

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

1 TAC §351.821

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §351.821, concerning the Value-Based Payment and Quality Improvement Advisory Committee. The amendment to §351.821 is adopted without changes to the proposed text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3787). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The Value-Based Payment and Quality Improvement Advisory Committee (VBPQIAC) was established in 2016 by the HHSC Executive Commissioner, under the authority of Texas Government Code §531.012. This statute requires the HHSC Executive Commissioner to establish and maintain advisory committees; establish rules for the operation of advisory committees; and for advisory committees to provide recommendations to the HHSC Executive Commissioner and the Texas Legislature.

The VBPQIAC advises the HHSC Executive Commissioner and Texas Health and Human Services agencies (HHS agencies) on quality improvement and value-based payment initiatives for Medicaid, other publicly funded health services, and the wider health care system. The VBPQIAC consolidated the functions of the previous Medicaid and CHIP Quality Based Payment Advisory Committee and the Texas Institute of Health Care Quality and Efficiency. Members meet approximately four times a year in Austin.

In §351.821, the VBPQIAC is set to abolish on December 31, 2023. Abolition of the VBPQIAC would result in the loss of a primary source of public input for key Medicaid value-based and quality improvement programs, such as the state's Alternative Payment Models initiative. The VBPQIAC maintains strong participation from stakeholders.

The amendment extends the VBPQIAC by four years to December 31, 2027, updates membership categories by removing "Regional Healthcare Partnerships," and aligns the rule with current HHSC advisory committee rule formatting and standards.

COMMENTS

The 31-day comment period ended August 14, 2023.

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

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 Texas Government Code §531.012(c)(1), which requires the Executive Commissioner to adopt rules consistent with Texas Government Code Chapter 2110 to govern an advisory committee's report requirements.

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

Filed with the Office of the Secretary of State on October 6, 2023.

TRD-202303732

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Effective date: October 26, 2023

Proposal publication date: July 14, 2023

For further information, please call: (512) 380-4372

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.221

The Texas Department of Agriculture (Department) adopts new Texas Administrative Code, Title 4, Part 1, §1.221, regarding the Texas Food System Security and Resiliency Planning Council without changes to the proposed text as published in the September 1, 2023 issue of the *Texas Register* (48 TexReg 4719). These rules will not be republished.

New §1.221 addresses the Texas Food System Security and Resiliency Planning Council and describes the Council's purposes, composition, and terms of office for members. In addition, it prescribes meeting requirements and procedures. The proposed rule also creates requirements for member conduct and training,

addresses conflicts of interests, and provides for the duration of the Council.

The Department received no comments in response to the proposed new rule.

The new rule is adopted under Code, Section 23.006, which provides the Department shall adopt rules to administer Texas Agriculture Code, Chapter 23, including the Texas Food System Security and Resiliency Planning Council. Texas Agriculture Code, Chapter 23 is affected by the adopted rule.

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

Filed with the Office of the Secretary of State on October 5, 2023.

TRD-202303711

Susan Maldonado

General Counsel

Texas Department of Agriculture

Effective date: October 25, 2023

Proposal publication date: September 1, 2023

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PART 4. OFFICE OF THE CHIEF APIARY INSPECTOR

CHAPTER 71. BEES

The Texas Apiary Inspection Service (TAIS) adopts amendments to 4 TAC §71.1 and §71.9. TAIS adopts the repeal of 4 TAC §71.23 due to the intrastate permit requirement being repealed by Texas Agriculture Code Chapter 131 updates. The TAIS adopts new 4 TAC §71.24 as it adds the new requirements for beekeeper registration. Sections 71.9, 71.23, and 71.24 are adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4728). The rules and repeal will not be republished. Section 71.1 is adopted with changes to the proposed text to update alphabetization as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4728). The rule will be republished.

TAIS adopts amendments to 4 TAC §71.1 and §71.9 as a new interstate permit will replace exportation and intrastate permits. The intrastate permit will be repealed by Texas Agriculture Code Chapter 131 updates. These changes are necessary to meet changes in Texas Agriculture Code Chapter 131 Bees and Honey. The repeal of §71.23 is adopted to reflect changes in Texas Agriculture Code Chapter 131.01-131.122. New §71.24 is adopted to reflect changes in Texas Agriculture Code Chapter 131.01-131.122.

No comments were received regarding these proposals.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §71.1, §71.9

Statutory Authority: These rules are adopted under authority of the Texas Agriculture Code Chapter 131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating, and suppressing infectious diseases of honeybees.

§71.1. *Definitions.*

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

(1) Act--Texas Bee Law, Texas Agricultural Code, Chapter 131, (1981), as amended.

(2) Apiary--A place where colonies of bees or nuclei of bees are kept.

(3) Bee--Any stage of the common honeybee, *Apis mellifera* species.

(4) Beekeeper--a person who owns, leases, possesses, controls, or manages one or more colonies of bees for any personal or commercial purpose.

(5) Chief Apiary Inspector--The Chief Apiary Inspector, formerly known as State Entomologist, appointed by the director or his designee.

(6) Colony--A distinguishable localized population of bees in which one or more life stages may be present.

(7) Director--The director of Texas A&M AgriLife Research, formerly known as the Texas Agricultural Experiment Station.

(8) Disease--American foulbrood, European foulbrood, or any other contagious or infectious disease of bees, or parasite or pest that affects bees or brood.

(9) Equipment--Hives, supers, frames, veils, gloves, tools, machines, including bee removal vacuums, or other devices for the handling and manipulation of bees, honey, pollen, wax, or hives, including storage or transporting containers for pollen, honey, or wax, or other apiary supplies used in the operation of an apiary or honey house.

(10) Governing board--The Board of Regents of the Texas A&M University System.

(11) Hive--A box or other shelter containing a colony of bees.

(12) Honey--The nectar of plants that has been transferred by, and is the natural product of, bees and that is in the comb or has been taken from the comb and is packaged in a liquid, crystallized, or granular form.

(13) Nucleus--A small mass of bees and combs used in forming a new colony.

(14) Package bees--Live bees in cages without comb.

(15) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(16) Pollen--Dust-like grains formed in the anthers of flowering plants in which the male elements or sperm are produced.

(17) Queen apiary--An apiary in which queen bees are reared or kept for sale, barter, or exchange.

(18) Reportable Diseases--A disease that presents a significant threat to the population of honeybees and that has been designated by the Chief Apiary Inspector as a disease or pest that must be reported under §131.025. The Chief Apiary Inspector shall publish a list of reportable diseases.

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

Filed with the Office of the Secretary of State on October 4, 2023.

TRD-202303687
Angela Thomas
Chief Apiary Inspector
Office of the Chief Apiary Inspector
Effective date: October 24, 2023
Proposal publication date: September 1, 2023
For further information, please call: (979) 845-9714



SUBCHAPTER C. PERMITS AND REGISTRATION

4 TAC §71.23

The repeal of 71.23 is adopted under the Texas Agriculture Code Chapter 131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating, and suppressing infectious diseases of honeybees.

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

Filed with the Office of the Secretary of State on October 4, 2023.

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Proposal publication date: September 1, 2023
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4 TAC §71.24

The new §71.24 is adopted under the Texas Agriculture Code Chapter 131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating, and suppressing infectious diseases of honeybees.

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

Filed with the Office of the Secretary of State on October 4, 2023.

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER U. EPINEPHRINE AUTO-INJECTOR POLICIES IN SCHOOLS

25 TAC §§37.601 - 37.611

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §§37.601 - 37.611, concerning Epinephrine Auto-Injector Policies in Schools. These rules are adopted without changes to the proposed text as published in the August 4, 2023, issue of the *Texas Register* (48 TexReg 4233) and the sections will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal of 25 Texas Administrative Code (TAC) Chapter 37, Subchapter U, places all stock medication rules under 25 TAC Chapter 40. The new rules for 25 TAC Chapter 40, Subchapter E, Epinephrine Auto-Injector Policies in Schools, is published in the same issue of the *Texas Register*.

The repeal of §§37.601 - 37.611 removes rules no longer necessary under 25 TAC Chapter 37. The new rules in 25 TAC §§40.81 - 40.89 aligns the rules with similar TAC rules relating to stock medications in schools, youth facilities, and other entities such as amusement parks, restaurants, and sport venues.

COMMENTS

The 31-day comment period ended September 5, 2023.

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

STATUTORY AUTHORITY

The repeals are adopted and authorized by Texas Education Code Chapter 38; and Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

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

Filed with the Office of the Secretary of State on October 3, 2023.

TRD-202303681
Cynthia Hernandez
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Department of State Health Services
Effective date: November 1, 2023
Proposal publication date: August 4, 2023
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CHAPTER 40. STOCK MEDICATION IN SCHOOLS AND OTHER ENTITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new Subchapter E, §§40.61 - 40.71, concerning Epinephrine Auto-Injector Policies in Schools; and new Subchapter F, §§40.81 - 40.89, concerning Opioid Antagonist Medication Requirements in Schools.

Sections 40.61, 40.63 - 40.68, 40.70, 40.71, and §§40.81 - 40.89 are adopted with changes to the proposed text as published in the August 4, 2023, issue of the *Texas Register* (48 TexReg 4234) and these sections will be republished. Some of these changes provide clarity and consistency throughout the subchapters but do not impact the requirements under Subchapter E or Subchapter F. Sections 40.62 and 40.69 are adopted without changes to the proposed text as published in the August 4, 2023, issue of the *Texas Register* (48 TexReg 4234) and these sections will not be republished.

This adoption renames 25 Texas Administrative Code (TAC) Chapter 40, as "Stock Medication in Schools and Other Entities" to reflect the broader scope of stock medication rules that will be included under this chapter.

BACKGROUND AND JUSTIFICATION

The adoption implements Senate Bill (S.B.) 629, 88th Legislature, Regular Session, 2023, which amends Texas Education Code Chapter 38 by adding Subchapter E-1. As required by S.B. 629, the Texas Education Agency was consulted and provided comments to the proposed rules relating to maintenance, administration, and disposal of opioid antagonists. S.B. 629 also requires the rules to establish a process for checking inventory and the amount of training for school personnel and volunteers. Finally, S.B. 629 requires schools to report information on the administration of opioid antagonists to the Commissioner of DSHS.

To place all stock medication rules under the same chapter in TAC, this rule adoption adds new Subchapter E, Epinephrine Auto-Injector Policies in Schools, to 25 TAC Chapter 40. The repeal of 25 TAC Chapter 37, Subchapter U is published in this same issue of the *Texas Register*.

This adoption adds new Subchapter F, Opioid Antagonist Medication Requirements in Schools, as required by S.B. 629.

COMMENTS

The 31-day comment period ended September 5, 2023.

During this period, DSHS received comments from five commenters regarding the proposed rules, including the Texas Education Agency, the Texas Association of School Boards, RISE Services, Family Hospital Systems, and Drews27Chains. A summary of comments relating to the rules and DSHS's responses follows.

Comment: One commenter suggested that the definition of "All hours the campus is open" in 25 TAC §40.63(1) be clarified to state "at a minimum, the regular instructional day for the campus" instead of "regular on-campus school hours."

Response: DSHS disagrees and declines to amend the rule. The Stock Epinephrine Advisory Committee recommended that unassigned epinephrine auto-injector policies include all hours when school-sponsored activities occur on a campus where school personnel are present, including outside of normal instructional times.

Comment: One commenter suggested adding open-enrollment charter school to §40.63, concerning Definitions.

Response: DSHS agrees and adds the definition from Texas Education Code §38.151.

Comment: Several commenters suggested that DSHS disseminate transparent and broad statewide opioid antagonist standing orders that state that all Food and Drug Administration approved opioid antagonists are approved for treating suspected

poisoning victims that include intramuscular (IM) Naloxone, as the IM route is more effective than the intranasal (IN) route. Commenters stated that one dose of IM opioid antagonist will revive a victim, while it may take 4-5 doses of IN opioid antagonist to revive a victim of an opioid-related drug overdose.

Response: DSHS disagrees and declines to amend Subchapter F. Standing orders are outside the scope of this rule proposal.

Comment: Several commenters suggested that DSHS promote a 4:1 ratio of IN to IM routes of administration of an opioid antagonist. The commenters suggested that the IM route of administration, when using an opioid antagonist auto-injector, is as user friendly as the epinephrine auto-injector and more effective at reviving a victim than intranasal.

Response: DSHS disagrees and declines to amend Subchapter F to specifically mandate what route of administration must be given to a person experiencing an opioid-related overdose. DSHS leaves the option to the school district to decide the route of administration.

Comment: Several commenters suggested placing IN opioid antagonists in the automated external defibrillator case throughout the schools and IM opioid antagonists in the nurse's office to enhance access points.

Response: DSHS disagrees and declines to amend Subchapter F. Texas Education Code §38.222(c)(4) requires that the supply of opioid antagonists at each school campus subject to a policy adopted under Texas Education Code §38.222 must be stored in a secure location and be easily accessible to school personnel and school volunteers authorized and trained to administer an opioid antagonist. DSHS recognizes that each campus is unique and will leave the access points to the discretion of individual campuses.

Comment: Several commenters suggested adding rules that require age-appropriate opioid-related overdose curriculum to be given in health classes if not in all homerooms. Commenters also suggested training all homeroom teachers on how to administer IN and IM opioid antagonists as well as establishing a minimum number of opioid antagonists stocked at each campus.

Response: DSHS disagrees and declines to amend Subchapter F regarding opioid-related overdose curriculum or to mandate the minimum number of opioid antagonists that a campus must stock. These determinations are outside the authority of the department.

Comment: Several commenters suggested the development of a rating system that designates schools that adopt best opioid awareness practices with a rated distinction to help raise community awareness of opioids to ensure student safety.

Response: DSHS disagrees and declines to amend Subchapter F to include an opioid awareness rating system for schools. DSHS will continue to work with stakeholders to ensure student safety by disseminating best practices and raising awareness of opioid-related overdoses and use of unassigned opioid antagonists.

Comment: One commenter suggested that Naloxone training should be standard to all staff, including bus drivers, in the same manner as cardiopulmonary resuscitation is standard training for staff and this training should include awareness of storage locations of the opioid antagonists on campus, as well as locations stored during off campus events.

Response: DSHS disagrees and declines to amend Subchapter F to require that all staff and bus drivers should be trained on opioid-related overdoses and the location and administration of opioid antagonists. Texas Education Code §38.224(a) states that each school district, open-enrollment charter school, and private school that adopts a policy under §38.222(a) or (b) is responsible for training school personnel and school volunteers in the administration of an opioid antagonist and states the training that is required.

Comment: One commenter suggested that all schools should have a specific response plan in place for trained school personnel and school volunteers and that the response plan should be practiced ensuring that staff is adequately trained in case of an opioid-related overdose emergency.

Response: DSHS disagrees and declines to amend Subchapter F and refers to Texas Education Code §38.224(a), which states that each school district, open-enrollment charter school, and private school that adopts a policy under §38.222(a) or (b) is responsible for training school personnel and school volunteers in the administration of an opioid antagonist and states the training that is required. DSHS will continue to work with stakeholders to ensure that resources are available to school districts to tailor training to their campuses that are evidence based and relevant.

Comment: Five comments requested additional or amended rules related to implementation of S.B. 294, 88th Legislature, Regular Session, 2023.

Response: DSHS declines to add or amend rules relating to S.B. 294 as part of this rule proposal and will take the comments under advisement when addressing rules to implement S.B. 294.

Comment: One commenter suggested adding open-enrollment charter school and all hours the campus is open to §40.82, concerning Definitions.

Response: DSHS agrees and adds definition for All hours the campus is open--At a minimum, during regular on-campus school hours, and when school personnel are physically on-site for school-sponsored activities, and definition for open-enrollment charter school.

Comment: One commenter requested amending §40.86, concerning Training, by adding Assignment of School Personnel and School Volunteers to be trained.

Response: DSHS disagrees and declines to amend §40.86 from this comment. Each school district, open-enrollment charter school, and private school that adopts a written unassigned opioid antagonist policy under Texas Education Code §38.222, is responsible for training school personnel and school volunteers in the administration of an opioid antagonist. The decision to assign training among school personnel and school volunteers will be at the discretion of the school districts.

Comment: One commenter requested amending §40.87, concerning Report on Administering Unassigned Opioid Antagonist Medication, to include a notice to parents if an unassigned opioid antagonist policy is implemented.

Response: DSHS disagrees and declines to amend §40.87 from this comment. The school district can opt to include a notice of opioid antagonist policy implementation to parents.

Comment: One commenter suggested amending §40.87(b), concerning Report on Administering Unassigned Opioid Antagonist Medication, to include a list of which individuals and entities to submit the report.

Response: DSHS agrees and amends §40.87(b) by adding paragraphs as follows:

(1) the school district, the charter holder if the school is an open-enrollment charter school, or the governing body of the school if the school is a private school;

(2) the physician or other person who prescribed the opioid antagonist; and

(3) the commissioner of the Department of State Health Services (DSHS).

DSHS made edits to the rule language in §§40.61, 40.63 - 40.68, 40.70, 40.71, and §§40.81- 40.89 to provide clarity and consistency throughout the subchapters.

SUBCHAPTER E. EPINEPHRINE AUTO-INJECTOR POLICIES IN SCHOOLS

25 TAC §§40.61 - 40.71

STATUTORY AUTHORITY

The new rules are required to comply with Texas Education Code Chapter 38, Subchapter E. The new rules are also authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§40.61. Purpose.

The purpose of this subchapter is to establish minimum standards for administering, maintaining, and disposing of epinephrine auto-injectors in school districts, open-enrollment charter schools, and private schools adopting unassigned epinephrine auto-injector policies. These standards are implemented under Texas Education Code Chapter 38, Subchapter E.

§40.63. Definitions.

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

(1) All hours the campus is open--At a minimum, during regular on-campus school hours, and when school personnel are physically on site for school-sponsored activities.

(2) Anaphylaxis--As defined in Texas Education Code §38.201.

(3) Authorized healthcare provider--A physician or person who has been delegated prescriptive authority under Texas Occupations Code Chapter 157.

(4) Campus--A unit of a school district, open-enrollment charter school, or private school with an assigned administrator, has enrolled students who are counted for average daily attendance, has assigned instructional staff, provides instructional services to students, has one or more grades in the range from early childhood education through grade 12 or is ungraded, and complies with relevant Texas laws.

(5) Open-enrollment charter school--As defined in Texas Education Code §38.151.

(6) Physician--As defined in Texas Education Code §38.201.

(7) Private school--As defined in Texas Education Code §38.201.

(8) School nurse--As defined in 19 Texas Administrative Code §153.1022.

(9) School personnel--As defined in Texas Education Code §38.201.

(10) School volunteer--As defined in Texas Education Code §22.053.

(11) Unassigned epinephrine auto-injector--An epinephrine auto-injector prescribed by an authorized healthcare provider in the name of the school issued with a non-patient-specific standing delegation order for the administration of an epinephrine auto-injector, issued by a physician or person who has been delegated prescriptive authority under Texas Occupations Code Chapter 157.

§40.64. Applicability.

This subchapter applies to any school district, open-enrollment charter school, or private school voluntarily choosing to adopt and implement a written policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors on each school campus.

§40.65. Maintenance, Administration, and Disposal of Unassigned Epinephrine Auto-Injectors.

(a) A school district, open-enrollment charter school, or private school shall obtain a prescription from an authorized healthcare provider each year, to stock, possess, and maintain at least one unassigned adult epinephrine auto-injector pack (two doses) on each school campus as described in Texas Education Code §38.211.

(1) A school may choose to stock unassigned pediatric epinephrine auto-injector packs, based on the need of the school's population.

(2) A school district or the governing body of an open-enrollment charter school or private school may develop, as part of the policy, provisions for additional doses to be stocked and utilized at off campus school events, or in transit to or from school events.

(b) Each school district superintendent, open-enrollment charter school administrator, or private school administrator will designate appropriate school personnel to coordinate and manage policy implementation, including training of school personnel, and the acquisition or purchase, usage, expiration, and disposal of unassigned epinephrine auto-injectors. Throughout the school calendar year, the designated school personnel must coordinate with each campus to ensure the unassigned epinephrine auto-injectors are checked monthly for expiration and usage and the findings are documented.

(c) At least one school personnel or one school volunteer who is authorized and trained to administer an unassigned epinephrine auto-injector must be present on campus during all hours the campus is open for school-sponsored activities.

(d) School personnel or school volunteers who are trained and authorized may administer an unassigned epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis on a school campus, or as indicated in the school's unassigned epinephrine auto-injector policy.

(e) Local emergency medical services must be promptly notified by the school when an individual is suspected of experiencing anaphylaxis and when an epinephrine auto-injector is administered. If the trained school personnel or school volunteer is the only individual available to notify emergency medical services, the trained individual should administer the unassigned epinephrine auto-injector before notifying emergency medical services.

(f) The parent, legal guardian, or emergency contact must be promptly notified by the school when an unassigned epinephrine auto-injector is utilized on their child as soon as feasible during the emergency response to suspected anaphylaxis. School records of the administration of the unassigned epinephrine auto-injector and suspected anaphylaxis must be provided to the parent or guardian of the recipient upon request.

(g) Records relating to implementation and administration of the school's unassigned epinephrine auto-injector policy shall be retained per the record retention schedule for records of public school districts found in 13 Texas Administrative Code §7.125.

(h) Unassigned epinephrine auto-injectors shall be stored in a secure, easily accessible area for an emergency, in accordance with the manufacturer's guidelines. It is recommended the school administrator develop a map to be placed in high traffic areas indicating the location of the unassigned epinephrine auto-injectors on each school campus. It is recommended the map also indicate the locations of the automated external defibrillator.

(i) The school district, open-enrollment charter school, or private school shall develop a plan to replace, as soon as reasonably possible, any unassigned epinephrine auto-injector used or close to expiration.

(j) Used unassigned epinephrine auto-injectors shall be considered infectious waste and shall be disposed of according to the school's bloodborne pathogen control policy.

(k) Expired unassigned epinephrine auto-injectors shall be disposed of according to the school's medication disposal policy.

§40.66. Assignment and Recruitment of School Personnel and School Volunteers to be Trained to Administer Epinephrine Auto-Injectors.

(a) At each school campus adopting an unassigned epinephrine auto-injector policy, the school principal may:

(1) assign school personnel or school volunteers to be trained to administer unassigned epinephrine auto-injectors; or

(2) seek school personnel or school volunteers who volunteer to be trained to administer unassigned epinephrine auto-injectors.

(b) In order to increase the number of trained individuals in the administration of unassigned epinephrine auto-injectors, schools may distribute to school personnel and school volunteers in the school district, open-enrollment charter school, or private school, at least once per school year, a notice including:

(1) a description of the request seeking volunteers to be trained to administer an epinephrine auto-injector to a person believed to be experiencing anaphylaxis; and

(2) a description of the training the school personnel or school volunteers will receive in the administration of epinephrine with an auto-injector.

(c) Trained school personnel or school volunteers who administer the unassigned epinephrine auto-injector must submit a signed statement indicating they agree to perform the service of administering an unassigned epinephrine auto-injector to a student or individual who may be experiencing anaphylaxis.

§40.67. Training.

Each school district, open-enrollment charter school, or private school that adopts an unassigned epinephrine auto-injector written policy under this subchapter is responsible for training school personnel and school volunteers in the recognition of anaphylaxis signs and symptoms and administration of an unassigned epinephrine auto-injector. Each assigned school personnel or school volunteer shall receive initial

training and an annual refresher training. Training shall be consistent with the most recent Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs published by the federal Centers for Disease Control and Prevention.

(1) Training may be provided in a formal face-to-face training session or through an online education course.

(2) Training required under this subchapter must meet the requirements found in Texas Education Code §38.210 and include information on properly inspecting unassigned epinephrine auto-injectors for usage and expiration.

(3) The initial training must include hands-on training with an epinephrine auto-injector trainer.

(4) The annual refresher training must include a hands-on demonstration of administration skills.

(5) The training must also include information about promptly notifying local emergency medical services.

(6) Each school campus must maintain training records and make available upon request a list of those school personnel or school volunteers trained and authorized to administer the unassigned epinephrine auto-injector on the campus.

§40.68. Report on Administering Epinephrine Auto-Injectors.

(a) A report must be submitted by the school no later than the 10th business day after the date school personnel or a school volunteer administers an epinephrine auto-injector in accordance with the unassigned epinephrine auto-injector policy adopted under this subchapter. The report shall be submitted to the individuals and entities identified in Texas Education Code §38.209, including the commissioner of the Department of State Health Services (DSHS).

(b) Notifications to the commissioner of DSHS shall be submitted on the designated electronic form available on the DSHS School Health Program website found at dshs.texas.gov.

§40.70. Gifts, Grants, and Donations.

A school district, open-enrollment charter school, or private school may accept gifts, grants, donations, federal funds, and local funds to implement the unassigned epinephrine auto-injector policy in accordance with Texas Education Code §38.213.

§40.71. Immunity from Liability.

A person who in good faith takes, or fails to take, any action under this subchapter or Texas Education Code Chapter 38, Subchapter E is immune from civil or criminal liability or disciplinary action resulting from action or a failure to act in accordance with the Texas Education Code §38.215.

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

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SUBCHAPTER F. OPIOID ANTAGONIST MEDICATION REQUIREMENTS IN SCHOOLS

25 TAC §§40.81 - 40.89

STATUTORY AUTHORITY

The new rules are required to comply with Texas Education Code Chapter 38, Subchapter E. The new rules are also authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§40.81. Purpose.

The purpose of this subchapter is to establish minimum standards for administering, maintaining, and disposing of opioid antagonist medication in school districts, open-enrollment charter schools, and private schools adopting opioid antagonist medicine policies. These standards are implemented under Texas Education Code Chapter 38, Subchapter E-1.

§40.82. Definitions.

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

(1) All hours the campus is open--At a minimum, during regular on-campus school hours, and when school personnel are physically on site for school-sponsored activities.

(2) Authorized healthcare provider--A physician, as defined in Texas Education Code §38.201, or person who has been delegated prescriptive authority by a physician under Texas Occupations Code Chapter 157.

(3) Campus--A unit of a school district, open-enrollment charter school, or private school with an assigned administrator, has enrolled students who are counted for average daily attendance, has assigned instructional staff, provides instructional services to students, has one or more grades in the range from early childhood education through grade 12 or is ungraded, and complies with relevant Texas laws.

(4) Open-enrollment charter school--As defined in Texas Education Code §38.151.

(5) Opioid antagonist--As defined in Texas Health and Safety Code §483.101, any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors.

(6) Opioid-related drug overdose--As defined in Texas Health and Safety Code §483.101, a condition, evidenced by symptoms of extreme physical illness, decreased level of consciousness, constriction of the pupils, respiratory depression, or coma, that a layperson would reasonably believe to be the result of the consumption or use of an opioid.

(7) Private school--As defined in Texas Education Code §38.201.

(8) School personnel--As defined in Texas Education Code §38.201.

(9) School volunteer--As defined in Texas Education Code §22.053.

§40.83. Applicability.

This subchapter applies to any school district, open-enrollment charter school, or private school adopting and implementing a written policy regarding the maintenance, administration, and disposal of opioid antagonist medication on a campus or campuses.

§40.84. Required and Voluntary Opioid Antagonist Policies.

(a) Each school district must adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus in the district serving students in grades 6 through 12 and may voluntarily adopt and implement such a policy at each campus in the district, including campuses serving students in a grade level below grade 6.

(b) An open-enrollment charter school or private school may adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists. If an open-enrollment charter or private school adopts a policy under this subchapter, the opioid antagonist policy must comply with the Texas Education Code §38.222. The policy may apply:

(1) only at campuses of the school serving students in grades 6 through 12; or

(2) at each campus of the school, including campuses serving students in a grade level below grade 6.

(c) A policy adopted under this subchapter must:

(1) provide that school personnel and school volunteers who are authorized and trained may administer an opioid antagonist to a person who they reasonably believe is experiencing an opioid-related drug overdose;

(2) require each school campus, subject to a policy adopted under this subchapter, have one or more school personnel members or school volunteers authorized and trained to administer an opioid antagonist present during regular school hours;

(3) establish the number of opioid antagonists that must be available at each campus at any given time; and

(4) require the supply of opioid antagonists at each school campus, subject to a policy adopted under this subchapter, be stored in a secure location and be easily accessible to school personnel and school volunteers authorized and trained to administer an opioid antagonist.

§40.85. Maintenance, Administration, and Disposal of Opioid Antagonist Medication.

(a) Once a school district, open-enrollment charter school, or private school adopts an opioid antagonist medication policy, a campus implementing an opioid policy must stock opioid antagonist medication as defined by §40.84 of this subchapter (relating to Required and Voluntary Opioid Antagonist Policies).

(b) A campus must obtain a prescription from a physician or a person who has been delegated prescriptive authority to stock, possess, and maintain the established number of doses of opioid antagonists as determined by a school district, on each campus as described in Texas Education Code §38.225.

(1) The campus must renew this prescription or obtain a new prescription annually.

(2) The number of additional doses may be determined by an individual campus review led by a physician or a person who has been delegated prescriptive authority.

(c) A physician or other person who has been delegated prescriptive authority under Texas Occupations Code Chapter 157 and prescribes opioid antagonist medication under subsection (a) of this section, must provide the school district, open-enrollment charter school,

or private school a standing order for administration of an opioid antagonist medication to a person who is reasonably believed to be experiencing an opioid-related drug overdose. The standing order must comply with the Texas Education Code §38.225.

(d) The unassigned opioid antagonist medication must be stored in a secure location and be easily accessible, in accordance with the manufacturer's guidelines and local policy of the school district, open-enrollment charter school, or private school.

(e) Used, unassigned opioid antagonists are considered infectious waste and must be disposed of according to the school's blood-borne pathogen control policy.

(f) Expired, unassigned opioid antagonists must be disposed of in accordance with the Federal Drug Administration's disposal of unused medications guidelines and local policy of the school district, open-enrollment charter school, or private school.

§40.86. Training.

(a) Each school district, open-enrollment charter school, and private school adopting a written unassigned opioid antagonist policy under Texas Education Code §38.222, is responsible for training school personnel and school volunteers in the administration of an opioid antagonist.

(b) Training under this subchapter must:

(1) include information on:

(A) recognizing the signs and symptoms of an opioid-related drug overdose;

(B) responding to an opioid-related drug overdose and administering an opioid antagonist;

(C) implementing emergency procedures, after administering an opioid antagonist;

(D) understanding the medical purpose and misuse of opioids; and

(E) properly disposing of used or expired opioid antagonists;

(2) be provided annually in a formal training session or through online education, including practicing the administration of an opioid antagonist with an opioid antagonist trainer device; and

(3) be provided in accordance with the policy adopted under Texas Education Code §21.4515.

(c) Each campus must maintain training records and must make available upon request a list of school personnel and school volunteers who are trained and authorized to administer the unassigned opioid antagonist medication on the campus.

§40.87. Report on Administering Unassigned Opioid Antagonist Medication.

(a) Records relating to implementing and administering the school district, open-enrollment charter school, or private school's unassigned opioid antagonist medication policy must be retained per the campus record retention schedule.

(b) The campus must submit the report no later than the 10th business day after the date a school personnel member or school volunteer administers an opioid antagonist in accordance with the unassigned opioid antagonist medication policy adopted under this subchapter. The report shall be submitted to the individuals and entities identified in Texas Education Code §38.223:

(1) the school district, the charter holder if the school is an open-enrollment charter school, or the governing body of the school if the school is a private school;

(2) the physician or other person who prescribed the opioid antagonist; and

(3) the commissioner of the Department of State Health Services (DSHS).

(c) Notifications to the commissioner of DSHS must be submitted on the designated electronic form available on DSHS School Health Program website found at dshs.texas.gov.

§40.88. Gifts, Grants, and Donations.

A school district, open-enrollment charter school, or private school may accept gifts, grants, donations, federal funds, and local funds to implement this subchapter.

§40.89. Immunity from Liability.

A person who in good faith takes, or fails to take, any action under this subchapter, or Texas Education Code Chapter 38, Subchapter E-1, is immune from civil or criminal liability or disciplinary action resulting from action or a failure to act in accordance with Texas Education Code §38.227.

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 374. MENTAL HEALTH EARLY INTERVENTION AND TREATMENT GRANT

26 TAC §§374.1 - 374.4

The Texas Health and Human Services Commission (HHSC) adopts new §374.1, concerning Purpose and Objectives; §374.2, concerning Definitions; §374.3, concerning Eligibility Criteria for Applicants; and §374.4, concerning Application and Selection Process, in new Chapter 374, Mental Health Early Intervention and Treatment Grant.

New §374.2 is adopted with changes to the proposed text as published in the August 4, 2023, issue of the *Texas Register* (48 TexReg 4240). This rule will be republished. Sections 374.1, 374.3, and 374.4 are adopted without changes to the proposed text as published in the August 4, 2023, issue of the *Texas Register* (48 TexReg 4240). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Senate Bill (S.B.) 26, 88th Legislature, Regular Session, 2023, which adds new §531.09915 to the Texas Government Code effective September 1, 2023. Section 531.09915 requires the Health and Human Services Commission (HHSC) to implement a competitive grant program to support community-based initiatives that promote identification of mental health issues and improve access to early intervention and treatment for children and families. The adopted rules establish the application and eligibility requirements for an entity to be awarded a grant.

COMMENTS

The 31-day comment period ended September 5, 2023.

During this period, HHSC received comments regarding the proposed rules from six commenters, including TexProtects, Meadows Mental Health Policy Institute, Texas Network of Youth Services, Texas Coalition for Healthy Minds, Texas Council of Community Centers, and Texas Alliance of Child and Family Services. A summary of comments relating to the rules and HHSC's responses follows.

Comment: All commenters recommended changing or removing the definition of "children" in §374.2 to define children as "individuals who are younger than 18 years of age".

Response: HHSC agrees with the recommended rule change and revised the definition of "children" in §374.2(2) from "individuals who are younger than 13 years of age" to "individuals who are younger than 18 years of age". In addition, HHSC also revised §374.2(4) to remove the phrase "and young people" after "children" to avoid confusion and duplication with the new definition of "children".

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.09915(d), which requires the Executive Commissioner of HHSC to establish by rule eligibility and application requirements for an entity to be awarded a Mental Health Early Intervention and Treatment Grant.

§374.2. Definitions.

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

- (1) Applicant--An entity eligible to apply for a grant.
- (2) Children--Individuals who are younger than 18 years of age.
- (3) Commission--The Health and Human Services Commission.
- (4) Early intervention--Services to identify and provide effective early support to children who are at risk of poor outcomes.
- (5) Grantee--A recipient of a grant awarded under this chapter.

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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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

**CHAPTER 51. EXECUTIVE
SUBCHAPTER D. EDUCATION**

31 TAC §51.81

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 24, 2023, adopted an amendment to 31 TAC §51.81, concerning Mandatory Boater Education, without changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3970). The rule will not be republished.

House Bill 2755, enacted by the most recent session of the Texas Legislature, amended Parks and Wildlife Code, §31.108 to require the commission to adopt rules to "approve boater education courses that meet or exceed the minimum instruction requirement established by the National Association of State Boating Law Administrators on or after January 1, 2016." Accordingly, the amendment to §51.81 alters current rules to require all boater education courses to satisfy the minimum national standards adopted by the National Association of State Boating Law Administrators in effect on June 1, 2022 to be approved by the department.

The department received one comment opposing adoption of the rule as proposed. The commenter stated that boater education is unnecessary because the commenter had been boating for 60 years without an accident. The department disagrees that the experience of one person should be used to guide the department's water safety programs. No changes were made as a result of the comment.

The department received five comments supporting adoption of the rule as proposed.

The amendment is adopted under the provisions of Parks and Wildlife Code, §31.108, as amended by House Bill 2755 enacted by 88th Texas Legislature (RS), which requires the commission to approve boater education courses that meet or exceed the minimum instruction requirement established by the National Association of State Boating Law Administrators on or after January 1, 2016.

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

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SUBCHAPTER O. ADVISORY COMMITTEES

31 TAC §51.615

In a duly noticed meeting on August 24, 2023, the Texas Parks and Wildlife Commission adopted new 31 TAC §51.615, concerning the Boating and Waterways Advisory Committee (BWAC), without changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3970). The rule will not be republished.

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission (the Commission) to "appoint committees to advise the commission on issues under its jurisdiction." Under Parks and Wildlife Code, Chapter 31, the legislature has designated TPWD as the primary regulatory agency for boating and boating safety. Government Code, Chapter 2110, requires each state agency to adopt rules regarding advisory committees. Unless otherwise specifically provided by statute, the rules must (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Under this authority, the Commission has established a number of advisory committees to provide the department with informed opinion regarding various aspects and dimensions of the department's mission. These advisory committees perform a valuable service for the department and the people of Texas.

The department is the primary state agency responsible for water safety and boating regulation. Staff have determined that the creation of an advisory board for matters concerning boating and waterways would be helpful in assisting the department and the commission in determining and executing appropriate strategies to maximize public safety and public enjoyment with respect to boating in this state.

The department received five comments opposing adoption of the rule as proposed. Two of the comments were not germane to the subject of the rulemaking. Of the three comments germane to the rule, only one provided a reason or rationale for opposing adoption. That commenter opposed adoption and stated that there are too many advisory committees. The department disagrees with the comment and responds that advisory committees perform a valuable function for the department and the public by providing a sounding board for agency decision-making. No changes were made as a result of the comment.

The department received four comments supporting adoption of the rule as proposed.

The rule is adopted under the provisions of Government Code, Chapter 2110, which requires the adoption of rules regarding state agency advisory committee.

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

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CHAPTER 57. FISHERIES

SUBCHAPTER J. FISH PASS PROCLAMATION

31 TAC §57.901

The Texas Parks and Commission in a duly noticed meeting on August 24, 2023, adopted an amendment to 31 TAC §57.901, concerning Prohibited Acts, without changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3971). The rule will not be republished.

The amendment retitles the section to more accurately reflect its content and clarifies the delineation of restricted areas within the Cedar Bayou Fish Pass. Cedar Bayou is a natural channel that connects Mesquite Bay to the Gulf of Mexico and functions as a migratory path for various aquatic species to and from the estuary. In 1939, the Texas Legislature prohibited the operation, possession, or mooring of vessels and the placement of pilings, wires, ropes, cables, nets, traps, or other obstructions within 2,800 feet of the point where a fish pass connects with the Gulf of Mexico or connects with an inland bay, and further required this restricted area to be permanently marked. Cedar Bayou has been periodically dredged and maintained since that time and the department has erected signs indicating that Cedar Bayou is a fish pass.

The 75th Texas Legislature in 1997 amended Parks and Wildlife Code, §66.204, to specifically authorize the commission to "regulate the placement of obstructions, traps, and mooring in fish passes and the marking of restricted areas in any natural or artificial pass that is opened, reopened, dredged, excavated, constructed, or maintained by the department as a fish pass between the Gulf of Mexico and an inland bay." Consequently, the commission promulgated the current rule in 1998. The department has determined that the current rule should be amended to make it clear that "fish pass" and "restricted area" are not synonymous terms; therefore, the amendment adds new subsection (b) to make it clear that the restricted area within the fish pass where no vessels are allowed is distinct from the remainder of the fish pass where vessels may not be anchored or moored for a period exceeding two consecutive days.

The department received one comment opposing adoption. The commenter stated that boat access to the Gulf via Cedar Bayou should be allowed in order to create greater fishing opportunity. The department disagrees with the comment and responds that the rule is intended to clarify the status quo that's been in place for decades at Cedar Bayou. No changes were made as a result of the comment.

The department received seven comments supporting adoption of the rule as proposed.

The Coastal Conservation Association commented in favor of adoption of the rule as proposed.

The amendment is adopted under Parks and Wildlife Code, §66.204, which authorizes the commission to make rules governing the placement of obstructions, traps, and mooring in fish passes and the marking of restricted areas in any natural or artificial pass that is opened, reopened, dredged, excavated, constructed, or maintained by the department as a fish pass between the Gulf of Mexico and an inland bay.

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SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.979

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 24, 2023, adopted new 31 TAC §57.979, concerning Unlawful Possession of Shark Fins, with changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3973) The rule will be republished.

The change replaces a comma in the introductory clause of subsection (b) with a colon and is nonsubstantive.

The new rule prescribes the process to be followed at a restaurant or place of business for treating shark fins to render them inedible and thus unfit for illicit commercial purposes.

The Texas Legislature during the most recent regular session enacted Senate Bill (S.B.) 1839, which addresses the unlawful sale and purchase of shark fins and products derived from shark fins. "Shark finning" is the act of removing a shark's fins and discarding the rest of the animal, often while it is still alive, leaving the animal to slowly die because it can no longer swim. The practice of shark finning is widely considered to be barbaric and wasteful, and it is illegal in Texas under current law (Texas Parks and Wildlife Code, §66.2161) and in many other states and countries as well. There is a significant commercial demand for shark fins and related products as foodstuffs, which, because the practice is illegal, has resulted in a lucrative opportunity for unscrupulous persons to engage in criminal activity at the expense of a public resource. In light of documented evidence that the practice continues to be common in Texas, the legislature determined that current statutory provisions regarding shark finning are problematic with respect to prosecution and insufficient in terms of deterrence. S.B. 1839 is intended to address the situation by, among other things, increasing penalties for violation and requiring persons in a place of business or restaurant to immediately destroy and discard shark fins while processing sharks for eventual sale. The bill delegates rulemaking authority to the commission to pre-

scribe the particulars of the process by which shark fins are to be denatured (i.e., destroyed) and discarded.

The new rule stipulates that a shark fin must be destroyed by immersion in chlorine bleach, acid, or other such chemical or chemical solution for a period of time sufficient to render the shark fin inedible or otherwise unfit for human consumption. The rule also requires destroyed shark fins and shark fin parts to be lawfully disposed of at a landfill or disposal site authorized by the Texas Commission of Environmental Quality to accept such materials, which would include waste removal services provided by third parties.

The department received three comments opposing adoption of the rule as proposed. Two commenters provided a reason or rationale for opposing adoption. Both commenters opposed adoption and stated that legally possessed shark fins should be allowed to be processed and sold as food. The department disagrees with the comments and responds that under the provisions of Parks and Wildlife Code, §66.2161, the legislature expressly prohibits the possession of shark fins in any place of business. The commission does not have the authority to modify or eliminate that stipulation. No changes were made as a result of the comments.

The department received three comments supporting adoption of the rule as proposed.

The new rule is adopted under the provisions of Senate Bill 1839 of the 88th Texas Legislature (Regular Session), which amended Parks and Wildlife Code, §66.2161 to authorize the commission to promulgate rules stipulating the method and circumstances for the destruction and disposal of shark fins at a restaurant or place of business.

§57.979. *Unlawful Possession of Shark Fins.*

(a) It is unlawful for any person to, upon detaching a shark fin from a shark that is lawfully possessed and being processed in a restaurant or place of business, fail to immediately destroy the shark fin as prescribed in this section. Destroyed shark fins shall be lawfully disposed of, either by a contracted waste removal service or by direct transport to a landfill or waste facility permitted by the Texas Commission on Environmental Quality to receive such material.

(b) In this section, the following terms shall have the following meanings:

(1) Destroy--to treat a shark fin by immersion in chlorine bleach, acid, or other such chemical or chemical solution for a period of time sufficient to render the shark fin inedible or otherwise unfit for human consumption.

(2) Immediately--At once, without delay, promptly.

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

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CHAPTER 59. PARKS

SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §59.3

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 24, 2023, adopted an amendment to 31 TAC §59.3, concerning Parks Entry Passes, with changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3974). The rule will be republished.

The change replaces the semicolon at the end of paragraph (3)(B)(iii) with a period and inserts the word "and" at the end of paragraph (3)(B)(ii) for purposes of grammatical consistency. The change is nonsubstantive.

The amendment implements the provisions of House Bill (H.B.) 1740, enacted during the most recent regular session of the Texas Legislature. H.B. 1740 amended Texas Parks and Wildlife Code, §13.018, to require the department to issue a state parklands passport ("passport") at no charge to additional categories of persons.

Prior to the enactment of H.B. 1740, the department was required under Parks and Wildlife Code, §13.018, to issue a passport free of charge to qualified individuals, defined as Texas residents 65 years old or over; members of the United States armed forces on active duty who are 65 years old or over; veterans of the armed services of the United States who, as a result of military service, have a service-connected disability consisting of either the loss of the use of a lower extremity or a 60 percent disability rating and who are receiving compensation from the United States because of the disability; and individuals who have a physical or mental impairment that substantially limits one or more major life activities. H.B. 1740 amended Parks and Wildlife Code, §13.018, to include any person who is an honorably discharged veteran of the United States armed services, a member of the United States armed services on active duty, or the surviving spouse, parent, child, or sibling of a person who died while serving in the United States armed services. The amendment effects those changes in department rules, while making changes as necessary to remove conflicts with existing rule language.

The department received two comments opposing adoption of the rule as proposed. Both commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule contains no method for preventing unscrupulous persons from obtaining a benefit they are not entitled to. The department agrees with the comment and responds that department protocols have been developed and deployed that will enable the department to ensure that the benefit created by H.B. 1740 is extended only to persons entitled to it. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule also should apply to the families of fallen peace officers. The department neither agrees nor disagrees with the comment and responds that the rule as adopted implements provisions specifically directed by a legislative act. No changes were made as a result of the comment.

The department received three comments supporting adoption of the rule as proposed.

The amendment is adopted under Parks and Wildlife Code, §13.018, which requires the commission to establish by rule the eligibility requirements and privileges available to the holder of a state parklands passport.

§59.3. *Park Entry Passes.*

Parks entry passes authorize entry privileges to parks where entry fees apply but are not valid for activity or other applicable fees.

(1) Annual Park Entrance Passes.

(A) A valid annual park entrance pass authorizes park entry without payment of an individual entrance fee for the holder of the annual pass, and:

(i) all occupants in the same vehicle with the holder of the annual park entrance pass if the holder of the annual park entrance pass is entering by noncommercial motor vehicle;

(ii) up to 14 persons accompanying the pass holder in the same boat if the holder of the annual park entrance pass is entering by boat; or

(iii) up to 14 persons accompanying the pass holder if the holder of the annual park entrance pass is entering by motorcycle, bicycle or on foot.

(B) An annual park entrance pass is valid only for private, noncommercial use and is not valid for:

(i) buses or similar vehicles; or

(ii) commercial use such as tour groups.

(C) An annual park entrance pass is not valid unless presented by the person named on the pass.

(D) The fee for an annual park entrance pass shall be established by the executive director within the range of \$50 - \$100.

(E) The fee for an annual park entrance pass that is part of a promotional drawing under the provisions of §51.750 of this title (relating to Promotional Drawings), of this title is \$0.

(2) Youth Group Annual Entrance Pass.

(A) A youth group annual entrance pass authorizes entry to any state park without payment of an individual entrance fee for up to a total of 50 persons belonging to a nonprofit youth organization.

(B) The department on a case-by-case basis may limit the number of adult supervisors entering a park under this subsection. Vehicles entering a park under a single youth group pass may be subject to additional fees if the number of vehicles exceeds the vehicle capacity for the campsite.

(C) The fee for a pass under this subsection shall be established by the executive director within the range of \$50 - \$300.

(D) A youth group annual entrance pass is valid for 12 months from date of purchase.

(3) State Parklands Passport. A state parklands passport shall be issued at no cost to any person meeting the criteria established by Parks and Wildlife Code, §13.018. For the purposes of this paragraph, "accompanying" means entering a park simultaneously with the passport holder.

(A) A state parklands passport issued to a person in a category listed in this subparagraph authorizes the entry of the person to any state park without payment of an individual entrance fee, and includes the waiver of the entry fee for one person accompanying and providing assistance to the passport holder:

(i) a person whose birth date is before September 1, 1930;

(ii) a veteran of the armed services of the United States who, as a result of military service, has a service-connected disability, as defined by the Veterans' Administration, consisting of the loss of the use of a lower extremity or of a 60 percent disability rating and who is receiving compensation from the United States because of the disability; or

(iii) a holder of a state parklands passport issued on or before August 31, 1995.

(B) A state parklands passport issued to a person in a category listed in this subparagraph authorizes the entry of the person to any state park without payment of an individual entrance fee but does not waive or reduce the entrance fee for any person accompanying the passport holder:

(i) an honorably discharged veteran of the United States armed services;

(ii) a member of the United States armed services on active duty; and

(iii) the surviving spouse, parent, child, or sibling of a person who died while serving in the United States armed services.

(C) To be eligible for issuance of a state parklands passport under the provisions of Parks and Wildlife Code, §13.018(a)(3), a person must submit government-issued personal identification and one of the following:

(i) an Award of Benefits Letter or a Statement of Benefits from the Social Security Administration that attests to the applicant's permanent disability; or

(ii) an affidavit or attestation on a form approved by the department certifying that the applicant meets the requirements of Parks and Wildlife Code, §13.018(a)(3) and this subsection.

(D) A state parklands passport issued to a person in a category listed in this subparagraph who does not otherwise qualify under subparagraph (A) or (B) of this paragraph authorizes the entry of the person to any state park upon payment of 50% of the posted entrance fee for the park, rounded to the nearest higher whole dollar, which shall also apply to one person accompanying and providing assistance to the passport holder.

(i) a Texas resident whose birth date is after August 31, 1930; or

(ii) an individual who has a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(E) A parklands passport is nontransferable.

(F) The department may collect a fee for a replacement state parklands passport.

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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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 362. STATE FLOOD PLANNING GUIDELINES

SUBCHAPTER A. STATE FLOOD PLAN DEVELOPMENT

31 TAC §§362.2 - 362.4

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code (TAC) §§362.2 - 362.4. Sections 362.2 - 362.4 are adopted with changes as published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2080). The rules will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The TWDB adopts amendments to Chapter 362 including minor revisions to include consideration of flood management strategies and relevant updated guidance in the guidance principles. Additionally, adopted amendments in Chapter 362 will also be made in Chapter 361, as applicable, to ensure uniformity of terms.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Several changes were made to Chapter 362 in response to comments received. Other changes include revisions to bring Chapter 362 and Chapter 361 into alignment.

Adopted amendments to §362.2 Definitions include updates to correspond to the changes to the definitions that are being made in Chapter 361. The alphabetical order of the definitions was updated..

Adopted amendments to §362.3 guidance principles include modifications to correct terms, such as changing "1.0 percent" to "1%." Citations to other rules and punctuation marks were also corrected.

The adopted amendments in §362.4(c) include a change to the ranking that will be included in the State Flood Plan. Previously, any FME, FMS, or FMP would need to have a one-time capital cost or other non-recurring cost to be included in the ranking. With this amendment, the ranking will include FMSs that have a non-recurring, non-capital costs.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The San Jacinto River Authority pointed out the need to change "solution" to "solutions" to match previous definition in §362.2(e).

TWDB acknowledges and agrees with the comment. The definition has been revised accordingly.

Freese and Nichols suggested revising the definition for §362.2(e), Flood Management Evaluation. Flood Management Evaluation (FME) to be a proposed study to define or quantify flood risk or flood risk reduction solutions. Freese and Nichols explained that in many cases, flood risk and a potential flood risk reduction solution have already been identified and FMEs have been recommended to further define the solution or satisfy requirements to be considered an FMP.

TWDB acknowledges and agrees with the comment. The definition for FME has been revised.

Freese and Nichols suggested revising the definition for §362.2(f), Flood Management Strategy. Flood Management Strategy (FMS) to better differentiate between FMEs and FMPs as well as clarify the types of actions that are eligible for funding within the FMS category. Freese and Nichols suggested removing the phrase, "ideas that still need to be formulated," in exchange for, "that result in flood risk reduction benefits that cannot be directly quantified through standard practices." Freese and Nichols stated that incorporating examples of types of actions that would qualify as an FMS and whose non-recurring, non-capital cost would be eligible for funding under the FMS category, would help to clarify the purpose of this category.

TWDB appreciates and agrees with the comment. The definition for Flood Management Strategy (FMS) has been modified.

Half Associates explained that the drainage area size described in §362.3(b)(9) was not applied consistently throughout the 16 regions. Half Associates stated that the inconsistent application resulted in varying degrees of localized projects being included in the RFPs. Half Associates requested that the purpose or intent of the one square mile drainage area be clarified.

TWDB acknowledges and appreciates the comment. Guidance documents will be enhanced to provide further clarifications. TWDB considers it important to provide a starting point for RFPs but also retain flexibility. No change has been made in response to the comment.

The San Jacinto River Authority requested clarification as to whether strategies should be considered in guidance principles related to water quality, fish and wildlife, ecosystem function, and recreation, and how long-term maintenance and operation of flood strategies will be conducted and funded, in accordance with §362.4(b)(36) and (38).

TWDB acknowledges and appreciates the comment. Section 362.3(b)(36) and (38) have been revised in accordance with the comment.

Freese and Nichols requested that §362.4(c)(5) be revised to be consistent with Guidance.

TWDB appreciates and agrees with the comment. Section §362.4(c)(5) has been revised in accordance with the comment.

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of 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, and also under the authority of Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rule-making.

§362.2. *Definitions and Acronyms.*

(a) 1% Annual Chance Flood Event--Flood event having a 1% chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood.

(b) 0.2% Annual Chance Flood Event--Flood event having a 0.2% chance of being equaled or exceeded in any given year, also referred to as the 500-year flood.

(c) Board--The governing body of the Texas Water Development Board.

(d) Executive Administrator (EA)--The Executive Administrator of the TWDB or a designated representative.

(e) Flood Management Evaluation (FME)--A proposed study to identify, assess, and quantify flood risk or identify, evaluate, and recommend flood risk reduction solutions.

(f) Flood Management Strategy (FMS)--Flood risk reduction solution ideas and strategies that do not belong in FME or FMP categories. Examples may include regulatory enhancements, development of entity-wide buyout programs, and public outreach and education.

(g) Flood Mitigation--The implementation of actions, including both structural and non-structural solutions, to reduce flood risk to protect against the loss of life and property.

(h) Flood Mitigation Project (FMP)--A proposed flood project, both structural and non- structural, that has a non-zero capital costs or other non-recurring cost and that when implemented will reduce flood risk or mitigate flood hazards to life or property.

(i) Neighboring area--Any area, including but not limited to upstream and downstream areas, potentially affected by the proposed flood mitigation project.

(j) Political Subdivision--County, city, or other body politic or corporate of the state, including any district or authority created under Art. 3 §52 or Art. 16 §59 of the Constitution and including any interstate compact commission to which the state is a party and any nonprofit WSC created and operating under Ch. 67.

(k) Regional Flood Plan (RFP)--The plan adopted or amended by a Regional Flood Planning Group pursuant to Texas Water Code §16.062 (relating to Regional Flood Plans) and this chapter.

(l) State Flood Plan (SFP)--The most recent State Flood Plan adopted or amended by the Board under Texas Water Code §16.061 (relating to State Flood Plan).

(m) TWDB--Texas Water Development Board.

§362.3. *Guidance Principles.*

(a) Regional flood planning guidance principles shall be the same as the state flood planning guidance principles and will be revisited every five years.

(b) Development of the regional and state flood plans shall be guided by the following principles. The regional and state flood plans:

(1) shall be a guide to state, regional, and local flood risk management policy;

(2) shall be based on the best available science, data, models, and flood risk mapping;

(3) shall focus on identifying both current and future flood risks, including hazard, exposure, vulnerability and residual risks; selecting achievable flood mitigation goals, as determined by each RFPG for their region; and incorporating strategies and projects to reduce the identified risks accordingly;

(4) shall, at a minimum, evaluate flood hazard exposure to life and property associated with the 1% and 0.2% annual chance flood events (the 100 and 500-year floods) and, in these efforts, shall not be limited to consideration of historic flood events;

(5) shall, at a minimum, evaluate flood risk to life and property associated with 1% annual chance flood event (the 100-year flood) and address, when feasible, through recommended projects and strategies, the flood mitigation goals of the RFPG in paragraph 3 of this subsection to address flood events associated with a 1% annual chance flood event (the 100-year flood); and, in these efforts, shall not be limited to consideration of historic flood events;

(6) shall consider the extent to which current floodplain management, land use regulations, and economic development practices increase future flood risks to life and property and consider recommending adoption of floodplain management, land use regulations, and economic development practices to reduce future flood risk;

(7) shall consider future development within the planning region and its potential to impact the benefits of flood management strategies (and associated projects) recommended in the plan;

(8) shall consider various types of flooding risks that pose a threat to life and property, including, but not limited to, riverine flooding, urban flooding, engineered structure failures, slow rise flooding, ponding, flash flooding, and coastal flooding, including relative sea level change and storm surge;

(9) shall focus primarily on flood management strategies and projects with a contributing drainage area greater than or equal to 1.0 (one) square mile except in instances of flooding of critical facilities or transportation routes or for other reasons, including levels of risk or project size, as determined by the RFPG;

(10) shall consider the potential upstream and downstream effects, including environmental, of potential flood mitigation projects and flood management strategies on neighboring areas. In recommending projects and strategies, RFPGs shall ensure that no neighboring area is negatively affected by the regional flood plan;

(11) shall include an assessment of existing, major flood mitigation infrastructure and will recommend both new strategies and projects that will further reduce risk, beyond what existing flood strategies and projects were designed to provide, and make recommendations regarding required expenditures to address deferred maintenance on or repairs to existing flood infrastructure;

(12) shall include the estimate of costs and benefits at a level of detail sufficient for RFPGs and sponsors of flood mitigation projects to understand project benefits and, when applicable, compare the relative benefits and costs, including environmental and social benefits and costs, between feasible options;

(13) shall provide for the orderly preparation for and response to flood conditions to protect against the loss of life and property and reduce injuries and other flood-related human suffering;

(14) shall provide for an achievable reduction in flood risk at a reasonable cost to protect against the loss of life and property from flooding;

(15) shall be supported by state agencies, including the TWDB, General Land Office, Texas Commission on Environmental

Quality, Texas State Soil and Water Conservation Board, Texas Parks and Wildlife Department, and the Texas Department of Agriculture, working cooperatively to avoid duplication of effort and to make the best and most efficient use of state and federal resources;

(16) shall include recommended strategies and projects that minimize residual flood risk and provide effective and economical management of flood risk to people, properties, and communities, and associated environmental benefits;

(17) shall include strategies and projects that provide for a balance of structural and nonstructural flood mitigation measures, including projects that use nature-based features, that lead to long-term mitigation of flood risk;

(18) shall contribute to water supply development where possible;

(19) shall also follow all regional and state water planning guidance principles per §358.3 of this title (relating to State Water Planning Guidelines) in instances where recommended flood projects also include a water supply component;

(20) shall be based on decision-making that is open to, understandable for, and accountable to the public with full dissemination of planning results except for those matters made confidential by law;

(21) shall be based on established terms of participation that shall be equitable and shall not unduly hinder participation;

(22) shall include flood management strategies and projects recommended by the RFPs that are based upon identification, analysis, and comparison of all flood management strategies the RFPs determine to be potentially feasible to meet flood mitigation and floodplain management goals;

(23) shall consider land-use and floodplain management policies and approaches that support short- and long-term flood mitigation and floodplain management goals;

(24) shall consider natural systems and beneficial functions of floodplains, including flood peak attenuation and ecosystem services;

(25) shall be consistent with the National Flood Insurance Program (NFIP) and shall not undermine participation in nor the incentives or benefits associated with the NFIP;

(26) shall emphasize the fundamental importance of floodplain management policies that reduce flood risk;

(27) shall encourage flood mitigation design approaches that work with rather than against natural patterns and conditions of floodplains;

(28) shall not cause long-term impairment to the designated water quality as shown in the state water quality management plan as a result of a recommended flood management strategy or project;

(29) shall be based on identifying common needs, issues, and challenges; achieving efficiencies; fostering cooperative planning with local, state, and federal partners; and resolving conflicts in a fair, equitable, and efficient manner;

(30) shall include recommended strategies and projects that are described in sufficient detail to allow a state agency making a financial or regulatory decision to determine if a proposed action before the state agency is consistent with an approved regional flood plan;

(31) shall include ongoing flood projects that are in the planning stage, have been permitted, or are under construction;

(32) shall include legislative recommendations that are considered necessary and desirable to facilitate flood management planning and implementation to protect life and property;

(33) shall be based on coordination of flood management planning, strategies, and mitigation projects with local, regional, state, and federal agencies projects and goals;

(34) shall be in accordance with all existing water rights laws including, but not limited to, Texas statutes and rules, federal statutes and rules, interstate compacts, and international treaties;

(35) shall consider protection of vulnerable populations;

(36) shall consider benefits of flood mitigation projects and flood management strategies to water quality, fish and wildlife, ecosystem function, and recreation, as appropriate;

(37) shall minimize adverse environmental impacts and be in accordance with adopted environmental flow standards;

(38) shall consider how long-term maintenance and operation of flood mitigation projects and flood management strategies will be conducted and funded; and

(39) shall consider multi-use opportunities such as green space, parks, water quality, or recreation, portions of which could be funded, constructed, and or maintained by additional, third-party project participants.

§362.4. State Flood Plan Guidelines.

(a) The EA shall prepare, develop, and formulate the state flood plan and the Board shall adopt a state flood plan pursuant to the schedule in Texas Water Code §16.061.

(b) The EA shall incorporate into the state flood plan presented to the Board those RFPs approved by the Board pursuant to Texas Water Code §16.062 and Chapter 361 of this title (relating to Regional Flood Planning). The Board shall, not less than 30 days before adoption or amendment of the state flood plan, publish notice of its intent to adopt a state flood plan and shall mail notice to each RFP. The Board shall hold a public meeting during which it may adopt a state flood plan or amendments thereto.

(c) The state flood plan shall incorporate information from Board-approved RFPs, and shall address, at a minimum, the following:

(1) basis for state flood planning, including sections on Texas water statutes, rules, regulations, and Texas' flood management and mitigation institutions;

(2) summary of the condition and adequacy of major flood control infrastructure on a regional basis;

(3) summary of existing flood risk associated with 1% annual chance and 0.2% annual chance flood events;

(4) description of methods used to develop the regional and state flood plans;

(5) a statewide, ranked list of recommended FMEs and FMPs that have associated one-time capital costs or other non-recurring costs, and FMSs with non-recurring non-capital costs derived from the Board-approved RFPs;

(6) an analysis of completed, ongoing, and proposed FMEs, FMPs, and FMSs included in previous state flood plans including projects funded by the TWDB;

(7) a discussion of how the recommended FMEs, FMPs, and FMSs will reduce flood risk and mitigate flood hazards; and

(8) legislative recommendations the Board considers necessary to facilitate flood mitigation planning and FME, FMP, and FMS implementation.

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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