

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 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 per-

sons 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) [(44)] 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](http://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 landowner 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) [(64)] 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.

TRD-202100480

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: March 28, 2021

For further information, please call: (512) 463-6218



## 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 Prop-

erties (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.

TRD-202100678

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: March 28, 2021

For further information, please call: (512) 463-6218



## **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](mailto: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](mailto: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



## 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 rennumbers 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 rennumbers 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) rennumbers 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) re-names 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 ver-

ification 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 impose 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](mailto: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](mailto: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.

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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



### 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

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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

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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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## 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) [(e)] 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.

~~[(e) 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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## **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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## 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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## 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 includes 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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## **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 [40] 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 [40] 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.]

[(e) 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.

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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?*

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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?*

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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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## 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.

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



## 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) [(4)] 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.

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

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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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**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 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.

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

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## SUBCHAPTER 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)]

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

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Health and Human Services Commission

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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](mailto: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) [(e)] 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](http://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



## 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 no-

tice 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](mailto: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 RWP 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



## **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 ob-

taining 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](mailto: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

### 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](mailto: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. 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.

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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



## 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](mailto: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 [DLRulecomments@dps.texas.gov](mailto:DLRulecomments@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 day-time 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



### 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](mailto: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.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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



## 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 [DLRulecomments@dps.texas.gov](mailto:DLRulecomments@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.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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