minimum 30-day public notice and public comment period prior to and after the hearings. This subsection revises the previous 30-day notice requirements for these hearings in that the notice requirements

in Texas Water Code (TWC) 16.053(h) are no longer applied to these hearings to reduce the costly expense associated with a large mailout and posting notice in a newspaper. RWPGs may continue to provide newspaper notices and notify additional entities at their discretion and in accordance with their bylaws.

New subsection §357.21(h) specifies public meeting and hearing requirements for pre-planning public meetings to obtain input on development of the next RWP and holding hearings on the Initially Prepared Plan (IPP) or making revisions to RWPs based on interregional conflict resolutions. These hearings are subject to public notice provision in TWC 16.053(h), including posting notice in a newspaper and providing a mailed notice to certain entities as specified in the rule. This subsection also requires notification of all adjacent RWPGs, which is an additional requirement not included in TWC 16.053(h). This subsection changes the 60 "public comment" period on the IPP to a 60 "written comment" period on the IPP. This will change the comment period of state and public agencies from 90 to 60 days in order to simplify the deadlines to submit written comment to the RWPGs. TWDB's 120-day comment period is not altered by this rule revision. The subsection also clarifies that if more than one hearing is held by a RWPG on the IPP, the notice and public comment periods apply to the date of the first hearing. The subsection adds in the requirements for RWPG hearings on making revisions to their RWPs based on interregional conflict resolutions. The requirements for this type of hearing are specified in TWC §16.053(h) but were not previously addressed in rule. The requirement to post notice for these meetings in the *Texas Register* is also removed.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

This rule amendment may result in reductions in costs to local governments. The amended rule reduces the number of newspaper publications required by political subdivisions that provide administrative support to Regional Water Planning Groups. There is no increase in costs for state or local governments to comply with the proposed revision. This rule is not expected to have any impact on state or local revenues. This rule does not require any increase in expenditures for state or local governments as a result of administering this rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from this rule.

Because this rule will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because this rule is amended to reduce the burden or responsibilities imposed on regulated persons by the rule.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it will simplify compliance with the notice requirements for the Regional Water Planning Groups.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major

environmental rule" is defined as a rule with the specific intent to protect the environment or

reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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. The intent of the rulemaking is to simplify regional water planning public notice requirements and remove redundant references in the rule related to notice requirements.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed the a standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under the authority of Texas Water Code § 16.053. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to simplify regional water planning public notice requirements and remove redundant references in the section to notice requirements.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231. Or by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments must include reference to Chapter 357 in the subject line. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register.*

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of the Texas Water Code § 6.101, which, provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is proposed under the additional authority of Texas Water Code § 16.053, which, provides the TWDB with the authority to adopt rules necessary to carry out Regional Water Planning in accordance with the statute.

Texas Water Code § 16.053 is affected by this rulemaking.

§357.21. Notice and Public Participation.

(a) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 and 552, Government Code. A copy of all materials presented or discussed at an open meeting shall be made available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552. In addition to the notice requirements of Chapter 551, Government Code, the following requirements apply to RWPGs.

(b) Each RWPG shall create and maintain a website that they will use to post public notices of all its full RWPG, committee, and subcommittee meetings and make available meeting agendas and related meeting materials for the public, in accordance with this section.

(c) Each RWPG shall provide a means by which it will accept written public comment prior to and after meetings. The RWPGs must also allow oral public comment during RWPG meetings and hearings.

(d) Each RWPG shall solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RWPG activities.

(e) At a minimum, notices of all meetings, meeting materials, and meeting agendas shall be sent electronically, in accordance with the timelines and any notice additional requirements provided in subsection (g)(1) - (3) and (h) of this section or any additional notice requirements in the RWPG by-laws, to all voting and non-voting RWPG members and any person or entity who has requested notice of RWPG activities. Notice must also be provided to the following:

(1) if a recommended or Alternative WMS that is located outside of the RWPG is being considered, the RWPG where the recommended or Alternative WMS is located must also receive notice of any meeting or hearing where action or public input may be taken on the recommended or Alternative WMS.

(2) for hearings on declarations of intent to pursue simplified planning, if a RWPG shares a water supply source, WMS, or WMSP with another RWPG, the RWPG declaring intent to pursue simplified planning must notify the RWPG with shared source, WMS, or WMSP.

(3) each project sponsor of an infeasible WMS or WMSP must be provided notice of any meeting or hearing where action may be taken on the infeasible WMS or WMSP.

(f) At a minimum, all meeting and hearing notices must be posted to the RWPG website and on the secretary of state website and must include:

(1) the date, time, and location of the meeting;

(2) a summary of the proposed action(s) to be taken;

(3) the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and

(4) a statement of how and when comments will be received from the members and public.

(g) In addition to subsections (a) - (f) of this section, and the notice requirements of Chapter 551, Government Code, the following requirements apply:

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made avail-

able online at least three days prior to and seven days following the meeting when the planning group will take the following actions:

(A) regular RWPG meetings and any RWPG committee or subcommittee meetings;

(B) approval of requests for funds from the Board;

(C) amendments to the scope of work or budget included in the regional water planning grant contract between the political subdivision and TWDB;

(D) approval of revision requests for draft population projections and Water Demand projections;

(E) adoption of the IPP;

(F) approval to submit a request to EA for approval of an Alternative WMS substitution or to request an EA determination of a minor amendment;

(G) declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning;

(H) initiation of major amendments to RWPs and adoption of major amendments following a public hearing on the amendment;

(I) approval of replacement RWPG members to fill voting and non-voting position vacancies; and

(J) any other RWPG approvals required by the regional water planning grant contract between TWDB and the political subdivision.

(2) at a minimum, notice must be provided at least 14 days prior to the meeting, written comment must be accepted for 14 days prior to the meeting and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available online for a minimum of seven days prior to and 14 days following the meeting, when the planning group will take the following actions:

(A) approval to submit revision requests to officially adopted Board population and Water Demand projections;

(B) approval of process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs;

(C) approval to submit the Technical Memorandum;

(D) adoption of the final RWP;

(E) approval to substitute an Alternative WMSs; and

(F) adoption of minor amendments to RWPs.

(3) at a minimum, notice must be provided at least 30 days prior to the hearing, written comment must be accepted for 30 days prior to and following the date of the hearing and considered by the RWPG members prior to taking the associated action, and meeting materials must be made available online for a minimum of seven days prior to and 30 days following the hearing, when the planning group will receive input from the public on the following items:

(A) declarations to pursue simplified planning; and

(B) major amendments to RWPs.

(h) when holding pre-planning public meetings to obtain public input on development of the next RWP, holding hearings on the IPP, or making revisions to RWPs based on interregional conflict resolutions, in addition to the requirements of subsection (e) of this section, the following additional public notice and document provisions must be met per TWC 16.053(h):

(1) notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA before the 30th day preceding the date of the public meeting or hearing.

(2) at a minimum, notice must be provided at least 30 days prior to the meeting or hearing.

(3) written comments to be accepted as follows:

(A) written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(B) at least 60 days following the date of the public hearing on an IPP.

(4) if more than one hearing on the IPP is held, the notice and comment periods applies to the date of the first hearing.

(5) additional entities to be notified by mail under this subsection include:

(A) each adjacent RWPG;

(B) each mayor of a municipality, located in whole or in part in the RWPA, with a population of 1,000 or more or which is a county seat;

(C) each county judge of a county located in whole or in part in the RWPA;

(D) each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission; and

(E) each Retail Public Utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and

(F) each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission.

(6) the public hearings shall be conducted at a central location readily accessible to the public within the regional water planning area.

(7) RWPGs shall make copies of the IPP available for public inspection at least 30 days before the required public hearing by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA. The locations of such copies shall be included in the public hearing notice. For distribution of the IPP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate public library and location in the county courthouse to ensure maximum accessibility to the public during business hours. According to the capabilities of the facility, the RWPG may provide the copy electronically, on electronic media, through an internet web link, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

(i) All notice periods given are based on calendar days.

(j) Each RWPG shall include a statement in their draft and final adopted RWPs regarding the RWPG's conformance with this section.

[(b) All public notices required by this subsection shall comply with this section and shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: regular RWPG meetings; amendments to the regional water planning scope of work or budget; population projection and Water Demand projection revision requests to the EA regarding draft projections; process of identifying potentially feasible WMSs for plans previous to the 2026 RWPs; meetings to replace RWPG members or addition of new RWPG members; submittal of request to EA for approval of an Alternative WMS substitution; declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning; adoption of RWPs; and RWPG committee and subcommittee meetings.

(2) Published 72 hours prior to the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken; and

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted.

(4) Entities to be notified in writing include:

(A) all voting and non-voting RWPG members; and

(B) any person or entity who has requested notice of RWPG activities.

(5) Notice and agenda to be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials presented or discussed at the meeting.]

[(c) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: population projection and Water Demand projection revision requests to officially adopted Board projections; approval to submit Technical Memorandum; substitution of Alternative WMSs; process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs for plans beginning with the 2026 plan; and minor amendments to RWPs.

(2) Notice of meetings under this subsection shall be published/postmarked on the internet and emailed or mailed to the public before the 14th day preceding the date of the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the meetings and information on how the public may submit written comments separate from such meetings. The RWPG shall specify a deadline for submission of public written comments of not earlier than 14 days after the meeting.

(4) Entities to be notified in writing include:

(A) all voting and non-voting RWPG members;

(B) any person or entity who has requested notice of RWPG activities;

(C) each RWPG where a recommended or Alternative WMS being considered would be located; and

(D) for actions associated with infeasible WMSs or WMSPs, each project sponsor of a WMS or WMSP identified as infeasible.

(5) Notice and associated meeting agenda to be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials, reports, plans presented or discussed at the meeting.

(7) Public comments to be accepted as follows:

(A) Written comments for 14 days prior to meeting with comments considered by RWPG members prior to action;

(B) Oral and written public comment during meeting; and

(C) Written comments must also be accepted for 14 days following the meeting and all comments received during the comment period must be submitted to the Board by the RWPG.]

[(d) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: holding a preplanning public meeting to obtain public input on development of the next RWP; public hearings on declarations to pursue simplified planning, major amendments to RWPs; and holding hearings for IPPs.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA before the 30th day preceding the date of the public meeting or hearing.

(3) Notice of the public meetings and public hearings shall include:

(A) a date, time, and location of the public meeting or hearing;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the hearings and information on how the public may submit written comments separate from such hearings. The RWPG shall specify a deadline for submission of public written comments as specified in paragraph (9)(A) of this subsection.

(4) RWPGs shall make copies of the IPP available for public inspection at least 30 days before a public hearing required or held by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA and include locations of such copies in the notice for public hearing. For distribution of the IPP and adopted RWP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate location in the county courthouse to ensure maximum accessibility to the public during business hours. Additionally, the RWPG may consult with local and county officials in determining which public library in the county can provide maximum accessibility to the public. According to the capabilities of the facility, the RWPG may provide the copy electronically, on electronic media, through an internet web link, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

(5) Notice shall be mailed to, at a minimum, the following:

(A) Notification of all entities that are to be notified under subsection (c)(4) of this section;

(B) Each mayor of a municipality, located in whole or in part in the RWPA, with a population of 1,000 or more or which is a county seat;

(C) Each county judge of a county located in whole or in part in the RWPA;

(D) Each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission; and

(E) Each Retail Public Utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission;

(F) Each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission;

(G) For declarations of intent to pursue simplified planning, RWPGs with water supply sources, WMSs, or WMSPs shared with the RWPG declaring intent to pursue simplified planning; and

(H) For amendments associated with infeasible WMSs or WMSPs, each project sponsor of a WMS or WMSP identified as infeasible.

(6) Notice and associated hearing and meeting agenda shall also be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA;

(B) Texas Secretary of State website; and

(C) In the *Texas Register*.

(7) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials presented or discussed at the meeting.

(8) The public hearing for the IPP shall be conducted at a central location readily accessible to the public within the regional water planning area.

(9) Public comments to be accepted as follows:

(A) Written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(i) Until not earlier than 30-days following the date of the public hearing on a major amendment to an RWP or declaration of intent to pursue simplified planning.

(ii) Until not earlier than 60 days following the date of the public hearing on an IPP.

(B) Verbal public comments at the noticed meeting or hearing;

(C) Comments received must be considered as follows:

(i) Comments associated with hearings must be considered by RWPG members when declaring implementation of simplified planning, adopting an RWP or adopting a major amendment to an RWP.

(ii) Comments associated with a preplanning meeting must be considered prior to taking RWPG action.]

[(e) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply when an RWPG is requesting research and planning funds from the Board.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA at least 30 days prior to Board consideration of funding applications.

(3) Notice shall include the name and address of the eligible applicant and the name of the applicant's manager or official representative; a brief description of the RWPA; the purposes of the planning project; the Board's name, address, and the name of a contact person with the Board; a statement that any comments must be filed with the EA and the applicant within 30 days of the date on which the notice is mailed or published. Prior to action by the Board, the applicant must provide one copy of the notice sent, a list of those to which the notice was sent, the date on which the notice was sent, copies of all notices as published showing name of the newspaper and the date on which the notice was published.

(4) Notice shall be mailed to, at a minimum, the following:

(A) Each mayor of a municipality, located in whole or in part in the RWPA, with a population of 1,000 or more or which is a county seat;

(B) Each county judge of a county located in whole or in part in the RWPA;

~~(C) Each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission; and~~

~~(D) All other RWPGs.~~

~~(5) Notice shall also be posted on the website of the RWPG or host Political Subdivision.~~]

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 February 11, 2021.

TRD-202100580
Ashley Harden
General Counsel
Texas Water Development Board
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 463-7686

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §§15.27, 15.28, 15.39

The Texas Department of Public Safety (the department) proposes the repeal of §§15.27, 15.28, and 15.39, concerning Application Requirements--Original, Renewal, Duplicate, Identification Certificates. These repeals are necessary because the currently applicable rule language is included in newly proposed rules §15.27 and §15.28 that consolidate and streamline general issuance requirements for minor driver licenses.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeal 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 repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit will be clearer understanding of signature requirements for minor driver license issuance, clearer understanding of requirements for hardship driver license issuance, and fewer in office visits to present additional documentation for students obtaining a provisional license and better understanding of Verification of Enrollment (VOE) requirements.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a 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 an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit 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 repeal is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.27. Signature by Parent or Guardian for a Driver License.

§15.28. Minor's Restricted Driver License Application.

§15.39. Verification of Enrollment and Attendance.

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 February 11, 2021.

TRD-202100586
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 424-5848

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37 TAC §15.27, §15.28

The Texas Department of Public Safety (the department) proposes new §15.27 and §15.28, concerning Application Requirements--Original, Renewal, Duplicate, Identification Certificates. Current driver license rules relating to driver education and the issuance of driver licenses to minors contain redundant and outdated information. Newly proposed §15.27 and §15.28 consolidate the general issuance requirements for minor driver licenses and update rule language to conform with current state law. Proposed §15.27 and §15.28 combine relevant information from current §15.27, Signature by Parent or Guardian for a Driver License; §15.39, Verification of Enrollment and Attendance; §18.1, General Requirements for Driver Education and Issuance of Learner and Provisional Driver Licenses; §18.2, Requirements for Learner License; and §18.3, Requirements for a Provisional License, all of which are being simultaneously repealed. These rules also remove restrictions to online and alternative transactions for minor license holders.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are 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 rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of these rules will be clearer understanding of signature requirements for minor driver license issuance, clearer understanding of requirements for hardship driver license issuance, and fewer in office visits to present additional documentation for students obtaining a provisional license and better understanding of Verification of Enrollment (VOE) requirements.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a 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 an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit 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.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.27. Issuance Requirements for Minor Driver License Applicants.

(a) An applicant who is at least 15 but younger than 18 years of age must enroll in an approved commercial, public, or parent taught driver education program prior to applying for a driver license. The applicant must be at least 14 years of age to begin driver education. The department will not approve a driver license application if any coursework is taught prior to the applicant's 14th birthday.

(b) Upon completion of the required hours of classroom driver education, the applicant must visit a driver license office and complete the requirements to obtain a learner license. To qualify for a learner license, the applicant must be at least 15 years of age and have completed the first six hours of classroom instruction if enrolled in the concurrent method or 32 hours if enrolled in the block method. A learner license is required before any behind the wheel phase of instruction may begin.

(c) An applicant must hold a learner or hardship license for a minimum of six months and be at least 16 but younger than 18 years of age to apply for a provisional driver license.

(d) The driver license application of a minor must be signed by the person having custody of the minor. If the minor is not in the custody of the minor's parent(s), the guardian or agent under a power of attorney for the parent should sign. If not in the custody of any of the foregoing, the minor's employer or the county judge of the county in which the minor resides or the Department of Family and Protective Services custodian may sign.

(e) Any examinations or issuance requirements not completed by a driver education provider or authorized entity will be administered at the driver license office.

(f) If the minor applies to operate a vehicle not authorized under the original application, a separate, new notarized authorization from the custodian is required.

(g) Adult authorization is not required for an applicant younger than 18 years of age who is or has been married or whose disabilities of minority have been removed generally, by law. Instead, they must:

(1) Present a marriage certificate or divorce decree (not an annulment decree) or other satisfactory evidence of marriage or having been married;

(2) Present a court order showing removal of disabilities of minority; or

(3) Obtain a notarized parental authorization as though the minor were not or had not been married.

(h) Marriage or removal of disabilities of minority affect only requirements pertaining to parental authorization. All other requirements, including minimum ages for licensing, must be met.

(i) A request to withdraw or restore an authorization for a minor driver license must be submitted to the department in writing.

(j) The driver education certificate must contain applicable items for certification of classroom and laboratory training.

(k) Driver education certificates issued by a jurisdiction or agency other than one of the 50 United States must be approved by a driver license office supervisor.

(l) A certificate from any state showing completion of an approved driver education course will be accepted. Applications with certificates showing completion of only classroom instruction may be accepted for a learner license and applications with certificates showing completion of both classroom and behind the wheel requirements may be accepted for a provisional license.

(m) The department will check the driver record of the parent taught course instructor at the time of application for the learner and provisional license. If the instructor is ineligible to teach the course, the learner or provisional license will be denied and all instruction time will be forfeited. An instructor with an out of state or country driver license must present a copy of his or her driver record for the preceding three years. Out of country driver records must be translated into English.

(n) Verification of enrollment and attendance in school, a course to complete high school requirements, or proof of high school completion is required.

(1) A minor applicant enrolled in high school shall submit a Verification of Enrollment (VOE) form or the equivalent with the original application.

(2) The VOE is valid for 30 days from the date of signature when school is in session and 90 days from the date of signature during the summer break.

(3) An applicant who is enrolled in home school may submit the VOE or a letter from the instructor as a substitute for the VOE form. The letter must contain the same information as the VOE with the exception of the school name and district.

§15.28. Learner, Provisional and Hardship License Requirements.

A driver license applicant who is younger than 18 years of age must, in addition to all other requirements as described in this section, including the application fee, meet the following requirements for issuance of each type of minor driver license.

(1) Learner License.

(A) A learner license applicant must appear at a driver license office and submit:

(i) a high school diploma or the equivalent, acceptable certification of a high school completion course/GED enrollment and attendance, or a Verification of Enrollment (VOE) form or the equivalent;

(ii) if previously licensed (including an instruction permit or learner license) in another state, the license from the other state or an executed department affidavit certifying the license was lost, stolen, or expired;

(iii) completed FOR LEARNER LICENSE ONLY portion of the Texas Driver Education Certificate; and

(iv) results for any examinations performed by a state-approved driver education provider.

(B) A learner license issued to an applicant who fails to complete the concurrent driver education classroom instruction will be canceled by the department.

(2) Provisional License.

(A) A provisional license applicant must submit:

(i) the applicant's learner license;

(ii) completed Texas Driver Education Certificate;

(iii) proof of liability insurance if the applicant owns a vehicle;

(iv) if not presented for learner license issuance, proof of high school completion, enrollment and attendance in a completion program, VOE or the equivalent;

(v) if the skills examination is performed at the driver license office, valid motor vehicle registration and inspection for the vehicle that will be used for the examination;

(vi) if previously licensed (including and instruction permit or learner license) in another state, the license from the other state or an executed department affidavit certifying the license was lost, stolen, or expired; and

(vii) if not already included as part of the driver license record, an applicant must appear in person at a driver license office and present a completed "Application for a Texas Driver License or Identification Card" and all documents required to obtain a Texas driver license as described in Subchapter B of this chapter.

(3) Hardship License.

(A) An applicant for a hardship driver license, also known as a minor's restricted driver license, in addition to meeting all application requirements, must complete all components of a state-approved driver education course, pass the skills examination, meet the requirements of Texas Transportation Code, §521.223, and provide evidence of hardship.

(B) The hardship license application must be executed by an authorized adult on behalf of a minor, with the adult and minor signing the form and presenting it in person at a driver license office. Hardship requirements, including examinations, cannot be conducted by a driver education school or authorized entity.

(C) Only a parent, guardian, or person having custody of a minor may make application on behalf of the minor applicant. If the minor has no parent, guardian, or custodian, then an employer or county judge may apply.

(D) The department may require additional evidence or conduct an investigation to confirm information furnished on any application for a hardship driver license.

(E) Any restriction approved on the hardship driver license application by the department or by court order, and found by the department to be necessary and not in conflict with the original authorization or court order, must be added to the license. Restrictions will normally be the time frame and area necessary to relieve a hardship or emergency.

(F) Types of hardship that may qualify a person for a hardship license are:

(i) Unusual economic hardship. Applicants who meet and provide acceptable evidence of the following criteria will be considered for licensing under Texas Transportation Code, §521.223 (a)(1):

(I) married and maintains a separate household apart from the parent or guardian;

(II) head of a household other than as a married person;

(III) has dependent children and must drive to ensure the welfare of the children;

(IV) only person in the household eligible for a driver license;

(V) only person in the household eligible for a driver license, other than the head of the household and that person is absent from the residence for sustained periods of time due to work necessitating licensing of the applicant to sustain the household;

(VI) attends school and must work to provide basic necessities and other means of transportation are not available without causing other family members to be absent from work;

(VII) requires transportation to and from school and a school bus or public transportation is not available. Travel to participate in school activities such as sports, band or other extracurricular activities is not sufficient reason to establish unusual economic hardship; and

(VIII) must drive in order to assist in essential farming or ranching activity, which is the primary source of family income.

(ii) Illness, sickness, or disability of a family member. A signed statement from the attending physician attesting that the family member must not drive due to the condition/illness is required for license issuance under Texas Transportation Code, §521.223 (a)(2).

(iii) Enrollment in a career and technology or vocational education program requiring a driver license to participate. Certification from the school administration attesting the enrollment of the applicant in an approved career and technology education course recognized by the school for academic credit and that driving by the applicant is necessary to pursue such program is required for license issuance under Texas Transportation Code, §521.223 (a)(3).

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 February 11, 2021.

TRD-202100587
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 424-5848

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SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.57

The Texas Department of Public Safety (the department) proposes the repeal of 37 TAC §15.57, concerning Restrictions, Physical. This rule is being proposed for simultaneous repeal and replacement. The repeal is necessary because the language is outdated. It also includes references to moped and motor-driven cycle licenses, which were repealed by the legislature and includes references to vehicle restrictions not related to the rule title.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeal 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 repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit will be clearer understanding of driver license restrictions.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a 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 an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit 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 repeal is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which

authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.57. Restrictions, Physical.

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 February 11, 2021.

TRD-202100588
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 424-5848

37 TAC §15.57

The Texas Department of Public Safety (the department) proposes new 37 TAC §15.57, concerning Restrictions, Physical. The new rule is proposed simultaneously with the repeal of the current §15.57. The new rule updates outdated language to conform the rule with current law. Specifically, references to moped and motor-driven cycle licenses were removed as well as references to vehicle restrictions not related to the rule title.

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 rule 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.

In addition, Ms. Whittenton has also 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 will be clearer understanding of the physical restrictions that may be placed on a driver license.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a 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 an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit 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.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.57. Restrictions, Physical.

Performance on the skills examination generally establishes what effect physical limitations may have on an applicant's ability to safely operate a motor vehicle. Restrictions are placed on an applicant's driver license when necessary.

(1) General information. Restrictions may be imposed for reasons other than failure to meet standard examination requirements.

(A) Request restriction. The adult who authorizes issuance of a minor applicant's driver license may request, and have imposed, any reasonable restriction.

(B) Eye specialist recommendations. An eye specialist may recommend restrictions such as daytime driving.

(C) Restriction limits. Only special equipment necessary to qualify on the skills exam will be required in the restriction(s) placed on an applicant's license.

(2) Physical Impairments. Restrictions may be required for persons with limb, hearing, strength, movement limitations, or other physical conditions that require special or assistive equipment to pass the skills examination.

(A) Limbs. Any special equipment necessary to pass the skills examination will be included in the restriction(s). Examples of restrictions and applicable aids for limb impairments include but are not limited to:

(i) Arm or hand impairment. If the applicant's right arm is not functional, the shift lever should be restricted to the left side of the steering wheel. Aids may include; steering wheel knob, signal device, or prosthesis.

(ii) Leg or foot impairment. An applicant with an amputation above the knee will ordinarily require additional restrictions even with the use of a prosthesis. An amputee may not use his or her hands to lift the leg for applying the brakes. Aids may include;

prosthesis, automatic transmission, pedal bars or extensions, manual brake, or power controls.

(B) General. Other common physical limitations that may require aids.

(i) Joint stiffness, tremors, shaking or wobbly body or limbs. Aids; none, based solely on conditions causing these symptoms.

(ii) Not strong enough to perform legal stop. Aids; power brakes.

(iii) Stature too small to perform legal stop. Aids; adjustable seat.

(C) Hearing. Deaf or hard of hearing. Aids; outside rearview mirror or hearing aid.

(3) Personal Restrictions.

(A) With corrective lenses. The applicant must wear corrective glasses or contact lenses while driving.

(B) Driver devices. Drivers may be restricted to prosthetic limbs, braces or other equipment.

(C) Time and place. Time restrictions, including daytime driving only, may be necessary for vision or other medical conditions. Some license holders may have operating restrictions for time and place such as only to and from work or school.

(D) Speed. A license may restrict driving to within certain speeds.

(E) Vehicle devices. A variety of devices may be installed on vehicles to compensate for physical limitations.

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 February 11, 2021.

TRD-202100589
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 424-5848

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37 TAC §15.64

The Texas Department of Public Safety (the department) proposes new §15.64, concerning Examinations Administered by Other Entities. This rule replaces §18.4, Examinations Administered by a Driver Education School or Parent Taught Driver Education Course Provider, which is simultaneously being proposed for repeal.

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 rule 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.

In addition, Ms. Whittenton has also 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 will be clearer understanding of requirements for outside entities authorized to perform driver license examinations.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a 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 an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit 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.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, and §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.64. Examinations Administered by Other Entities.

(a) Prior to application for a learner license, the driver education school, or parent taught driver education course provider may administer the Class C Road Signs exam and the Class C Road Rules exam to each student.

(1) The student must achieve a score of at least 70% on each exam to pass.

(2) The exams shall be administered in accordance with the guidelines detailed in subparagraph (A) and subparagraph (B) of this paragraph:

(A) The driver education school or parent taught driver education course provider will obtain the exams from the department or the Texas Department of Licensing and Regulation (TDLR) and may reproduce and electronically administer the exams if the most current version available from the department or TDLR is used. The exams will be available in English and Spanish. Other languages and oral exams must be referred to a driver license office. Exam results will be recorded on the Texas Driver Education Certificate. No student shall be examined prior to his or her 15th birthday.

(B) The exams may not be reviewed prior to examination. The driver education school, or parent taught driver education course provider may review exams after completion, but may not provide copies of the exams to the student.

(b) An applicant must complete a vision exam.

(1) Applicants completing a parent taught driver education course are required to take and pass the vision exam at a driver license office.

(2) Applicants completing a driving education course may take the vision exam at the school. The driver education school may administer the vision exam using a suitable device that utilizes the Snellen Method of Measurement and American Medical Association (AMA) Visual Efficiency Rating to accurately measure the student's visual acuity.

(A) The device must be used in a manner consistent with the procedures prescribed by the device manufacturer.

(B) The results of the student's visual acuity will be recorded on the Texas Driver Education Certificate. A student with obvious visual problems shall be referred to the driver license office for examination and any necessary referrals to a vision specialist.

(C) Upon presentation of a Texas Driver Education Certificate including the results of a student's visual acuity, the driver license office personnel shall evaluate the exam results and if vision limitations are present, add the proper restriction(s) to the learner license.

(c) The Texas Driver Education Certificate shall be completed and dated on the same day examination requirements are completed. The certificate will serve as verification to the department that the student has met the training and examination requirements.

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

Filed with the Office of the Secretary of State on February 11, 2021.

TRD-202100590
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 424-5848

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CHAPTER 18. DRIVER EDUCATION

SUBCHAPTER A. ISSUANCE AND EXAMINATION REQUIREMENTS FOR LEARNER AND PROVISIONAL LICENSES

37 TAC §§18.1 - 18.4

The Texas Department of Public Safety (the department) proposes the repeal of §§18.1 - 18.4, concerning Issuance And Examination Requirements For Learner And Provisional Licenses. New rules are simultaneously proposed to update the language and incorporate information from Chapter 18, Driver Education into Chapter 15, Driver License Rules. The relevant information from repealed §§18.1 - 18.4 is included in proposed new §15.27, §15.28, and §15.64.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeal 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 repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit will be clearer understanding of requirements for minor driver license issuance.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a 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 an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit 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 repeal is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Com-

ments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§18.1. General Requirements for Driver Education and Issuance of Learner and Provisional Driver Licenses.

§18.2. Requirements for Learner License.

§18.3. Requirements for a Provisional License.

§18.4. Examinations Administered by a Driver Education School or Parent Taught Driver Education Course Provider.

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 February 11, 2021.

TRD-202100591
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 28, 2021
For further information, please call: (512) 424-5848

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER EE. SAFE AND SUPPORTIVE SCHOOL PROGRAM AND TRAUMA-INFORMED CARE POLICY AND TRAINING

19 TAC §§103.1401, 103.1403, 103.1405, 103.1407, 103.1409

The Texas Education Agency withdraws the proposed new §§103.1401, 103.1403, 103.1405, 103.1407, and 103.1409, which appeared in the September 11, 2020, issue of the *Texas Register* (45 TexReg 6305).

Filed with the Office of the Secretary of State on February 12, 2021.

TRD-202100632
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: February 12, 2021
For further information, please call: (512) 475-1497

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.419

The Comptroller of Public Accounts withdraws the proposed amendment to §9.419 which appeared in the February 5, 2021, issue of the *Texas Register* (46 TexReg 900).

Filed with the Office of the Secretary of State on February 9, 2021.

TRD-202100564
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: February 9, 2021
For further information, please call: (512) 475-2220

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.15

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to 10 TAC §1.15, Integrated Housing Rule, without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9374). The rule will not be republished. The purpose of the revision is to correct an incorrect citation to a regulation.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this rule action, therefore no costs or impacts warrant a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendment will be in effect:

1. The amended rule does not create or eliminate a government program, but relates to the activity of the Department to ensure that Developments voluntarily participating in programs funded by the Department offer an integrated housing opportunity for Households with Disabilities.

2. The amended rule does not require a change in work that will require the creation of new employee positions, nor is the amendment significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The amended rule does not require additional future legislative appropriations.

4. The amended rule does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department

5. The amendment is creating a new regulation, which is being created to ensure that rental housing developed with state funding is subject to integrated housing requirements.

6. The amended rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations related to development of rental housing with state funds; however, this addition to the rule is necessary to conform to the requirements of Tex. Gov't Code §2306.111(g).

7. The amended rule will increase the number of individuals subject to the rule's applicability as described in item 6 above.

8. The amended rule will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111(g).

1. The Department has evaluated this adopted action and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the Department ensuring that Developments voluntarily participating in programs funded by the Department offer an integrated housing opportunity for Households with Disabilities. Other than in the case of a small or micro-business that is voluntarily participating in one of the Department's multifamily programs, no small or micro-businesses are subject to the rule. However, if a small or micro-business is pursuing a multifamily activity with the Department, this rule action merely clarifies a citation.

3. The Department has determined that because the amendment merely corrects a citation, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The amended rule does not contemplate or authorize a taking by the Department; therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the amended rule has no economic effect on local employment because the rule relates only to a correction to an incorrect citation.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule." Considering that this rule merely provides a minor technical change, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for

each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be a rule with correct references. There will not be any economic cost to any individuals subject to the amended rule as the processes described by the rule have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amended section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. SUMMARY OF COMMENT AND RESPONSE. The public comment period was held December 28, 2020, through January 29, 2021, to receive input on the proposed amendment. No comment was received.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the amended section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 12, 2021.

TRD-202100599
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 4, 2021
Proposal publication date: December 25, 2020
For further information, please call: (512) 475-1762

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10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP), without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9376). The rule will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2021 SLIHP.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2021 SLIHP, as required by Tex. Gov't Code 2306.0723.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2021 SLIHP.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated rule under separate action, in order to adopt by reference the 2021 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the proposed repeal and proposed new rule was held between December 21, 2020, and January 11, 2021. The public comment period for the draft 2021 SLIHP was held between December 21, 2020 and January 19, 2021. A virtual public hearing for the draft 2021 SLIHP was held on January 6, 2021, in Austin, Texas. Written comments were accepted by mail, email, and facsimile. While the Department received one public comment on the draft 2021

SLIHP, no comments were received specifically on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2021 SLIHP and the final order adopting the repeal on February 11, 2021.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 12, 2021.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-1762

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10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP), without changes to the proposed text as published in the December 25, 2020 issue of the *Texas Register* (45 TexReg 9377). The rule will not be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2021 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2021 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2019, through August 31, 2020).

Tex. Gov't Code §2001.0045(b) does not apply to the adopted rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2021 SLIHP, as required by Tex. Gov't Code 2306.0723.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand, limit, or repeal an existing regulation.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.0723.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the new rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the new rule will adopt by reference the 2021 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect, the new rule has no economic effect on local employment because the new rule will adopt by reference the 2021 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule will adopt by reference the 2021 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane

rule that will adopt by reference the 2021 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2021 SLIHP.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE.

The public comment period for the proposed new rule was held between December 21, 2020, and January 11, 2021. The public comment period for the draft 2021 SLIHP was held between December 21, 2020, and January 19, 2021. A virtual public hearing for the draft 2021 SLIHP was held on January 6, 2021, in Austin, Texas. Written comments were accepted by mail, email, and facsimile. While the Department received one public comment on the draft 2021 SLIHP, no comments were received specifically on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2021 SLIHP and the final order adopting the new rule on February 11, 2021.

STATUTORY AUTHORITY. The new section is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 12, 2021.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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CHAPTER 2. ENFORCEMENT
SUBCHAPTER B. ENFORCEMENT FOR NONCOMPLIANCE WITH PROGRAM REQUIREMENTS OF CHAPTERS 6 AND 7

10 TAC §2.201, §2.202

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 2 Enforcement, Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7, §2.201, Cost Reimbursement, and §2.202, Sanctions and Contract Closeout, without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9378). The rules will not be republished. The purpose of the rules is to clarify requirements for participants of the Department's program.

Tex. Gov't Code §2001.0045(b) does not apply to the rule action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director of the Department, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to existing guidance for program subrecipients.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand, limit, or repeal an existing regulation.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE.

The public comment period was held from December 28, 2020, through January 29, 2021, to receive input on the proposed action. No comments were received.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amended sections affect no other code, article, or statute.

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) 475-1762

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10 TAC §2.201, §2.202

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 2 Enforcement, Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7, §2.201, Cost Reimbursement, and §2.202, Sanctions and Contract Closeout, without changes to the proposed text as published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9379). The rules will not be republished. The purpose of the new sections is to provide clarity in these sections.

Tex. Gov't Code §2001.0045(b) does not apply to the rules because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director of the Department, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The rule changes do not require additional future legislative appropriations.

4. The rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not expand, limit, or repeal an existing regulation.

7. The rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.041 and §2306.0504.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. Other than in the case of a small or micro-business that participates in the Department's programs covered by this rule, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for doing so.

3. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule has no economic impact on local employment there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be an updated and more germane rule. There will not be any economic cost, other than that described above, to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE.

The public comment period was held from December 28, 2020, through January 29, 2021, to receive input on the proposed action. No comments were received.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

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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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.503

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.503, relating to oversight of wholesale market participants, with changes to the proposed text as published in the August 14, 2020, issue of the *Texas Register* (45 TexReg 5569). The rule will be republished. These amendments update the process used by the commission to select the entity to monitor wholesale market reliability-related requirements for the Electric Reliability Council of Texas (ERCOT). These amendments also provide the commission discretion over whether to select such an entity. These amendments are adopted under Project Number 50602.

The commission received comments on the proposed amendments from the Office of Public Utility Counsel (OPUC), ERCOT, and Texas Industrial Energy Consumers (TIEC).

General Comments

OPUC filed comments supporting the commission's efforts to broaden the pool of candidates that are eligible to serve as the Reliability Monitor in the ERCOT wholesale market and recommending that the commission adopt the proposed amendments. OPUC argued that expanding the pool of candidates would introduce more competition to the selection process and ultimately lower costs for residential and small commercial customers in the ERCOT market.

TIEC filed comments explaining that the Reliability Monitor serves an important role in ensuring compliance with reliability standards under PURA, commission rules, and ERCOT requirements. TIEC also indicated that it could envision scenarios where it would be beneficial for entities other than the current Reliability Monitor, such as ERCOT, to act as the Reliability Monitor. TIEC stated that the commission should have the flexibility to select the appropriate entity as circumstances warrant. TIEC further emphasized the importance of the Reliability Monitor performing its role with "(i)ndependence, objectivity, and the absence of potential conflicts of interest," as required by the commission's proposed amendments.

Commission Response

The general comments filed by the commenters did not request any changes to the proposed amendments, pose any questions, or present any issues requiring the commission's response.

Changes to §25.503(j), Role of ERCOT in Enforcing Operating Standards

The commission added language to §25.503(j) in response to comments made by TIEC related to §25.503(k). These changes are discussed in the commission's response under §25.503(k).

Comments on 16 TAC §25.503(k), Responsibilities of the Reliability Monitor

TIEC recommended that the commission include language that would limit the ability of ERCOT personnel with operational responsibilities to participate in the activities of the Reliability Monitor. In particular, with regard to the possibility that the commission select ERCOT as the Reliability Monitor, TIEC stated that "(i)f the Reliability Monitor is a department within ERCOT, it is important to take precautions to ensure that (the) Reliability Monitor's personnel and activities will be appropriately segregated from the operational side."

TIEC argued that ERCOT operational personnel, through either their operational decisions or the instructions, requests, or recommendations that they provide to market participants, may play a role in or alongside the occurrence of a violation. TIEC contended that these personnel and their supervisors might be relevant fact witnesses, but they should not be in a position to provide expert analysis, testimony, or subjective recommendations in a compliance proceeding. TIEC argued that in these situations, ERCOT's role in the enforcement action could be motivated by, or perceived to be motivated by, self-interest.

TIEC recommended the addition of specific language to §25.503(k): "The Reliability Monitor must not include any persons who currently have operational responsibilities within the ERCOT market. The Reliability Monitor may rely on ERCOT personnel with operational responsibilities to provide relevant facts, but shall not rely on such personnel for expert analysis, opinions, or testimony."

Commission Response

The commission declines to adopt the language recommended by TIEC that would limit the ability of ERCOT personnel with operational responsibilities to participate in the activities of the Reliability Monitor. The commission agrees with TIEC that actions taken by ERCOT operational personnel can be material in wholesale investigations. However, the level of separation between the Reliability Monitor and ERCOT operational personnel need not be as absolute as TIEC recommends. Rather, the Reliability Monitor must operate with enough independence to provide an objective analysis of ERCOT's role in or around occurrences of non-compliance. If the commission directs ERCOT to assume all or part of the duties of the Reliability Monitor, the necessary degree of structural separation between the Reliability Monitor and ERCOT will depend upon the duties and responsibilities assumed.

By design, ERCOT plays an active role in the compliance process. §25.503(j) requires ERCOT to "monitor material occurrences of non-compliance with ERCOT procedures," "promptly provide information to and respond to questions posed by the Reliability Monitor and the commission," and "provide to the Reliability Monitor and the commission the support and cooperation the commission determines is necessary for the Reliability Monitor and the commission to perform their functions." To accomplish this, ERCOT must, necessarily, provide expert analysis and opinions on whether a behavior was an occurrence of non-compliance, whether the occurrence was material, and whether it posed a reliability risk. TIEC's language prohibiting the Reliability Monitor from "rely(ing) on (ERCOT operational) personnel for expert analysis, opinions, or testimony" could stifle the exchange of information and expertise between ERCOT and the Reliability Monitor, and may reduce the Reliability Monitor's ability to thoroughly investigate compliance issues.

The commission does, however, agree with TIEC that the Reliability Monitor needs to have enough independence from ERCOT operational personnel to provide the commission with objective analysis on the role of ERCOT in potential occurrences of non-compliance. The degree of separation between ERCOT operational personnel and the Reliability Monitor necessary to achieve adequate independence depends upon the entity that the commission selects to assume the role.

Although stylistic changes were proposed to §25.503(l)(1), both existing §25.503(l)(1) and proposed §25.503(l)(1) require the commission to consider the entity's independence, objectivity, and the absence of potential conflicts of interest as a part of the selection process. This requirement provides a significant safeguard against the ability of ERCOT operational personnel, or any other market entity, to unduly influence the recommendations that the Reliability Monitor provides to the commission.

To further address this issue, the commission adds the following language to §25.503(l): "If the commission selects an entity other than ERCOT to act as the Reliability Monitor, the Reliability Monitor must be independent from ERCOT and is not subject to the supervision of ERCOT with respect to its monitoring and investigative activities." Together, these provisions provide sufficient protection against undue influence in the future.

If the commission selects ERCOT to perform the duties of the Reliability Monitor, the risk of ERCOT operational personnel influencing the activities of the personnel assigned to perform those duties will increase. To address this scenario, the commission adds the following language to §25.503(j): "If directed by the commission, ERCOT must assume all or part of the duties and responsibilities of the Reliability Monitor under (k). ERCOT must assume these duties and responsibilities, including establishing appropriate safeguards to prevent conflicts of interest and ensure the independence and objectivity of ERCOT personnel with respect to the duties and responsibilities assumed, in the manner prescribed by the commission."

Because the commission has authority under PURA §39.151 to direct ERCOT to assume all or part of the duties and responsibilities of the Reliability Monitor, the types of safeguards required will vary depending upon the duties transferred. This language will allow the commission to appropriately tailor the safeguards it puts in place to the situation. These safeguards will be further supplemented by a number of other provisions that ERCOT is subject to, such as its obligation as a market entity under §25.503(f)(8) to "provide accurate and factual information and "not submit false or misleading information, or omit material information, in any communication with...the commission," and to "exercise due diligence to ensure adherence to this provision throughout (ERCOT)." In the context of ERCOT personnel fulfilling the duties and responsibilities of the Reliability Monitor, the commission considers the actions that any ERCOT employee played in or around an occurrence of non-compliance reported to the commission to be material information, as well as the name and position of any person who contributed to any recommendation provided to the commission related to such an occurrence. The commission expects commission staff to consider the possible influence of ERCOT personnel in or around an occurrence of non-compliance when deciding whether to pursue an enforcement action and what magnitude of penalty to seek.

Comments on 16 TAC §25.503(l) - Selection of the Reliability Monitor

ERCOT recommended that the commission retain the existing requirement in §25.503(l) that the commission and ERCOT enter into a contract with the Reliability Monitor when the Reliability Monitor is an entity other than ERCOT. ERCOT argued that §25.503 outlines the general roles and responsibilities of ERCOT and the Reliability Monitor, but a requirement that the commission and ERCOT contract with the Reliability Monitor ensures the parties will more specifically detail their respective obligations and expectations. ERCOT explained that its contract with the current reliability monitor "contains myriad terms and obligations that are not identified in §25.503, and therefore helps provide additional guidance and accountability among the parties to that agreement." ERCOT further explained that, while the absence of a contractual mandate would not prohibit the commission and ERCOT from contracting with a future reliability monitor, an express requirement would provide clarity on the issue.

Commission Response:

The commission agrees with ERCOT that §25.503 does not detail all of the obligations, expectations, and relationships among the commission, ERCOT, and the Reliability Monitor. The commission adds a requirement that if the commission selects an entity other than ERCOT to act as the Reliability Monitor, the

commission and ERCOT will enter into a contract with the selected entity.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these amendments, the commission makes other minor modifications for the purpose of clarifying its intent.

Statutory authority

These amendments are adopted under the Public Utility Regulatory Act, Tex. Util. Code §14.002 which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §39.151, which grants the commission authority to adopt and enforce rules concerning reliability of the regional electrical network. Section 39.151 further provides that the commission may delegate to an independent organization responsibilities for establishing or enforcing such rules, which are subject to commission oversight and review.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §39.151.

§25.503. Oversight of Wholesale Market Participants.

(a) Purpose. The purpose of this section is to establish the standards that the commission will apply in monitoring the activities of entities participating in the wholesale electricity markets, including markets administered by the Electric Reliability Council of Texas (ERCOT), and enforcing the Public Utility Regulatory Act (PURA) and ERCOT procedures relating to wholesale markets. The standards contained in this rule are necessary to:

(1) protect customers from unfair, misleading, and deceptive practices in the wholesale markets, including ERCOT-administered markets;

(2) ensure that ancillary services necessary to facilitate the reliable transmission of electric energy are available at reasonable prices;

(3) afford customers safe, reliable, and reasonably priced electricity;

(4) ensure that all wholesale market participants observe all scheduling, operating, reliability, and settlement policies, rules, guidelines, and procedures established in the ERCOT procedures;

(5) clarify prohibited activities in the wholesale markets, including ERCOT-administered markets;

(6) monitor and mitigate market power as authorized by the Public Utility Regulatory Act (PURA) §39.157(a) and prevent market power abuses;

(7) clarify the standards and criteria the commission will use when reviewing wholesale market activities;

(8) clarify the remedies for non-compliance with the Protocols relating to wholesale markets; and

(9) prescribe ERCOT's role in enforcing ERCOT procedures relating to the reliability of the regional electric network and accounting for the production and delivery among generators and all other market participants and monitoring and obtaining compliance with operating standards within the ERCOT regional network.

(b) Application. This section applies to all market entities, as defined in subsection (c) of this section.

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

(1) Artificial congestion--Congestion created when multiple foreseeable options exist for scheduling, dispatching, or operating a resource, and a market participant chooses an option that is not the most economical, that foreseeably creates or exacerbates transmission congestion, and that results in the market participant being paid to relieve the congestion it caused.

(2) Efficient operation of the market--Operation of the markets administered by ERCOT, consistent with reliability standards, that is characterized by the fullest use of competitive auctions to procure ancillary services, minimal cost socialization, and the most economical utilization of resources, subject to necessary operational and other constraints.

(3) ERCOT procedures--Documents that contain the scheduling, operating, planning, reliability, and settlement procedures, standards, and criteria that are public and in effect in the ERCOT power region, including the ERCOT Protocols, ERCOT Operating Guides, and Other Binding Documents as amended from time to time but excluding ERCOT's internal administrative procedures. The Protocols generally govern when there are inconsistencies between the Protocols and the Operating Guides, except when ERCOT staff, consistent with subsection (i) of this section, determines that a provision contained in the Operating Guides is technically superior for the efficient and reliable operation of the electric network.

(4) Excess Revenue--Revenue in excess of the revenue that would have occurred absent a violation of PURA §39.157 or this section.

(5) Market entity--Any person or entity participating in the ERCOT-administered wholesale market, including, but not limited to, a load serving entity (including a municipally owned utility and an electric cooperative,) a power marketer, a transmission and distribution utility, a power generation company, a qualifying facility, an exempt wholesale generator, ERCOT, and any entity conducting planning, scheduling, or operating activities on behalf of, or controlling the activities of, such market entities.

(6) Market participant--A market entity other than ERCOT.

(7) Reliability Monitor--A person or entity selected by the commission to monitor compliance with all state reliability-related laws, rules, and ERCOT procedures including protocols, processes and any other operating standards applicable to the ERCOT Region.

(8) Resource--Facilities capable of providing electrical energy or load capable of reducing or increasing the need for electrical energy or providing short-term reserves into the ERCOT system. This includes generation and load resources.

(d) Standards and criteria for enforcement of ERCOT procedures and PURA. The commission will monitor the activities of market entities to determine if such activities are consistent with ERCOT procedures; whether they constitute market power abuses or are unfair, misleading, or deceptive practices affecting customers; and whether they are consistent with the proper accounting for the production and delivery of electricity among generators and other market participants. When reviewing the activities of a market entity, the commission will consider whether the activity was conducted in a manner that:

(1) adversely affected customers in a material way through the use of unfair, misleading, or deceptive practices;

(2) materially reduced the competitiveness of the market, including whether the activity unfairly impacted other market participants in a way that restricts competition;

(3) disregarded its effect on the reliability of the ERCOT electric system; or

(4) interfered with the efficient operation of the market.

(e) Guiding ethical standards. Each market participant is expected to:

(1) observe all applicable laws and rules;

(2) schedule, bid, and operate its resources in a manner consistent with ERCOT procedures to support the efficient and reliable operation of the ERCOT electric system; and

(3) not engage in activities and transactions that create artificial congestion or artificial supply shortages, artificially inflate revenues or volumes, or manipulate the market or market prices in any way.

(f) Duties of market entities.

(1) Each market participant must be knowledgeable about ERCOT procedures.

(2) A market participant must comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the commission.

(A) If a market participant disagrees with any provision of the Protocols or any official interpretation of the Protocols, it may seek an amendment of the Protocols as provided for in the Protocols, appeal an ERCOT official interpretation to the commission, or both.

(B) A market participant appealing an official interpretation of the Protocols or seeking an amendment to the Protocols must comply with the Protocols unless and until the interpretation is officially changed or the amendment is officially adopted.

(C) A market participant may be excused from compliance with ERCOT instructions or Protocol requirements only if such non-compliance is due to communication or equipment failure beyond the reasonable control of the market participant; if compliance would jeopardize public health and safety or the reliability of the ERCOT transmission grid, or create risk of bodily harm or damage to the equipment; if compliance would be inconsistent with facility licensing, environmental, or legal requirements; if required by applicable law; or for other good cause. A market participant is excused under this subparagraph only for so long as the condition continues.

(3) Whenever the Protocols require that a market participant make its "best effort" or a "good faith effort" to meet a requirement, or similar language, the market participant must act in accordance with the requirement unless:

(A) it is not technically possible to do so;

(B) doing so would jeopardize public health and safety or the reliability of the ERCOT transmission grid, or would create a risk of bodily harm or damage to the equipment;

(C) doing so would be inconsistent with facility licensing, environmental, or legal requirements; or

(D) other good cause exists for excusing the requirement.

(4) When a market participant is not able to comply with a Protocol requirement or official interpretation of a requirement, or honor a formal commitment to ERCOT, the market participant has an obligation to notify ERCOT immediately upon learning of such constraints and to notify ERCOT when the problem ceases. A market participant who does not comply with a Protocol requirement or official interpretation of a requirement, or honor a formal commitment to ERCOT, has the burden to demonstrate, in any commission proceeding in which the failure to comply is raised, why it cannot comply with the Protocol requirement or official interpretation of the requirement, or honor the commitment.

(5) The commission staff may request information from a market participant concerning a notification of failure to comply with a Protocol requirement or official interpretation of a requirement, or honor a formal commitment to ERCOT. The market participant must provide a response that is detailed and reasonably complete, explaining the circumstances surrounding the alleged failure, and must provide documents and other materials relating to such alleged failure to comply. The response must be submitted to the commission staff within five business days of a written request for information, unless commission staff agrees to an extension.

(6) A market participant's bids of energy and ancillary services must be from resources that are available and capable of performing, and must be feasible within the limits of the operating characteristics indicated in the resource plan, as defined in the Protocols, and consistent with the applicable ramp rate, as specified in the Protocols.

(7) All statements, data and information provided by a market participant to market publications and publishers of surveys and market indices for the computation of an industry price index must be true, accurate, reasonably complete, and must be consistent with the market participant's activities, subject to generally accepted standards of confidentiality and industry standards. Market participants must exercise due diligence to prevent the release of materially inaccurate or misleading information.

(8) A market entity has an obligation to provide accurate and factual information and must not submit false or misleading information, or omit material information, in any communication with ERCOT or with the commission. Market entities must exercise due diligence to ensure adherence to this provision throughout the entity.

(9) A market participant must comply with all reporting requirements governing the availability and maintenance of a generating unit or transmission facility, including outage scheduling reporting requirements. A market participant must immediately notify ERCOT when capacity changes or resource limitations occur that materially affect the availability of a unit or facility, the anticipated operation of its resources, or the ability to comply with ERCOT dispatch instructions.

(10) A market participant must comply with requests for information or data by ERCOT as specified by the Protocols or ERCOT instructions within the time specified by ERCOT instructions, or such other time agreed to by ERCOT and the market participant.

(11) When a Protocol provision or its applicability is unclear, or when a situation arises that is not contemplated under the Protocols, a market entity seeking clarification of the Protocols must use the Nodal Protocol Revision Request (NPRR) process provided in the Protocols. If the NPRR process is impractical or inappropriate under the circumstances, the market entity may use the process for requesting formal Protocol clarifications or interpretations described in subsection (i) of this section. This provision is not intended to discourage day to day informal communication between market participants and ERCOT staff.

(12) A market participant operating in the ERCOT markets or a member of the ERCOT staff who identifies a provision in the ERCOT procedures that produces an outcome inconsistent with the effi-

cient and reliable operation of the ERCOT-administered markets must call the provision to the attention of ERCOT staff and the appropriate ERCOT subcommittee. All market participants must cooperate with the ERCOT subcommittees, ERCOT staff, and the commission staff to develop Protocols that are clear and consistent.

(13) A market participant must establish and document internal procedures that instruct its affected personnel on how to implement ERCOT procedures according to the standards delineated in this section. Each market participant must establish clear lines of accountability for its market practices.

(g) Prohibited activities. Any act or practice of a market participant that materially and adversely affects the reliability of the regional electric network or the proper accounting for the production and delivery of electricity among market participants is considered a "prohibited activity." The term "prohibited activity" in this subsection excludes acts or practices expressly allowed by the Protocols or by official interpretations of the Protocols and acts or practices conducted in compliance with express directions from ERCOT or commission rule or order or other legal authority. The term "prohibited activity" includes, but is not limited to, the following acts and practices that have been found to cause prices that are not reflective of competitive market forces or to adversely affect the reliability of the electric network:

(1) A market participant must not schedule, operate, or dispatch its generating units in a way that creates artificial congestion.

(2) A market participant must not execute pre-arranged offsetting trades of the same product among the same parties, or through third party arrangements, which involve no economic risk and no material net change in beneficial ownership.

(3) A market participant must not offer reliability products to the market that cannot or will not be provided if selected.

(4) A market participant must not conduct trades that result in a misrepresentation of the financial condition of the organization.

(5) A market participant must not engage in fraudulent behavior related to its participation in the wholesale market.

(6) A market participant must not collude with other market participants to manipulate the price or supply of power, allocate territories, customers or products, or otherwise unlawfully restrain competition. This provision should be interpreted in accordance with federal and state antitrust statutes and judicially-developed standards under such statutes regarding collusion.

(7) A market participant must not engage in market power abuse. Withholding of production, whether economic withholding or physical withholding, by a market participant who has market power, constitutes an abuse of market power.

(h) Defenses. The term "prohibited activity" in subsection (g) of this section excludes acts or practices that would otherwise be included, if the market entity establishes that its conduct served a legitimate business purpose consistent with prices set by competitive market forces; and that it did not know, and could not reasonably anticipate, that its actions would inflate prices, adversely affect the reliability of the regional electric network, or adversely affect the proper accounting for the production and delivery of electricity; or, if applicable, that it exercised due diligence to prevent the excluded act or practice. The defenses established in this subsection may also be asserted in instances in which a market participant is alleged to have violated subsection (f) of this section. A market entity claiming an exclusion or defense under this subsection, or any other type of affirmative defense, has the burden of proof to establish all of the elements of such exclusion or defense.

(i) Official interpretations and clarifications regarding the Protocols. A market entity seeking an interpretation or clarification of the Protocols must use the NPRR process contained in the Protocols whenever possible. If an interpretation or clarification is needed to address an unforeseen situation and there is not sufficient time to submit the issue to the NPRR process, a market entity may seek an official Protocol interpretation or clarification from ERCOT in accordance with this subsection.

(1) ERCOT must develop a process for formally addressing requests for clarification of the Protocols submitted by market participants or issuing official interpretations regarding the application of Protocol provisions and requirements. ERCOT must respond to the requestor within ten business days of ERCOT's receipt of the request for interpretation or clarification with either an official Protocol interpretation or a recommendation that the requestor take the request through the NPRR process.

(2) ERCOT must designate one or more ERCOT officials who will be authorized to receive requests for clarification from, and issue responses to market participants, and to issue official interpretations on behalf of ERCOT regarding the application of Protocol provisions and requirements.

(3) The designated ERCOT official must provide a copy of the clarification request to commission staff upon receipt. The ERCOT official must consult with ERCOT operational or legal staff as appropriate and with commission staff before issuing an official Protocol clarification or interpretation.

(4) The designated ERCOT official may decide, in consultation with the commission staff, that the language for which a clarification is requested is ambiguous or for other reason beyond ERCOT's ability to clarify, in which case the ERCOT official shall inform the requestor, who may take the request through the NPRR process provided for in the Protocols.

(5) All official Protocol clarifications or interpretations that ERCOT issues in response to a market participant's formal request or upon ERCOT's own initiative must be sent out in a market bulletin with the appropriate effective date specified to inform all market participants, and a copy of the clarification or interpretation must be maintained in a manner that is accessible to market participants. Such response must not contain information that would identify the requesting market participant.

(6) A market participant may freely communicate informally with ERCOT employees, however, the opinion of an individual ERCOT staff member not issued as an official interpretation of ERCOT pursuant to this subsection may not be relied upon as an affirmative defense by a market participant.

(j) Role of ERCOT in enforcing operating standards. ERCOT must monitor material occurrences of non-compliance with ERCOT procedures, which means occurrences that have the potential to impede ERCOT operations or represent a risk to system reliability. Non-compliance indicators monitored by ERCOT must include, but are not limited to, material occurrences of failing resource performance measures as established by ERCOT, failure to follow dispatch instructions within the required time, failure to meet ancillary services obligations, failure to submit mandatory bids or offers, and other instances of non-compliance of a similar magnitude.

(1) ERCOT must keep a record of all such material occurrences of non-compliance with ERCOT procedures and must develop a system for tracking recurrence of such material occurrences of non-compliance.

(2) ERCOT must promptly provide information to and respond to questions from market participants to allow the market participant to understand and respond to alleged material occurrences of non-compliance with ERCOT procedures. However, this requirement does not relieve the market participant's operator from responding to the ERCOT operator's instruction in a timely manner and shall not be interpreted as allowing the market participant's operator to argue with the ERCOT operator as to the need for compliance.

(3) ERCOT must keep a record of the resolution of such material occurrences of non-compliance and of remedial actions taken by the market participant in each instance.

(4) ERCOT must promptly provide information to and respond to questions posed by the Reliability Monitor and the commission.

(5) ERCOT must provide to the Reliability Monitor and the commission the support and cooperation the commission determines is necessary for the Reliability Monitor and the commission to perform their functions.

(6) If directed by the commission, ERCOT must assume all or part of the duties and responsibilities of the Reliability Monitor under subsection (k) of this section. ERCOT must assume these duties and responsibilities, including establishing appropriate safeguards to prevent conflicts of interest and ensure the independence and objectivity of ERCOT personnel with respect to the duties and responsibilities assumed, in the manner prescribed by the commission.

(k) Responsibilities of the Reliability Monitor. The Reliability Monitor must gather and analyze information and data as needed for its reliability monitoring activities. The Reliability Monitor works under the direction and supervision of the commission. The Reliability Monitor must protect confidential information and data in accordance with the confidentiality standards established in PURA, the ERCOT protocols, commission rules, and other applicable laws. The requirements related to the level of protection to be afforded information protected by these laws and rules are incorporated into this section. The duties and responsibilities of the Reliability Monitor may include, but are not limited to:

(1) Monitoring, investigating, auditing, and reporting to the commission regarding compliance with reliability-related ERCOT procedures, including Protocols, Operating Guides, and Other Binding Documents, the reliability-related provisions of the commission's rules, and reliability-related provisions of PURA by market entities;

(2) Providing reliability-related subject-matter advice, expertise, and assistance to the commission in the conduct of the commission's oversight and enforcement activities; and

(3) Providing expert advice, analysis, reports, and testimony services relating to the Reliability Monitor's analysis and findings as part of the commission staff's case in enforcement proceedings.

(l) Selection of the Reliability Monitor. The commission may select an entity to act as the Reliability Monitor. If the commission selects an entity other than ERCOT to act as the Reliability Monitor, the Reliability Monitor must be independent from ERCOT and is not subject to the supervision of ERCOT with respect to its monitoring and investigative activities. If the commission selects an entity other than ERCOT to act as the Reliability Monitor, the commission and ERCOT will enter into a contract with the selected entity. In selecting the Reliability Monitor, the commission must consider whether the Reliability Monitor satisfies the following criteria:

(1) Independence, objectivity, and the absence of potential conflicts of interest;

(2) Experience performing compliance monitoring of reliability-related laws;

(3) Familiarity with the ERCOT Region and understanding of reliability-related ERCOT protocols, procedures, and other operating standards;

(4) Ability to manage confidential information appropriately; and

(5) Cost effectiveness.

(m) Funding of the Reliability Monitor. ERCOT must fund the operations of the Reliability Monitor from the fee authorized by PURA §39.151.

(n) Standards for record keeping.

(1) A market participant who schedules through a qualified scheduling entity (QSE) that submits schedules to ERCOT on behalf of more than one market participants must maintain records to show scheduling, offer, and bidding information for all schedules, offers, and bids that its QSE has submitted to ERCOT on its behalf, by interval.

(2) All market participants and ERCOT must maintain records relative to market participants' activities in the ERCOT-administered markets to show:

(A) information on transactions, as defined in §25.93(c)(3) of this title (relating to Quarterly Wholesale Electricity Transaction Reports), including the date, type of transaction, amount of transaction, and entities involved;

(B) information and documentation of all planned, maintenance, and forced generation and transmission outages including all documentation necessary to document the reason for the outage;

(C) information described under this subsection including transaction information, information on pricing, settlement information, and other information that would be relevant to an investigation under this section, and that has been disclosed to market publications and publishers of surveys and price indices, including the date, information disclosed, and the name of the employees involved in providing the information as well as the publisher to whom it was provided; and

(D) reports of the market participant's financial information given to external parties, including the date, financial results reported, and the party to whom financial information was reported, if applicable.

(3) After the effective date of this section, all records referred to in this subsection except verbal dispatch instructions (VDIs) must be kept for a minimum of three years from the date of the event. ERCOT must keep VDI records for a minimum of two years. All records must be made available to the commission for inspection upon request.

(4) A market participant must, upon request from the commission, provide the information referred to in this subsection to the commission, and may, if applicable, provide it under a confidentiality agreement or protective order pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents, and Other Material).

(o) Investigation. The commission staff may initiate an informal fact-finding review based on a complaint or upon its own initiative to obtain information regarding facts, conditions, practices, or matters that it may find necessary or proper to ascertain in order to evaluate whether any market entity has violated any provision of this section.

(1) The commission staff will contact the market entity whose activities are in question to provide the market entity an opportunity to explain its activities. The commission staff may require

the market entity to provide information reasonably necessary for the purposes described in this subsection.

(2) If the market entity asserts that the information requested by commission staff is confidential, the information must be provided to commission staff as confidential information related to settlement negotiations or other asserted bases for confidentiality pursuant to §22.71(d)(4) of this title.

(3) If after conducting its fact-finding review, the commission staff determines that a market entity may have violated this section, the commission staff may request that the commission initiate a formal investigation against the market entity pursuant to §22.241 of this title (relating to Investigations).

(4) If, as a result of its investigation, commission staff determines that there is evidence of a violation of this section by a market entity, the commission staff may request that the commission initiate appropriate enforcement action against the market entity. A notice of violation requesting administrative penalties or disgorgement of excess revenues must comply with the requirements of §22.246 of this title (relating to Administrative Penalties). Adjudication of a notice of violation requesting both an administrative penalty and disgorgement of excess revenues may be conducted within a single contested case proceeding. Additionally, for alleged violations that have been reviewed in the informal procedure established by this subsection, the commission staff must include as part of its prima facie case:

(A) a statement either that--

(i) the commission staff has conducted the investigation allowed by this section; or

(ii) the market entity has failed to comply with the requirements of paragraph (5) of this subsection;

(B) a summary of the evidence indicating to the commission staff that the market entity has violated one of the provisions of this section;

(C) a summary of any evidence indicating to the commission staff that the market entity benefited from the alleged violation or materially harmed the market; and

(D) a statement that the staff has concluded that the market entity failed to demonstrate, in the course of the investigation, the applicability of an exclusion or affirmative defense under subsection (h) of this section.

(5) A market entity subject to an informal fact-finding review or a formal investigation by the commission staff has an obligation to fully cooperate with the investigation, to make its company representatives available within a reasonable period of time to discuss the subject of the investigation with the commission staff, and to respond to the commission staff's requests for information within a reasonable time frame as requested by the commission staff.

(6) The procedure for informal fact-finding review established in this subsection does not prevent any person or commission staff from filing a formal complaint with the commission pursuant to §22.242 of this title (relating to Complaints) or pursuing other relief available by law.

(7) If, in the course of its investigation under this subsection, commission staff determines that formal enforcement action is not warranted, the commission staff may work with the market entity to ensure any issues of concern are addressed and appropriate remedial actions have been taken.

(p) Remedies. If the commission finds that a market entity is in violation of this section, the commission may seek or impose any legal remedy it determines appropriate for the violation involved, provided that the remedy of disgorgement of excess revenues will be imposed for violations and continuing violations of PURA §39.157 and may be imposed for other violations of this section.

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

Filed with the Office of the Secretary of State on February 12, 2021.

TRD-202100628
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: August 14, 2020
For further information, please call: (512) 936-7244

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §§401.305, 401.312, 401.317

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§401.305 ("Lotto Texas" Draw Game Rule), 401.312 ("Texas Two Step" Draw Game Rule), and 401.317 ("Powerball" Draw Game Rule) without changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 8951). The amended rules will not be republished.

The amendment to §401.305 provides that Lotto Texas drawings will occur on the days and at times specified by the Commission's executive director, which may be days or times other than Wednesday and Saturday at 10:12 p.m., as the rule currently provides.

The amendment to §401.312 similarly provides that Texas Two Step drawings will occur on the days and at times specified by the executive director, which may be days or times other than Monday and Thursday at 10:12 p.m., as the rule currently provides.

The amendment to §401.317 provides that Powerball drawings will occur on the days specified by the Multi-State Lottery Association (MUSL) Powerball Group and announced by the executive director, which may be days other than Wednesday and Saturday, as the rule currently provides.

The purpose of the amendments is to provide the Commission greater flexibility to coordinate the draw dates and times for its jackpot draw games to maximize potential revenue to the state.

The Commission received two (2) written comments on the proposed amendments during the public comment period. One commenter stated their opposition to conducting an additional Powerball drawing per week. In response, the Commission notes that any decisions regarding the frequency of Powerball

drawings are made by the MUSL Powerball Group, not the Commission. *See* 16 TAC §401.317(a). Another commenter stated their opposition to the proposed amendments without specifying a reason. Accordingly, the Commission declines to make changes to the proposed amendments in response to the comments.

These amendments are adopted under Texas Government Code §466.015(c)(4), which authorizes the Commission to adopt rules governing the operation of the lottery, including the frequency of drawings or selection of a winning ticket, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 12, 2021.

TRD-202100631
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: March 4, 2021
Proposal publication date: December 18, 2020
For further information, please call: (512) 344-5392

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1016

The Texas Education Agency (TEA) adopts an amendment to §61.1016, concerning hazardous transportation funding. The amendment is adopted without changes to the proposed text as published in the October 2, 2020 issue of the *Texas Register* (45 TexReg 6864) and will not be republished. The adopted amendment reflects statutory changes resulting from House Bill (HB) 3, 86th Texas Legislature, 2019, by updating a cross reference and lowering the rate for high-risk-of-violence walking areas from $1.08 to $1.00 per mile.

REASONED JUSTIFICATION: Texas Education Code (TEC), §48.151, allows a school district to apply for up to 10% of its regular transportation allotment in additional funding to transport children who live within two miles of their campus but are subject to hazardous traffic conditions or a high risk for violence when walking to and from school. To be eligible for funding under the statute, districts must adopt a board policy that identifies specific hazardous or high-risk-of-violence areas for which the allocation is requested. In determining these areas, districts are to consult with local law enforcement agencies and must obtain law enforcement records that document a high incidence of violent crimes. Districts may use all or part of additional funds to support community walking transportation programs.

The adopted amendment to §61.1016 updates the rule to implement statutory changes resulting from HB 3, 86th Texas Legislature, 2019.

In subsection (a), the reference to TEC, §42.155, has been updated to §48.151 to reflect recodification by HB 3.

In subsection (e), the rate for high-risk-of-violence walking areas has been changed from $1.08 to $1.00 per mile, and the subsection specifies that the rate aligns with regular route services rather than special education route services. The amendment aligns with HB 3 changes to the regular transportation program allotment and the current General Appropriations Act, which set the allotment at $1.00 per mile.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 2, 2020, and ended November 2, 2020. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; TEC, §48.151(d), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which authorizes hazardous transportation funding for areas within two miles of a campus where students would be subject to hazardous traffic conditions or a high risk of violence when walking to and from school; TEC, §48.151(d-1), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which requires the school district board of trustees to provide an explanation of the hazardous traffic conditions or areas presenting a high risk of violence applicable to that district and to identify the specific hazardous or high-risk areas for which the allocation is requested by consulting with local law enforcement agencies and obtaining law enforcement records that document a high incidence of violent crimes; and TEC, §48.151(d-2), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which allows school districts to use all or part of additional funds to support community walking transportation programs and requires the commissioner to adopt rules for the administration of TEC, §48.151.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.151, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019.

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

Filed with the Office of the Secretary of State on February 10, 2021.

TRD-202100573
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: October 2, 2020
For further information, please call: (512) 475-1497

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CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER LL. COMMISSIONER'S RULES CONCERNING INNOVATIVE INSTRUCTIONAL PROGRAMS

19 TAC §102.1501

The Texas Education Agency adopts new §102.1501, concerning blended learning grant programs. The new section is adopted with changes to the proposed text as published in the December 11, 2020 issue of the *Texas Register* (45 TexReg 8817) and will be republished. The adopted new section establishes an application and selection process for awarding grants under this section and an application process to establish a list of programs that may be used for training.

REASONED JUSTIFICATION: Adopted new 19 TAC §102.1501 implements the provisions of Texas Education Code, §29.924. The new rule defines the application and selection process through which Blended Learning Grant Program (BLGP) grants are earned by school districts and open-enrollment charter schools. The rule provides school districts and open-enrollment charter schools with a clear understanding of the processes that lead to grant receipt under the BLGP.

The adopted new rule also establishes the process by which training programs are approved for use by school districts and open-enrollment charter schools participating in the BLGP. The rule enables a prospective third-party vendor to understand the processes by which the vendor can earn approval of its goods and services for use by school districts and open-enrollment charter schools participating in the program.

Based on public comments, changes were made at adoption to §102.1501(a)(2). Language was revised to better align the definition of "blended learning" with the definition in statute and prevent potential negative impacts on school funding.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 11, 2020, and ended January 11, 2021. Following is a summary of the public comments received and corresponding responses.

Comment: The Association of Texas Professional Educators (ATPE) requested alignment of the definition of "blended learning" in the proposed rule ("an instructional delivery method that combines classroom instruction, which includes teacher-led in-person or remote instruction and online instruction that is facilitated by instructional software") with the definition included in the associated statute ("combines classroom and online instruction"). ATPE also requested removing the phrase "teacher-led remote instruction" from the definition to prevent a potential negative impact to school funding.

Response: The agency agrees. At adoption, the definition of "blended learning" in subsection (a)(2) was modified to read, "an instructional delivery method that combines classroom and online instruction and is facilitated with instructional software."

Comment: The Texas Public Charter Schools Association requested modifying the grantee planning process depending on a grantee's status as a Math Innovation Zone or exempting those grantees from evaluation.

Response: The agency disagrees. The strategic plan and corresponding evaluation required by the rule are necessary for a high-fidelity implementation of the BLGP. If a participating BLGP school district or open-enrollment charter school has previously earned approval of its plan as a Math Innovation Zone, it should keep the components of the previously approved plan that remain relevant to its non-math blended learning program as components of its BLGP plan. Plan components that need to be adjusted for new subject areas should be adjusted as needed. The comprehensive plan must still receive approval after evaluation.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §29.924, which requires the commissioner to adopt rules as necessary to implement a blended learning grant program, including rules establishing an application and selection process for awarding grants under the statute and a list of programs that may be used for training for the grant program. In adopting rules for this grant program, the commissioner may not impose any requirements on a school district's or open-enrollment charter school's plan to implement a blended learning model not listed under TEC, §29.924(d).

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.924.

§102.1501. Blended Learning Grant Program.

(a) General provisions.

(1) The Texas Education Agency (TEA) will announce and execute an open application for blended learning grants pursuant to Texas Education Code (TEC), §29.924, to assist school districts and open-enrollment charter schools in implementing effective blended learning models.

(2) "Blended learning" means an instructional delivery method that combines classroom and online instruction and is facilitated with instructional software.

(b) Application and selection process.

(1) TEA will make publicly available the blended learning grant application, eligibility criteria, and scoring rubric. Priority will be given to school districts and open-enrollment charter schools with the highest numbers of educationally disadvantaged students.

(2) Submitted applications will be scored according to the published scoring rubric, and grants will be awarded by TEA to the school districts and open-enrollment charter schools whose applications are scored highest under the rubric.

(3) All grantees must complete the requirements of the program described in TEC, §29.924(d).

(c) Training programs. TEA will publish a list of approved training programs pursuant to TEC, §29.924. TEA will approve training programs based on a scoring rubric that will be made publicly available. The list of currently approved training programs is available on the TEA website, and TEA will update the list at its discretion.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: December 11, 2020
For further information, please call: (512) 475-1497

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SUBCHAPTER LL. COMMISSIONER'S RULES CONCERNING INNOVATIVE INSTRUCTIONAL PROGRAMS

19 TAC §102.1503

The Texas Education Agency (TEA) adopts new §102.1503, concerning mathematics innovation zones. The new section is adopted with changes to the proposed text as published in the December 11, 2020 issue of the *Texas Register* (45 TexReg 8818) and will be republished. The adopted new rule establishes the requirements for a school district or open-enrollment charter school to earn a Math Innovation Zone designation.

REASONED JUSTIFICATION: Texas Education Code, §28.020, provides the commissioner the authority to designate mathematics innovation zones and establishes the necessary implementation process for a designated mathematics innovation zone.

Adopted new 19 TAC §102.1503 establishes the requirements that school districts and open-enrollment charter schools must meet to earn Math Innovation Zone designations and the corresponding benefits. By defining the requirements of a designated Math Innovation Zone, TEA will be able to ensure the integrity of the program and ensure that only school districts and open-enrollment charter schools who meet Math Innovation Zone designation requirements attain the resulting benefits.

Based on public comment, a change was made at adoption to §102.1503(2)(D) to delete the phrase "an intended improvement in teacher instructional practice."

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 11, 2020, and ended January 11, 2021. Following is a summary of the public comment received and corresponding response.

Comment: The Texas Classroom Teachers Association requested clarification of the phrase "an intended improvement in teacher instructional practice that is aligned to the chosen TEA-approved online curriculum program and high quality instructional materials" in proposed new §102.1503(2)(D).

Response: The agency agrees that the proposed language was unclear. TEA has modified §102.1503(2)(D) at adoption to remove the phrase "an intended improvement in teacher instructional practice."

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §28.020, which provides that the commissioner may adopt rules as necessary to administer the mathematics innovation zone designation process.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §28.020.

§102.1503. Math Innovation Zone Designation.

The commissioner of education may designate a campus as a Math Innovation Zone if all participating grade levels of the campus successfully fulfill the Math Innovation Zone fidelity of implementation requirements in planning and execution of the program, as described in paragraphs (1) and (2) of this section.

(1) To achieve fidelity of implementation in planning, a school district must:

(A) submit a Math Innovation Zone strategic plan to a third-party evaluator that will evaluate the plan against a publicly available rubric that addresses the requirements of Texas Education Code, §28.020(b)(1); and

(B) receive approval of the plan, based on the recommendation of the third-party evaluator, from the Texas Education Agency (TEA).

(2) To achieve fidelity of implementation in execution, a campus must demonstrate evidence of:

(A) sufficient student progress with a TEA-approved online curriculum program, indicated by measures such as time spent in the program, lessons completed, or skills mastered;

(B) sufficient teacher usage of a TEA-approved online curriculum program, indicated by measures such as weekly logins, student progress report downloads, or corrected student misconceptions;

(C) sufficient time for data-driven planning for teachers, including successful completion of the full data cycle (gathering data, analyzing data, and changing practice based on the data) to improve classroom implementation of high quality instructional materials;

(D) satisfactory completion of professional development opportunities for participating teachers that is aligned to the chosen TEA-approved online curriculum program and high quality instructional materials; and

(E) the administration and analysis of an approved, Texas Essential Knowledge and Skills-aligned interim assessment that measures student growth and provides data to students and teachers to support future learning.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.36

The General Land Office (GLO) adopts amendments to 31 Texas Administrative Code (TAC) §15.36, relating to Certification Status of the City of Galveston Dune Protection and Beach Access Plan (Plan) with no changes to the text of the Rule. The GLO adopts new section 15.36(d) to conditionally certify the amendments to the Plan as consistent with state law. The rule amend-

ment was published in the September 4, 2020 *Texas Register* (45 TexReg 6213) and will not be republished.

BACKGROUND AND JUSTIFICATION

On January 25, 2018, the City Council adopted Ordinance No. 18-005, which added a requirement for notification of adjacent property owners where dune mitigation is required, adopted a prohibition on pools outside the footprint of a habitable structure in eroding areas and a variance for certain in-ground pools, and made changes necessary to incorporate Erosion Response Plan (ERP) provisions into the Plan. The GLO certified the ERP as consistent with state law on December 2, 2012 in 31 TAC §15.36(b). The City is now incorporating ERP provisions into the body of the Plan. The ordinance becomes effective upon the GLO's certification of the amendments to the Plan.

On January 24, 2019, the City Council adopted Ordinance No. 19-012, which incorporated Ordinance No. 18-005, amending Chapter 29 of its Code of Ordinances. The proposed amendments to the Plan include increasing the Beach user fee (BUF) at Seawall Beach Urban Park (the Seawall), replacing Exhibit B to the Plan with updated maps of the current shoreline conditions, and prohibiting ground-level enclosures below the base flood elevation within the Dune Conservation Area. The Plan was submitted to the GLO with a request for certification of the amendments to the Plan as consistent with state law, and in accordance with 31 TAC §§15.3, 15.7, and 15.8 and Texas Natural Resources Code (TNRC) Chapters 61 and 63. The ordinance becomes effective upon the GLO's certification of the amendments to the Plan.

ANALYSIS OF PLAN AMENDMENTS AND GLO'S AMENDMENT TO 31 TAC §15.36.

One of the proposed changes in Galveston's plan amendment is a request for authorization to increase its Beach User Fee (BUF). As provided in 31 TAC §15.8, local governments may request authorization to increase the BUF provided that the local government demonstrates that the increased BUF corresponds to increased costs for providing public services and facilities directly related to the public beach. Pursuant to 31 TAC §15.3 and §15.8, the City adopted a BUF increase on the Seawall and submitted a BUF Plan to the GLO with a request for certification that the BUF Plan is consistent with state law. Since the City was not in compliance with certain beach access requirements under its existing Plan, it submitted a compliance plan, dated July 17, 2020 (Compliance Plan) and amended December 18, 2020, to the GLO. At this time, the GLO is conditionally certifying all of the Plan Amendments as consistent with state law. The amendments will remain conditionally certified until the City is in compliance with all of the deadlines in its Compliance Plan. The City has been informally reporting progress on compliance to the GLO on a bi-weekly basis and has agreed to amend the Plan, as necessary, until compliance is achieved. The City has set the deadline to achieve full compliance with the Compliance Plan for December 31, 2022.

The amendments to the BUF Plan increase the BUF for parking on the Seawall from $1 per hour to up to $2 per hour with a minimum purchase of two hours required, a maximum charge of $16 per vehicle per day, and an increase in annual passes from $25 to up to $45 per vehicle per year. The City intends to charge the BUF for parking along the north and south sides of Seawall Boulevard daily between the hours of 10 a.m. and 6 p.m. Based on the information provided by the City, the GLO has determined that the BUF increase is reasonable. The BUF does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, including enhanced amenities, does not unfairly limit public use of and access to and from public beaches, and is consistent with 31 TAC §15.8 of the Beach and Dune Rules as well as the Open Beaches Act (TNRC Ch. 61).

The July 17, 2020 Compliance Plan described the steps the City would take to resolve each outstanding instance of noncompliance and included an estimated timeline with required progress milestones by which resolution of each instance of noncompliance would be completed. Due to the COVID-19 pandemic and the unprecedented hurricane season of 2020, which resulted in adjustments and limitations of City staff and labor activities, the City of Galveston revised the July 17, 2020 Compliance Plan. Within two months, the City of Galveston was directly impacted by Hurricane Laura, Tropical Storm Beta, and Hurricane Delta. These storm events caused significant damage to the City's beaches and infrastructure, and staff and resources were diverted from normal operations in order to focus on storm recovery. The City provided the GLO with a revised Compliance Plan on December 18, 2020 with modified deadlines that take into account the recent diversion of staff and resources due to storm recovery efforts and the pandemic.

Since the rule amendments were published in the *Texas Register* on September 4, 2020, the City has put forth significant effort to restore the public's ability to access and use the public beach. The City has resolved all of the noncompliance issues at the following public beach access points (AP): AP 3 - Seawall Beach Urban Park, AP 8 - Beachside Village, AP 19 - Karankawa Beach Subdivision, AP 21 - Kahala Beach Estates, AP 28 - Sea Isle Subdivision and Terramar Beach Subdivision, AP 29 - Isla Del Sol Subdivision, AP 37 - Playa San Luis Subdivision, AP 38 - Pointe San Luis 1, AP 37 - Playa San Luis Subdivision, AP 39 - Pointe San Luis 2, and AP 40 - Pointe San Luis 3.

The Compliance Plan also addresses noncompliance issues along the Seawall. The City's Plan requires 2,259 public beach access parking spaces for the Seawall to be in compliance with the requirements of 31 TAC §15.7. There are currently 1,933 parking spaces in Seawall Beach Urban Park, which is 266 spaces short of that requirement. In the revised Compliance Plan, the City proposed permanently locating the required 266 public beach access parking spaces in the free parking area in Stewart Beach Park. The City provided verification on December 18, 2020 that the free parking area in Stewart Beach Park has been expanded to accommodate the required 266 free parking spaces, which is also consistent with the requirements of the certification of the 2004 amendment to the City's Plan regarding Seawall parking. A future Plan amendment will be required to incorporate the final parking plan.

Numerous dune walkovers at Access Point 12 - Bermuda Beach were encroaching on the public beach and impairing public use of the beach. The City has removed all seven dune walkovers that were encroaching on the public beach easement.

In the initial Compliance Plan, the City agreed to install conspicuous signage identifying parking areas and access points and explaining the nature of vehicular controls, as required by 31 TAC §15.7(h) at access points that did not have adequate signs. The City has installed signage at Access Point (AP) 8 - Beachside Village, AP 19 - Karankawa Beach, AP 21 - Kahala Beach Estates, AP 29 - Isla Del Sol Subdivision, AP 37 - Playa San Luis Subdivision, AP 38 - Pointe San Luis 1, AP 39 - Pointe San Luis 2, and AP 40 - Point San Luis 3. In the revised Compliance Plan,

the City is required to install conspicuous signage at AP 15A - Pirates Beach Subdivision, AP 15B - Palm Beach Subdivision and AP 15C - Pirates Beach West Subdivision by March 1, 2021.

As required, the City provided the GLO with an enforceable plan to resolve the shortfall in the required amount of parking for the following access points: AP 20 - Indian Beach, AP 23 - The Dunes of West Beach, AP 24 - Sandhill Shores, and AP 28 - Sea Isle Subdivision and Terramar Beach Subdivision. The City provided verification that the approved parking plans for AP 24 - Sandhill Shores and AP 28 - Sea Isle Subdivision and Terramar Beach Subdivision have been fully implemented and that the parking shortfalls at these access points have been resolved. In the revised Compliance Plan, the City requested to move the date by which the City would provide the GLO with a plan to bring AP 12 - Bermuda Beach and AP 27 - Sea Isle Parking Area into compliance from September 1, 2020 to December 31, 2020. The City failed to meet the December 31, 2020 deadline and has committed to restoring vehicular access to the beach at these access points by March 1, 2021. The beach at each access point must remain open to vehicular traffic until the subdivision comes into compliance with the parking shortfall.

In the revised Compliance Plan, the City committed to completing the implementation of the approved parking plans for AP 20 - Indian Beach by December 31, 2020. The City did not complete the implementation of the parking plan for this access point by this deadline and vehicular traffic will be restored by March 1, 2021. The City has committed to implementing the parking plan at AP 23 - The Dunes of West Beach by September 2022. If the access point is not compliant by having the required amount of public off-beach parking by September 2022, the City will restore vehicular access to the beach in this area by November 1, 2022. The beach will then remain open to vehicular access until the subdivision comes into compliance with the parking requirements.

As required, the City has provided the GLO with a plan to restore the pedestrian pathway to the beach at AP 23 - The Dunes of West Beach and AP 24 - Sandhill Shores. In the revised Compliance Plan, the City committed to implementing the plan for AP 24 - Sandhill Shores by March 1, 2021. If the March 1, 2021 deadline is not met, the City will restore vehicular access to the beach by May 1, 2021. The beach will remain open to vehicular traffic until the subdivision comes into compliance with the public pedestrian access requirements. The City has committed to implementing the plan at AP 23 - The Dunes of West Beach by September 2022. If the access point is not compliant by having public pedestrian pathways to the beach by September 2022, the City will restore vehicular access to the beach in this area by November 1, 2022. The beach will remain open to vehicular access until the subdivision comes into compliance with the pedestrian access requirements.

In the revised Compliance Plan, the City requested to move the date in which the City would provide the GLO with a plan to bring AP 20 - Indian Beach into compliance from September 1, 2020 to December 31, 2020. A plan to restore the pedestrian pathways to the beach was not provided to the GLO by the December 31, 2020 deadline, so the City has committed to restoring vehicular access to the beach at this access point by March 1, 2021. The beach must remain open to vehicular traffic until the subdivision comes into compliance with the pedestrian access requirements.

Finally, AP 9 - Pocket Park No. 2, AP 13 - Pocket Park No. 3, and AP 32 - Pocket Park No. 4 do not have the adequate amount of off-beach parking or pedestrian pathways to the beach as required by the City's existing Plan and 31 TAC §15.7. The construction of the required off-beach parking lot and dune walkover at Pocket Park No. 2 is fully funded and is anticipated to be completed by May 1, 2021. The City has applied for CMP Cycle 26 grant funding to bring Pocket Park No. 3 into compliance and will apply for CMP Cycle 27 grant funding to bring Pocket Park No. 4 into compliance. If awarded the funding, construction of the off-beach parking areas and pedestrian pathways to the beach is anticipated to be complete by December 31, 2021 for Pocket Park No. 3 and by December 31, 2022 for Pocket Park No. 4. In the interim, the City has relocated the bollards at Pocket Park No. 3 farther east to expand the size of the on-beach parking area to accommodate for the lack of the required off-beach parking and pedestrian pathway to the beach. The City committed to relocating the bollards at Access Point 33 farther east to accommodate for the lack of off-beach parking at Pocket Park No. 4 by November 20, 2020. The November 20, 2020 deadline to relocate the bollards was not met. The City has committed to restoring vehicular access to the beach at this access point by March 6, 2021.

Other amendments to the Plan include a replacement of the maps in Exhibit B, Dune Conservation Area and Enhanced Construction Zone, with updated maps showing conditions of the shoreline. In addition, the City is amending the building requirements section of the Plan to include a prohibition of ground-level enclosures below the base flood elevation within the Dune Conservation Area. The amendments also reconcile inconsistencies between the Plan and the City's Erosion Response Plan.

Another Plan amendment prohibits in-ground swimming pools in eroding areas in the area seaward of 1,000 feet from mean high tide, with the exception of in-ground pools that may be constructed under the footprint of a habitable structure. The Plan also contains a variance from 31 TAC §15.6(f) that would allow in-ground swimming pools in eroding areas that are located landward of large-scale, concrete, multi-family condominiums that had an existing in-ground swimming pool and concrete parking lot prior to the date beach and dune rules came into effect. Under this variance, the permit applicant must demonstrate that the total amount of existing impervious cover on the site will not be increased by the construction of a pool that meets the above conditions.

RESPONSE TO PUBLIC COMMENTS

The GLO received comments on the proposed Plan Amendment during the 30-day comment period. Comments were received from both residents and visitors of the City of Galveston, as well as from local business owners.

Several comments asked about the information used to determine that a local employment impact statement was not required for the proposed rule amendment and whether that information could be validated. The GLO is required by Texas Government Code §2001.022 to determine whether a rule may affect a local economy before proposing the rule for adoption. If a state agency determines that a proposed rule may affect a local economy, the agency must prepare a local employment impact statement for the proposed rule amendment. The GLO determined that the BUF increase would not affect the local economy since the increase would be mitigated due to the requirement in the City's Plan for areas of free public beach parking as required by 31 TAC §15.8(h). In addition, the fee is not charged from 6 p.m. to 10 a.m. daily, and an annual pass for $45 a year or approximately $0.13 a day is available. The GLO also determined that the proposed amendment will not create a cost of compliance for

small businesses as the proposed changes relate to individual permits for parking and are not related to the permitting or restriction of business activities. Therefore, the GLO determined that a local employment impact statement was not required for the proposed rule amendment.

Several commenters asked if there was a study completed by the City on the income level of those using Seawall parking, and they expressed concern over the ability of a lower income population to pay the parking fee. While such a study is not a requirement for establishing or increasing a beach user fee, the GLO is required under TAC §15.8(c)(2) to ensure that a local government does not charge a beach user fee that unfairly limits public use of and access to and from public beaches in any manner. Inability to pay a beach user fee by those who may be economically disadvantaged is addressed in part by the City's providing areas of free parking where no fee is charged. The GLO has found that the City is in compliance with this provision by providing intermittently spaced no-fee areas of parking throughout Seawall Beach Urban Park and by designating all parking as free from 6 p.m. to 10 a.m. daily. A total of 218 free parking spaces are evenly distributed along the north and south sides of Seawall Boulevard, and additional free parking spaces are located at Stewart Beach Park. Another option for frequent visitors that significantly lowers cost is an annual pass, available for parking along the Seawall for $45, which equates to approximately $0.13 per day.

In addition, in 2018 the Galveston City Council appointed a seven-member Seawall Parking Ad-Hoc Committee comprised of residents with backgrounds in tourism and hospitality, and business owners along Seawall Boulevard. The Committee's purpose was to review Seawall parking and to provide critical input for the parking referendum, including hours for parking charges, amounts per hour, amounts per day, and annual pass charges. The Committee was directed by City Council to meet on a regular basis and present final recommendations on Seawall Parking to the City Council. The Committee reviewed Seawall parking rates and amenities provided to the visitors of the Seawall Beach Urban Park and determined that the $1 per hour fee increase was needed in order to meet the growing maintenance costs associated with maintaining the Seawall Beach Urban Park.

Multiple commenters provided various reasons for why there should be discounted or free parking for both employees and patrons of businesses along the Seawall. However, the City has designated the entire area of Seawall Beach Urban Park as public beach access parking, which is required to accommodate for the lack of vehicular access along the beach in front of the Seawall, as required by 31 TAC §15.7(h). Designating parking for non-beachgoers would effectively eliminate parking in designated areas adjacent to a public beach that is closed to vehicles, which would result in the restriction of public access to the beach and violate the off-beach parking requirements outlined in Texas Natural Resources Code §61.011(d)(3) of the Open Beaches Act and 31 TAC §15.7(h). In addition, the City has stated that most businesses on the Seawall provide private parking lots to accommodate employees, and that public transportation is also available through Island Transit, including the Seawall trolley, which runs along Seawall Boulevard between 81st Street and Stewart Beach. The GLO believes that the BUF increase complies with the requirements of 31 TAC §15.8 and does not unfairly limit public use of and access to and from public beaches in any manner due to the availability of free off-beach parking areas both along the Seawall and on the west end, free parking hours before 10:00 a.m. and after 6:00 p.m., and the option to purchase an annual pass.

Additionally, commenters owning businesses along the Seawall requested that more free parking be located around businesses such as piers. There are 218 free parking spaces evenly distributed along the north and south sides of Seawall Boulevard, including 49 spaces between 12th and 19th Streets, 59 spaces between 33rd and 39th Streets, 51 spaces between 53rd and 61st Streets, and 59 spaces between 85th Street and the 9200 block of the Seawall. Currently, additional spaces have been located on streets adjacent to the Seawall, including 6 spaces on 11th Street, 15 spaces on 12th Street, 13 spaces on M 1/2 between 11th and 12th Streets, 11 spaces on 14th Street, 9 spaces on 15th Street, 19 spaces on 17th Street, and 12 parking spaces on 18th Street. At least 12 of these spaces must be free. Additionally, 266 free parking spaces have been added to the free parking area in Stewart Beach Park. The City's even distribution of free parking spaces along the Seawall was part of the justification for the GLO's original approval of the adoption of a Seawall BUF for parking in 2004, and free parking is required under 31 TAC §15.8. Even distribution of parking spaces in the current configuration is supported by the GLO since this provides those who may not be able to pay the BUF the opportunity to access all areas of the public beach in front of the Seawall. However, the GLO does not have the authority to require the exact location of the free parking spaces along the Seawall, and it is only required that they be evenly distributed.

Multiple commenters requested that the City hold a new referendum on the proposed BUF increase. There is no requirement in 31 TAC §15.8 for a citywide vote in order for a local government to propose a BUF increase, and this request is therefore outside the scope of the GLO's jurisdiction. However, the City has provided evidence to the GLO of the publicizing of the referendum through social media, HOA groups, and press releases to the news media. The City does not intend to hold another election reauthorizing the BUF on the Seawall.

Comments were made regarding the speed limit on the westernmost portion of the Seawall being too high and a lack of lighting and restrooms being an issue in this area. Additional comments received suggested a current lack of amenities along the westernmost portion of the Seawall and requested the City use the increased revenue generated from the BUF increase to fund improvements in this area. Although the comments related to the speed limit are outside the scope of the GLO's jurisdiction, the GLO agrees that ample lighting and restrooms should be amenities provided in as many areas as possible where the public is using or accessing the beach.

Additionally, multiple commenters requested that the City and the Park Board of Trustees prioritize and fund trash mitigation plans and take more preventative measures regarding beach litter rather than building more structures. While the GLO agrees that trash abatement programs are a good use of beach user fees and can be considered a beach-related service under 31 TAC §15.2(12), the GLO does not determine how each local government spends its beach user fees and cannot require that beach use fee revenue be used for a specific purpose.

Commenters also requested that the City provide clear statements regarding the proposed use of funds to be collected from parking fees. A requirement for GLO certification of the BUF Plan is that the fee is reasonable and necessary to fund and provide increased beach-related services and facilities to the public. The City is allowed by TNRC §61.011(b) to charge beach user

fees specifically to fund beach-related services, and the plans for those beach related services have been demonstrated to the GLO. According to the City, in the short term, the beach user fee revenue will be used to build median refuge islands to enhance the safety of beachgoers parked on the north side of Seawall Boulevard as they cross the Seawall to access the beach located on the south side of the street. In the long term, the beach user fee revenue will be used for expenses such as constructing an additional five visitor stations with permanent restroom facilities and outdoor showers, pedestrian bollard lighting along the sidewalk on the south side of Seawall Boulevard, additional ADA ramps to the beach, bicycle racks, and other amenities. In correspondence with the GLO, the City committed to making information regarding the proposed use of funds to be collected from the increase parking fee available on the City's website.

Multiple commenters expressed concern that there is an existing balance of $1.55 million in the City's account reserved for BUF revenue and stated that those monies could be used to fund the proposed short-term goal of constructing a median refuge island, which would make the proposed BUF increase unnecessary. The commenters are correct that the City does in fact propose to use the existing balance for the first median refuge island, and this was stated in correspondence with the GLO on October 16, 2020. According to the City, the reserve in funds was necessary to fund the refuge island since its construction requires a large initial capital outlay. The proposed BUF increase is necessary due to the continuous rise of expenses for beach-related services and to support the cost of additional planned public beach access improvements on the Seawall. The funds from the increase in the BUF will be used to continue to support the beach-related services already provided by the City, as well as fund additional amenities, such as the construction of additional median refuge islands along Seawall Boulevard, an additional five visitor stations with permanent restroom facilities and outdoor showers, pedestrian bollard lighting along the sidewalk on the south side of Seawall Boulevard, additional ADA ramps to the beach, bicycle racks, and other amenities.

Some commenters questioned how the City of Galveston and the Park Board each use the beach user fees they collect and whether the money is combined. The payment for beach-related services is controlled by an interlocal agreement between the City of Galveston and the Park Board of Trustees of the City of Galveston dated October 17, 2019. The GLO has authority to ensure that all BUF revenues collected from the public are spent on beach-related services as required under 31 TAC §15.8, but the GLO does not determine how each local government spends its BUF revenue. Beach-related services are those reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach and may include vehicular controls, management, and parking; sanitation and litter control; lifeguarding and lifesaving; beach maintenance; and providing public facilities such as restrooms and showers.

A commenter asked why a discounted beach pass for Galveston County residents was not available. As required by 31 TAC §15.8(c)(2)(D), beach user fees may not discriminate based on residence and must be the same for residents and non-residents.

The remainder of additional comments received did not pose a question or were not relevant to whether the Plan amendments and BUF increase are consistent with state law.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 61.070, 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, imposition or increase of beach user fees, the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property, and certification of local government beach access and use plans as consistent with state law.

Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015 61.022, 61.070, and 63.121 are affected by the proposed amendments.

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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Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
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For further information, please call: (512) 475-1859

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 273. HEALTH SERVICES

37 TAC §273.5

The Texas Commission on Jail Standards adopts an amendment to §273.5, concerning mental health and intellectual disabilities of inmates in Texas county jails, without changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TAC 9171) and will not be republished.

When booking an inmate into a county jail, the jail uses the Continuity of Care Query (CCQ) system to learn whether an arrestee has a recorded history of mental illness. The Department of State Health Services (DSHS) was recently able to fully integrate their existing database in order to allow the Texas Law Enforcement Telecommunication System (TLETS) to access the information through the CCQ, which is required, pursuant to Code of Criminal Procedure Article 16.22, to notify a magistrate of an inmate who may have a mental illness or Intellectual or Developmental Disability (IDD). The CCQ is now able to also show whether an arrestee has a recorded history of having IDD. The adopted amendment requires county jails when using the CCQ to include inmates with Intellectual and Developmental Disabilities.

The amendment adds language to 37 TAC §273.5(c) to expand the scope of inmates for whom county jails must perform a mental history check to include inmates with Intellectual and De-

velopmental Disabilities. It expands the scope of records jails must keep in relation to such inmates and of the jails' notification to other entities of their incarceration. The amendment also expands the information to be recorded on the mental health screening form to include information related to intellectual and developmental disability.

No comments were received on the proposed amendment.

The amendment is adopted under the authority of Government Code, Chapter 511.009(a), which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails and for the custody, care, and treatment of prisoners.

This adopted change does not affect other rules or statutes.

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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Brandon Wood
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463 5505

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CHAPTER 281. FOOD SERVICE

37 TAC §281.5

The Texas Commission on Jail Standards adopts an amendment to §281.5, concerning food service in Texas county jails, without changes to the proposed text as published in the December 18, 2020, issue of the *Texas Register* (45 TAC 9172) and will not be republished.

The Department of State Health Services (DSHS) determined that correctional facilities, including jails, that contract with professional food management corporations for food preparation and privately-owned correctional facilities are retail food establishments and must meet the associated licensing requirements for handling food.

This amendment adds language to 37 TAC §281.5 that requires that those who prepare food in county jails shall possess a food handler license in accordance with Texas Food Establishment Rules.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the authority of Government Code, Chapter 511.009(a), which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails and for the custody, care, and treatment of prisoners.

This adopted change does not affect other rules or statutes.

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

Filed with the Office of the Secretary of State on February 12, 2021.

TRD-202100627
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Effective date: March 4, 2021
Proposal publication date: December 18, 2020
For further information, please call: (512) 463-5505

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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 Assistive and Rehabilitative 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, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(a), specified the Department of Assistive and Rehabilitative Services (DARS) be abolished September 1, 2017, after all its functions were transferred to HHSC or the Department of Family and Protective Services in accordance with Texas Government Code, §531.0201. The former DARS rules in Texas Administrative Code (TAC), Title 40, Part 2, Chapter 104, Independent Living Services are being transferred to 26 TAC Part 1, Chapter 357, Independent Living Services.

The rules will be transferred in the Texas Administrative Code effective March 15, 2021.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 104

TRD-202100633

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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, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(a), specified the Department of Assistive and Rehabilitative Services (DARS) be abolished September 1, 2017, after all its functions were transferred to HHSC or the Department of Family and Protective Services in accordance with Texas Government Code, §531.0201. The former DARS rules in Texas Administrative Code (TAC), Title 40, Part 2, Chapter 104, Independent Living Services are being transferred to 26 TAC Part 1, Chapter 357, Independent Living Services.

The rules will be transferred in the Texas Administrative Code effective March 15, 2021.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 104

Figure: 40 TAC Chapter 104

Current Rules **Title 40. Social Services and Assistance** **Part 2. Department of Assistive and Rehabilitative Services** **Chapter 104. Independent Living Services**	**Move to** **Title 26. Health and Human Services** **Part 1. Texas Health and Human Services Commission** **Chapter 357. Independent Living Services**
Subchapter A. General Rules	**Subchapter A. General Rules**
§104.101. Purpose.	§357.101. Purpose.
§104.103. Legal Authority.	§357.103. Legal Authority.
§104.105. Definitions.	§357.105. Definitions.
Subchapter B. Allocation of Funds	**Subchapter B. Allocation of Funds**
§104.201. Allocation of Funds.	§357.201. Allocation of Funds.
Subchapter C. Independent Living Services	**Subchapter C. Independent Living Services**
§104.301. Purpose.	§357.301. Purpose.
§104.305. Eligibility.	§357.305. Eligibility.
§104.307. Independent Living Plan.	§357.307. Independent Living Plan.
§104.309. Waiting List.	§357.309. Waiting List.
§104.311. Scope of Services.	§357.311. Scope of Services.
Subchapter D. Consumer Participation	**Subchapter D. Consumer Participation**
§104.401. Consumer Participation System.	§357.401. Consumer Participation System.
§104.403. Fee Schedule Amount.	§357.403. Fee Schedule Amount.
§104.405.Insurance Payments.	§357.405. Insurance Payments.
Subchapter E. Consumer Rights	**Subchapter E. Consumer Rights**
§104.501. Rights of Consumers.	§357.501. Rights of Consumers.
§104.503. Complaint Process.	§357.503. Complaint Process.
Subchapter F. Technical Assistance and Training	**Subchapter F. Technical Assistance and Training**
§104.601. Administering Agency's Role in Providing Technical Assistance.	§357.601. Administering Agency's Role in Providing Technical Assistance.
Subchapter G. Referrals	**Subchapter G. Referrals**
§104.701. Expectations of Administering Agency's Employees.	§357.701. Expectations of Administering Agency's Employees.

TRD-202100634

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 26 TAC §749.811(a)

Type of training for caregivers:	**When must the training be completed?**
(1) Orientation, as required by §749.831 of this subchapter (relating to What is the orientation requirement for caregivers and employees?).	Prior to having contact with children.
(2) Pre-service training, as required by §749.863 of this subchapter (relating to What are the pre-service training requirements for a caregiver?).	Varies with the type of training. See §749.863 of this subchapter.
(3) Pediatric first aid and CPR, as required by §749.911 of this subchapter (relating to Who must have pediatric first aid and pediatric CPR training?).	One foster parent must be certified in pediatric first aid and pediatric CPR before you place a child in the home. Other caregivers, including a second foster parent, must be certified in first aid and CPR within 90 days after you place the child in the home.
(4) Annual training, as required by §749.930 of this subchapter (relating to What are the annual training requirements for a caregiver?).	(A) Within 12 months after you verify the person as a foster parent or a caregiver begins providing care to a child; and (B) As further required by §749.933 of this subchapter (relating to When must an employee or caregiver complete annual training?).

Figure: 26 TAC §749.813

Type of training for employees:	**When must the training be completed?**
(1) Orientation, as required by §749.831 of this subchapter (relating to What is the orientation requirement for caregivers and employees?).	Prior to beginning job duties.
(2) Pre-service training, as required by §749.864 of this subchapter (relating to What are the pre-service training requirements for an employee?).	Within 90 days of beginning job duties.
(3) Annual training, as required by §749.931 of this subchapter (relating to What are the annual training requirements for an employee?).	(A) Within 12 months after you hire the employee; and (B) As further required by §749.933 of this subchapter (relating to When must an employee or caregiver complete annual training?).

Figure: 26 TAC §749.863(a)

What type of pre-service training is required?	What caregivers must receive the training?	How many hours of training are required?	When must the caregivers complete the training?
(1) General Pre-Service Training	(A) All caregivers	(B) 8 hours	(C)(i) One foster parent must complete the training before you place a child in the home; and (ii) Other caregivers, including a second foster parent, must complete the training within 90 days after you place the child in the home.
(2) Normalcy	(A) Foster parents	(B) 2 hours	(C)(i) One foster parent must complete the training before you place a child in the home; and (ii) A second foster parent must complete the training within 90 days after you place the child in the home.
(3) Emergency Behavior Intervention, if you do not allow the use of emergency behavior intervention	(A) Caregivers who care for children receiving: (i) Only child care services or programmatic services; or (ii) Treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder	(B) 8 hours	(C)(i) One foster parent must complete at least four hours of training before you place a child in the home, and the remaining hours within 90 days after you place the child in the home; and (ii) Other caregivers, including a second foster parent, must complete the training within 90 days after you place the child.
(4) Emergency Behavior Intervention, if you allow the use of emergency	(A) Caregivers who care for children receiving: (i) Only child care services or	(B)(i) 8 hours for caregivers who only care for children described in subsection	(C)(i) One foster parent must complete at least half of the hours of training before you place a child in the home, and the remaining hours within 90 days after you place the child

behavior intervention	programmatic services; or (ii) Treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder	(a)(4)(A)(i) of this section; or (ii) 16 hours for caregivers who care for children described in subsection (a)(4)(A)(ii) of this section	in the home; (ii) Other caregivers, including a second foster parent, must complete the training within 90 days after you place the child in the home; and (iii) A caregiver may not administer any form of emergency behavior intervention before completing all the required training hours for emergency behavior intervention, except for administering a short personal restraint.
(5) Safe Sleeping	(A) Caregivers who care for children younger than two years of age	(B) No specified hours	(C)(i) One foster parent must complete the training before you place a child in the home; and (ii) Other caregivers, including a second foster parent, must complete the training within 90 days after you place the child in the home.
(6) Administering Psychotropic Medication	(A) Caregivers who administer psychotropic medication	(B) No specified hours	(C) A caregiver must complete the training before administering a psychotropic medication.

Figure: 26 TAC §749.864(a)

What type of pre-service training is required?	Who is required to receive the training?	How many hours of training are required?	When must the training be completed?
(1) Normalcy	Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, excluding any employee who is exclusively assigned responsibilities related to adoption services	2 hours	Within 90 days of beginning job duties.
(2) Emergency Behavior Intervention	Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, excluding any employee who is exclusively assigned responsibilities related to adoption services or the care of children receiving treatment services for primary medical needs	8 hours	Within 90 days of beginning job duties.

Figure: 26 TAC §749.930(a)

A caregiver who cares for children receiving:	Must complete the following number of annual training hours:
(1) Only child-care services, programmatic services, or treatment services for primary medical needs, or a combination of these services	10 hours
(2) Treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder	25 hours

Figure: 26 TAC §749.930(c)

Type of Training	Hours
(1) Emergency Behavior Intervention	(A) 4 hours for caregivers only caring for children receiving child-care services, programmatic services, or treatment services for primary medical needs; or (B) 8 hours for caregivers caring for children receiving treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder.
(2) Trauma Informed Care	2 hours
(3) Normalcy	1 hour
(4) Administering Psychotropic Medication, if the caregiver administers psychotropic medication	No specified hours

Figure: 26 TAC §749.931(a)

Type of Employee	Hours of Annual Training
(1) Child placement staff with less than one year of child-placing experience	30 hours
(2) Child placement staff with at least one year of child-placing experience and all child placement management staff, except those exclusively assigned to provide adoption services	20 hours
(3) Executive directors, treatment directors, and fulltime professional service providers who do not hold a relevant professional license	20 hours
(4) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who hold a relevant professional license	15 hours

Figure: 26 TAC §749.931(b)

Type of Training	Hours
(1) Prevention, Recognition, and Reporting on Child Abuse, Neglect, and Exploitation	1 hour, unless the employee is an executive director
(2) Trauma Informed Care	2 hours
(3) Normalcy	1 hour

Figure: 26 TAC §749.2447 [40 TAC §749.2447]

Required Information	Description of Discussion, Assessment and Documentation Requirements
(1) The age of the prospective foster parents. Ages of all other members of the household.	All prospective foster parents must be at least 21 years old. You must document the ages of all household members [and include documentation verifying the ages of the foster parents].
(2) The educational level of the prospective foster parents.	You must ensure and document that each foster parent is able to comprehend and benefit from training and provide appropriate care and supervision to meet the needs of children in care, in areas such as health, education, and discipline/behavior management, by doing either or both of the following: (A) Require that foster parents have a high school diploma or a G.E.D. high school equivalency. The Texas Education Agency (TEA) or another public education entity outside of Texas must recognize the high school program or high school equivalent program; or (B) Screen each foster parent without a high school diploma or G.E.D. to ensure that each foster parent [Have a screening program that]: (i) Is [Ensures that each foster parent is]able to be an appropriate role model for children in placement;

	(ii) Is [Ensures that each foster parent is] able to communicate with the child in the child's own language, or has other means to communicate with the child in the child's own language; and (iii) Meets the [Addresses adequately] basic competencies that would otherwise be met by a high school diploma or G.E.D., including basic reading, writing, and math.
(3) Personal characteristics.	You must document information from foster parents that demonstrate your assessment of: (A) Emotional stability, good character, good health, and adult responsibility; and (B) The ability to provide nurturing care, appropriate supervision, reasonable discipline, and a home-like atmosphere for children.
(4) History of current and previous interpersonal relationships, including marriages, common-law marriages, and other relationships between people who share or have shared a domestic life without being married.	You must document information about [regarding] the marital status of the foster parents, including the present marital status, as well as a history of previous marriages or significant interpersonal relationships. You must include a description of the marriage or relationship, including reasons why any previous marriages or significant interpersonal relationships were ended.
(5) A history of the prospective foster parents' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and

	(B) Citizenship of the prospective foster parents.
(6) The financial status of the prospective foster family.	(A) You must discuss with the prospective foster parents the current reimbursement process, if applicable, and assess the foster parents' understanding of that process. (B) You must verify and document that the prospective foster parents have sufficient up-front income or other readily available assets to support their household and all children in care prior to receiving the foster care reimbursement for services provided. For each prospective foster parent you must obtain, document and assess the following: (i) Proof of income for the past 60 days or two complete calendar months. Disability, social security, and/or other sources of income such as family support, Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) must be included, as applicable; (ii) A copy of two consecutive itemized bank statements and/or the previous year's tax return. The bank statements must be related to the previous two calendar months prior to the date of application. If a foster family does not have two consecutive itemized bank statements or a previous year's tax return, then you must copy and document the evidence used to verify the financial status of the prospective foster family, including documenting the information used to verify the itemized monthly household expenses; and

	(iii) A monthly household expense report itemizing the following expenses: (I) Mortgage/Rent; (II) Utilities; (III) Transportation; (IV) Food; (V) Medical; (VI) Clothing; (VII) Insurance; (VIII) Credit cards and loans; (IX) Legal (i.e. attorney fees, alimony and/or child support); (X) Pet; and (XI) Entertainment/miscellaneous.
(7) The results of criminal history and central registry background checks conducted on the prospective foster parents and any non-client person 14 years of age or older who regularly or frequently stays or is present in the home.	(A) Persons applying to foster children and any person, excluding clients, 14 years of age or older who will regularly or frequently be staying or present at the home, must obtain a criminal history and central registry background check. See Chapter 745, Subchapter F of this title (relating to Background Checks). The specific results of those checks must be documented and assessed in the foster home screening and the foster home record. Any assessments of other parts of a home screening must include and assess relevant background check result information. For example, the paragraphs (3) and (6) about [regarding] a foster family's personal characteristics and financial status should consider and assess

	a misdemeanor theft by check, even though this crime is not a bar to becoming a foster parent. (B) With respect to law enforcement service call information, you must do the following: (i) Obtain service call information from the appropriate law enforcement agency for each of the prospective foster parents' addresses over the past two years. Discuss with the prospective foster parents any service call information that you obtain from a law enforcement agency and the facts surrounding the incident. (ii) Whether results were found or not, ask the prospective foster parents whether any law enforcement agency has responded to any of their residences in the past two years. If you obtain additional information from the prospective foster parents, request background information from each law enforcement agency that responded. Discuss the incident and any additional background information that you obtain with the prospective foster parents. (iii) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.
(8) The prospective foster parents' motivation to provide foster care.	Assess and document the prospective foster parents' motivation and willingness to provide foster care.
(9) Health status of all persons living in the home.	Discuss, assess, and document [Document] information about the physical and mental health status (including substance abuse

	history) of all persons living in the home in relation to the family's ability to provide foster care. You must discuss whether any health-related issues noted may affect the prospective foster parent's ability to care for a child in care. You must also observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations and, if applicable, professional evaluations.
(10) The quality of the current interpersonal relationship, including marriage, common-law marriage, or a relationship between people who share a domestic life without being married, and family relationships.	Discuss, assess, and document the quality of the current and previous interpersonal and family relationships in relation to the family's ability to provide foster care. You must discuss and assess the stability of a couple's current and previous relationships, the strengths and problems of the relationship, and how those issues will affect the current environment and the prospective foster parents' ability to care for any foster children placed in the home. You must discuss and assess the quality of the relationships between prospective foster parents and their children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to foster children placed in the home.
(11) The prospective foster parents' feelings about their childhoods and parents.	Discuss, assess, and document the prospective foster parents' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of those experiences.

(12) The prospective foster parents' attitudes about a foster child's or his biological family's religion.	Discuss, assess, [Evaluate] and document the prospective foster parents on: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child the opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if a foster parent's religious beliefs prohibit certain medical treatment.
(13) The prospective foster parents' values, feelings, and practices in regard to child care and discipline.	Discuss, assess, and document the applicants' knowledge of child development and their child-care experience. Discuss and assess the ways the applicants were disciplined as children and their reactions to the discipline they received. Discuss and assess the prospective foster parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. Discuss your approved disciplinary methods, which must comply with Subchapter K, Division 6 of this chapter (relating to Discipline and Punishment). If the prospective foster parents' current discipline methods are different than those that you approve, discuss and assess how they would change their child-care practices to conform to your approved methods.
(14) The prospective foster parents' sensitivity to and feelings about children who	Discuss, assess, and document the prospective foster parents' understanding of the dynamics of child abuse and neglect.

may have been subjected to abuse or neglect.	Discuss and assess their understanding of how these issues and experiences will affect them, their families, and foster children in their care. Discuss and assess the prospective foster parent's ability to help children who have been abused or neglected. If a prospective foster parent experienced abuse or neglect as a child, assess his handling of those experiences and the impact of those experiences on the applicant's ability to help children deal with their own experiences. Assess the availability of family and community resources to meet the needs of the children in the family's care.
(15) The prospective foster parents' sensitivity to and feelings about children's experiences of separation from or loss of their biological families.	Discuss, assess, and document the prospective foster parents' understanding of the dynamics of separation and loss and the effects of these experiences on children. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the potential foster parents' acceptance of the process of grief and loss for children and assess their ability to help a child through the grieving process.
(16) The prospective foster parents' sensitivity to, and feelings about, a child's biological family.	Discuss, assess, and document the prospective foster parents' feelings about the child's parents, including the issue of abuse or neglect of the child by the child's parents or other family members. Discuss and assess their sensitivity and reactions to the child's parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about the child's parents and assess their ability to help the child deal with those

	feelings. Discuss and assess the prospective foster parents' sensitivity to and acceptance of the child's relationships with the child's siblings. Discuss and assess their willingness to support the child's relationships with parents, siblings, and extended family, including their support for contacts between the child and the child's family.
(17) The attitude of other household members about the prospective foster parents' plan to provide foster care.	Discuss, assess, and document the attitudes of other household members toward the plan to provide foster care. Discuss and assess their involvement in the care of foster children, their attitudes toward foster children, and their acceptance of the verification as a foster family.
(18) The attitude of the prospective foster parents' extended family <u>about</u> [regarding] foster care.	Discuss, assess, and document the extended family's attitude toward foster care and foster children and the involvement the extended family will have with foster children. Discuss and assess the impact the extended family's attitudes will have on the family's ability to provide foster care and whether the extended family will serve as a support system for the foster family and for foster children
(19) Support systems available to prospective foster parents.	Discuss, assess, and document the support systems available to each foster parent and the support the family may receive from these resources. You must ask each prospective foster parent for information about any person who may provide support as a caregiver during an unexpected event or crisis situation, such as an illness or disability of a foster parent, loss of transportation, or the death of an

	immediate family member. Verify and document identifying information and availability of each person that will provide support as a caregiver. Any of these persons will need a fingerprint-based criminal history check before acting as a caregiver. Unless the person will be a caregiver immediately after you verify the home, the background check on the person does not have to be completed before you verify the home.
(20) The prospective foster parents' expectations of and plans for foster children.	Discuss, assess, and document the prospective foster parents' expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Discuss and assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.
(21) The language(s) spoken by the prospective foster parents.	Document the language(s) spoken by each prospective foster parent.
(22) Prospective foster parent's ability to work with specific kinds of behaviors and backgrounds.	(A) Discuss, assess, and document each prospective foster parent's willingness and ability to work with specific and challenging behaviors of foster children, including such things as backgrounds, special needs and/or disabilities. (B) Discuss, assess, and document the prospective foster parents' understanding of the concepts of trauma informed care and how they would use those concepts in the

	care, treatment, and management of children placed in their home. (C) Discuss, assess and document the prospective foster parents' willingness and ability to: (i) Care for and work with children of a specific gender; (ii) Care for and work with children of a specific age range; (iii) Care for a specific number of children, including whether or not the children are part of the same sibling group; (iv) Provide respite care services to any additional number of children of a specific gender, within a specific age range, and with special needs that the family will not be providing care for full time; and (v) Provide any additional services Licensing regulates according to §749.61 of this title (relating to What types of Services does Licensing regulate?).
(23) Background information from other child-placing agencies.	(A) Request, [and] assess, and maintain the [following] background information that a child-placing agency must provide you, as described in §749.2475 of this subchapter (relating to To whom must I release information regarding a family on which I previously conducted a foster home screening, pre-adoptive home screening, or post placement adoptive report?). [(if provided) from any and all child-placing agencies that previously conducted a foster home screening, pre-adoptive home

	screening, or post placement adoptive report: (i) The screening, report, and related documentation; (ii) Documentation of supervisory visits and evaluations; (iii) Any record of deficiencies and their resolutions; and (iv) The most current fire and health inspections.] (B) You must address and document the closure or any identified risk indicators, as applicable, with the prospective foster parents before approval and verification of the home if the background information indicates that: (i) The foster home was previously closed by a child-placing agency; or (ii) There was one or more potential risk indicators that the child placing agency did not adequately address with the foster parents.

Figure: 26 TAC §749.3391(a)

Type of Information:	Including:
(1) Abuse or neglect history:	Physical, sexual, or emotional abuse history.
(2) Health history:	(A) Current health status; (B) Birth history, neonatal history, and other medical, dental, psychological, or psychiatric history, including: (i) Available results and diagnoses of any medical or dental examinations[~~, including whether the child has been diagnosed with fetal alcohol spectrum disorder~~]; (ii) Available results and diagnoses of any psychological, psychiatric, or social evaluations; and (iii) To the extent known by the Department of Family and Protective Services based on information collected under Human Resources Code §264.019: (I) Whether the child's birth mother consumed alcohol during pregnancy; and (II) Whether the child has been diagnosed with fetal alcohol spectrum disorder; and [~~(iv) Any health history that is known by the Department of Family and Protective Services; and~~] (C) Immunization record.
(3) Social history:	Information about past and existing relations among the child and the child's siblings, birth parents, extended family members, and other persons who have had physical possession of or legal access to the child.
(4) Educational History:	(A) Enrollment and performance in educational institutions; (B) Results of educational testing and standardized tests; and (C) Special educational needs, if any.

(5) Family History	Information about the child's birth parents, maternal and paternal grandparents, other children born to either of the child's birth parents, and extended family members, including their: (A) Health and medical history, including any information obtained in the medical history report and information on [~~regarding~~] genetic diseases or disorders; (B) Current health status; (C) If deceased, cause of and age of death; (D) Height, weight, eye, and hair color; (E) Nationality and ethnic backgrounds; (F) General levels of educational and professional achievements; (G) Religious backgrounds; (H) Results of any psychological, psychiatric, or social evaluations, including the date of any such evaluation, any diagnosis, and a summary of any findings; (I) Any criminal conviction record relating to the following: (i) A misdemeanor or felony classified as an offense against the person or family; (ii) A misdemeanor or felony classified as public indecency; or (iii) A felony violation of a statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act; and (J) Any information necessary to determine whether the child is entitled to, or otherwise eligible for, state or federal financial, medical, or other assistance.

Figure: 26 TAC §749.3391(b)

Type of Information:	Including:
(1) History of previous placements:	Information about the child's previous placements, including the date(s) and reason(s) for placement.
(2) Child's legal status:	Information about [~~regarding~~] the child's legal status.
(3) Child's understanding of adoptive placement:	Information about [~~regarding~~] the child's understanding of adoptive placement.

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.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - January 2021

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period January 2021 is $30.26 per barrel for the three-month period beginning on October 1, 2020, and ending December 31, 2020. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of January 2021, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period January 2021 is $1.53 per mcf for the three-month period beginning on October 1, 2020, and ending December 31, 2020. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2021, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of January 2021 is $52.10 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of January 2021, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of January 2021 is $2.64 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of January 2021, from a qualified low-producing gas well.

TRD-202100635
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: February 12, 2021

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Office of Consumer Credit Commissioner

Adjustments to Maximum Fee Amounts

Section 394.210 of the Texas Finance Code lists maximum fee amounts for debt management and debt settlement providers. Under Section 394.2101, the OCCC publishes adjustments to these amounts based on the Consumer Price Index for All Urban Consumers (1982- 84).

Effective Maximum Fee Amounts: July 1, 2021 to June 30, 2022

The effective maximum fee amounts for July 1, 2021, to June 30, 2022, will be adjusted as follows:

Description	Citation	Adjusted Amount
Debt management setup fee	394.210(f)(1)	$115.00
Debt management monthly service fee	394.210(f)(2)	Lesser of $12.00 per account or $58.00
Debt settlement setup fee	394.210(g)(1)	$462.00
Debt settlement monthly service fee	394.210(g)(2)	Lesser of $12.00 per account or $58.00
Counseling or education if no debt management or settlement service provided	394.210(l)	$115.00
Fee for dishonored payment	394.210(n)	$29.00

Note: These calculations are based on comparing the reference base index for December 2011 (225.672) to the index for December 2020 (260.474). The percentage change is a 15.4214% increase, rounded to the nearest dollar. The fee descriptions above are just a summary. Providers should carefully review Section 394.210 and other applicable law to ensure that their fees are authorized.

TRD-202100676
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 16, 2021

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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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/22/21 - 02/28/21 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/22/21 - 02/28/21 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202100675
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 16, 2021

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Texas Commission on Environmental Quality

Notice of Public Meeting on an Application for a Water Use Permit: Application No. 13676

The City of Corpus Christi (Applicant) seeks a water use permit to authorize the diversion and use of not to exceed 93,148 acre-feet of water per year, at a maximum diversion rate of 129 cfs (57,708 gpm), from a diversion reach on Tule Lake Channel (Corpus Christi Ship Channel), Nueces-Rio Grande Coastal Basin in Nueces County for municipal purposes in Nueces, Kleberg, San Patricio and Aransas counties. Applicant also seeks an exempt interbasin transfer to the portions of Nueces County within the Nueces River Basin and the San Antonio-Nueces Coastal Basin, to the portions of Nueces and San Patricio counties within the San Antonio-Nueces Coastal Basin and to Aransas County within the San Antonio-Nueces Coastal Basin. More information on the application and how to participate in the permitting process is given below.

APPLICATION. The City of Corpus Christi (Applicant), P.O. Box 9277, Corpus Christi, Texas 78469, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to Texas Water Code (TWC) §§ 11.121 and 11.085 and TCEQ Rule Title 30 Texas Administrative Code (TAC) §295.151, *et seq.* Notice is being mailed to the water rights holders of record in the Nueces-Rio Grande Coastal Basin pursuant to Title 30 TAC §295.151; notice of the application was previously published in the Corpus Christi Times. No notice is required for the exempt interbasin transfer pursuant to Title 30 TAC §295.155 (d)(1) and (d)(4).

The City of Corpus Christi (Applicant) seeks a water use permit to authorize the diversion and use of not to exceed 93,148 acre-feet of water per year, at a maximum diversion rate of 129 cfs (57,708 gpm), from a diversion reach on Tule Lake Channel (Corpus Christi Ship Channel), tributary of Corpus Christi Bay, Nueces-Rio Grande Coastal Basin in Nueces County for municipal purposes within its service area in the Nueces, Kleberg, San Patricio and Aransas counties.

Applicant also seeks an exempt interbasin transfer of 93,148 acre-feet of water to the portions of Nueces County within the Nueces River Basin and the San Antonio-Nueces Coastal Basin and to the portions of Nueces and San Patricio Counties in the San Antonio-Nueces Coastal Basin within the City's service area, and an exempt interbasin transfer of 2,999 acre-foot of water out of the authorized 93,148 acre-feet to Aransas County within the San Antonio-Nueces Coastal Basin.

The proposed diversion reach is located along Tule Lake Channel, Nueces-Rio Grande Coastal Basin, in Nueces County in ZIP Code 78407.

The upper limit of the diversion reach is located at Latitude 27.812342° N, Longitude 97.414444° W, and the lower limit of the diversion reach located at Latitude 27.811553° N, Longitude 97.412778° W.

The application and fees were received on January 22, 2020. Additional information was received on February 4, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 26, 2020.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, installation of measuring devices. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. 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 is encouraged to ask questions of the applicant and TCEQ staff concerning the permit application and the Executive Director's recommendations, but the comments and questions submitted orally during the Informal Discussion Period will not be considered by the Commissioners and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period, members of the public may state their formal comments orally into the official record. The Executive Director will subsequently summarize the formal comments and prepare a written response which will be considered by the Commissioners before they reach a decision on the application. The Executive Director's written response will be available to the public online or upon request. The public comment period on this application concludes at the close of the public meeting.

The Public Meeting is to be held:

Thursday, March 18, 2021 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 913-378-755. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (631) 992-3221 and enter access code 782-545-934. Additional information will be available on the agency calendar of events at the following link:

https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting. Citizens may mail their comments to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or submit them electronically at http://www14.tceq.texas.gov/epic/eComment/ by entering WRPERM 13676 in the search field before the public comment period closes. 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.*

Persons with disabilities who need special accommodations at the public 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.

Issued: February 11, 2021

TRD-202100581
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 11, 2021

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Notice of Request for Public Comment and Notice of a Public Meeting on One Draft Total Maximum Daily Load for Indicator Bacteria in Hillebrandt Bayou

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) has made available for public comment one draft Total Maximum Daily Load (TMDL) for indicator bacteria in Hillebrandt Bayou, of the Neches-Trinity Coastal Basin, within Jefferson County.

The purpose of the meeting is to provide the public an opportunity to comment on the draft TMDL in one assessment unit: Hillebrandt Bayou 0704_02.

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, linkage analysis, margin of safety, pollutant load allocation, seasonal variation, public participation, and implementation and reasonable assurances.

After the public comment period, TCEQ may revise the draft TMDL if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments received will be made available on TCEQ's website. The TMDL will then be submitted to the United States Environmental Protection Agency (EPA) Region 6 office for final action by EPA. Upon approval by EPA, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

Public Meeting and Testimony. The public meeting for the draft TMDL will be held via video conference on **March 10, 2021, at 6:00 p.m.** To join the meeting follow the link ***https://tinyurl.com/HillebrandtPublicMeeting.*** Please place your computer's microphone or telephone on MUTE so that background noise is not heard and turn your video OFF. Meeting documents are available on the project web page at: *https://www.tceq.texas.gov/waterquality/tmdl/nav/118-hillebrandt-bayou-bacteria.*

Please periodically check *https://www.tceq.texas.gov/waterquality/tmdl/nav/118-hillebrandtbayou-bacteria* before the meeting date for meeting related updates.

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft TMDL may be submitted to Tim Cawthon, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to *fax4808@tceq.texas.gov.* Written comments may be submitted electronically to ***https://www6.tceq.texas.gov/rules/ecomments/.*** File size restrictions may apply to comments submitted via the eComments system. **All written comments must be received at TCEQ by midnight on March 29, 2021,** and should reference One Total Maximum Daily Load for Indicator Bacteria in Hillebrandt Bayou.

For further information regarding the draft TMDL, please contact Tim Cawthon at *Tim.Cawthon@tceq.texas.gov.* The draft TMDL can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/nav/118-hillebrandtbayou-bacteria.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Tim Cawthon at *Tim.Cawthon@tceq.texas.gov.* Requests should be made as far in advance as possible.

TRD-202100604
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 12, 2021

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Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will conduct a virtual public hearing on Thursday, March 18, 2021, at 10:00 a.m. Central Standard Time (CST) to receive public comments on the Statewide Transportation Improvement Program (STIP) for FY 2021-2024. The hearing will be conducted via electronic means due to the public health precautions surrounding COVID-19. Instructions for accessing the hearing will be published on the department's website at: https://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html

The STIP reflects the federally funded transportation projects in the FY 2021-2024 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed FY 2021-2024 STIP will be available for review, at the time the notice of hearing is published, on the department's website at: https://www.txdot.gov/inside-txdot/division/transportation-planning/stips.html

Persons wishing to speak at the hearing may register in advance by notifying Angela Erwin, Transportation Planning and Programming Division, at (512) 416-2187 no later than 12:00 p.m. CST on Wednesday, March 17, 2021. Speakers will be taken in the order registered and will

be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to participate in the hearing are encouraged to contact the Transportation Planning and Programming Division, at (512) 486-5003. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to participate in the hearing may submit comments regarding the proposed FY 2021-2024 STIP to Jessica Butler, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. CST on Monday, March 29, 2021.

TRD-202100585
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: February 11, 2021

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 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

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 "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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