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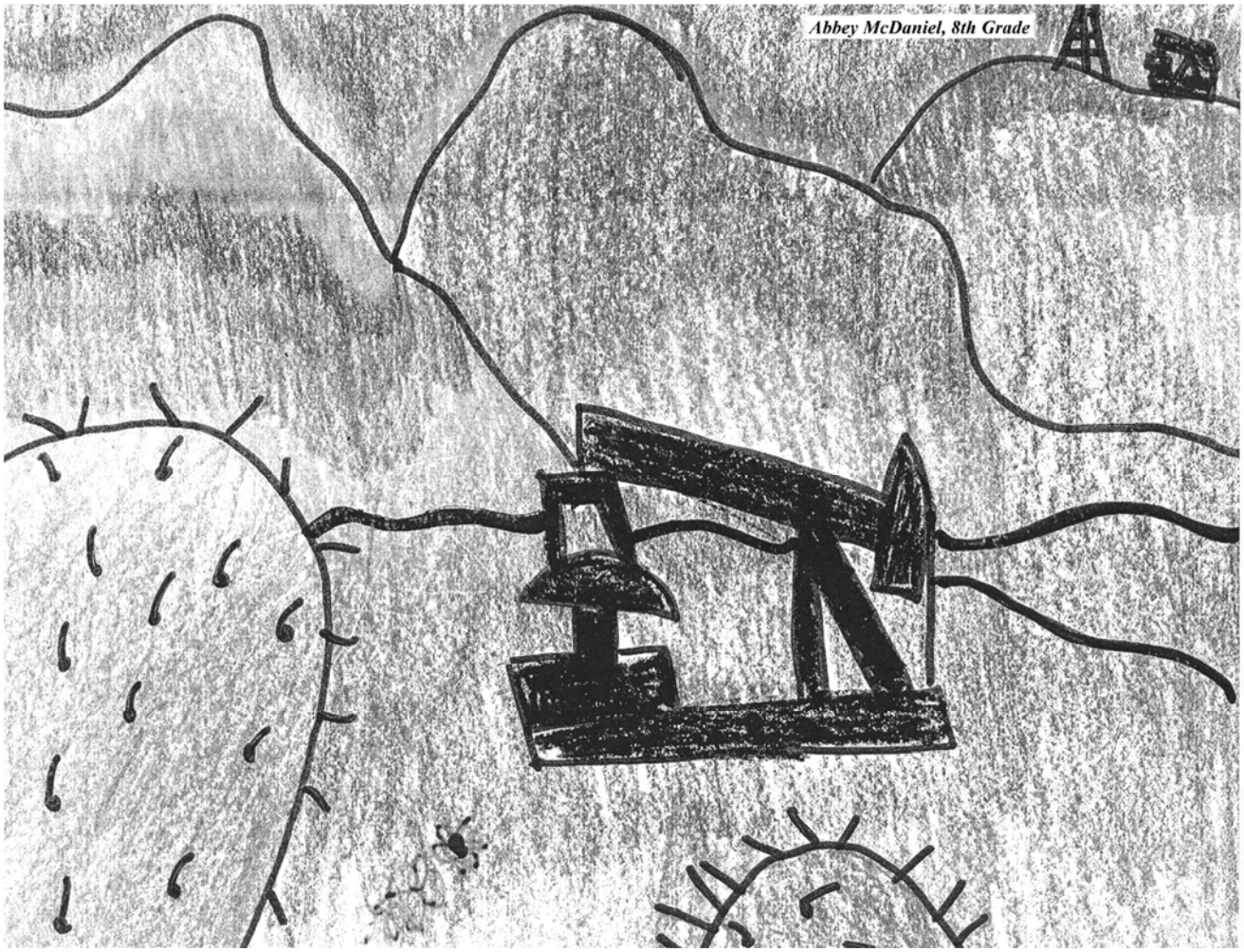

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-0107-KP

Requestor:

The Honorable Dan Patrick

Lieutenant Governor of Texas

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Fort Worth Independent School District transgender guidelines violate chapter 26 of the Education Code and whether the superintendent had authority to adopt the guidelines without a vote by the school board or public comment (RQ-0107-KP)

Briefs requested by June 14, 2016

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201602740
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: May 31, 2016

♦ ♦ ♦

Opinions

Opinion No. KP-0092

The Honorable Lori J. Kaspar

Hood County Attorney

1200 West Pearl Street

Grandbury, Texas 76048

Re: Ownership of interest earned on county taxes held by the appraisal district

(RQ-0080-KP)

S U M M A R Y

Interest earned on county taxes collected by an appraisal district pursuant to a contract under subsection 6.24(b) of the Tax Code belongs to the county and, as such, must generally be remitted to the county.

The accounting and remittance of funds belonging to the county from a particular tax year would depend at least in part on the terms of any contract entered into pursuant to subsection 6.24(b) then in place.

The personal liability of the tax assessor-collector for funds held in the custody of the appraisal district is ultimately a question of fact, dependent on various factors that cannot be ascertained in the opinion process of this office.

Opinion No. KP-0093

The Honorable Jane Nelson

Chair, Committee on Finance

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether an institution of higher education may enter into a contract with a business entity in which an institution's board member has an interest (RQ-0081-KP)

S U M M A R Y

Section 2261.252 of the Government Code prohibits a contract by an institution of higher education to purchase certain goods or services from a private vendor in which a member of the institution's governing body or a certain family member has a prohibited financial interest.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201602737
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: May 31, 2016

♦ ♦ ♦

Lawson Lehlberg
Third Grade

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 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 47. AUTHORIZED PERSONNEL

SUBCHAPTER C. CHRONIC WASTING DISEASE

4 TAC §§47.21 - 47.24

The Texas Animal Health Commission (commission) proposes amendments to §47.21, concerning Definitions, §47.22, concerning General Requirements and Application Procedures, §47.23, concerning Duration and Additional Training Requirements, and §47.24, concerning Grounds for Suspension or Revocation, in Chapter 47, which is entitled "Authorized Personnel". The purpose of the amendments is to establish and clarify requirements for persons authorized to perform certain activities related to Chronic Wasting Disease (CWD).

Section 161.047 of the Texas Agriculture Code requires a person, including a veterinarian, to be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals, which includes Chronic Wasting Disease.

Chapter 47, Subchapter C, which is entitled "Chronic Wasting Disease" includes standards and requirements for persons authorized by the commission to perform work as a Certified CWD Sample Collector. At the time the existing Subchapter C regulations were adopted, the commission only recognized test results from postmortem CWD sample collection. Since this sampling was not performed on live animals, the commission established standards and authorized non-veterinarians to collect postmortem samples.

In early 2016, the commission implemented CWD antemortem testing in certain situations to assess the disease risk and prevalence in herds known to be infected or exposed to CWD. Antemortem testing, because it involves the diagnosis of a disease in live animals, is considered the practice of veterinary medicine pursuant to Chapter 801 of the Occupations Code. As such, the commission proposes to modify the CWD authorized personnel requirements to specify that only Certified CWD Veterinarians may collect antemortem CWD samples.

A Certified CWD Veterinarian is defined as a veterinarian who has authorized personnel status for veterinarians as required by §47.1, has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for antemortem CWD testing, and who has been certified by the commission to perform these activities. The proposed rules include requirements regarding the application for authorized personnel status, general standards, duration of status, training, recordkeeping, and suspension or revocation for Certified CWD Veterinarians.

The proposed rules also clarify that non-veterinarians may only collect CWD postmortem samples. As such, the commission proposes to change the title of such individuals from "Certified CWD Sample Collector" to "Certified CWD Postmortem Sample Collector".

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be uniformity in the state's Chronic Wasting Disease control activities.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.0417 entitled "Authorized Personnel for Disease Control", a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

Pursuant to §161.005 entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.006 entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.0415 entitled "Disposal of Diseased or Exposed Livestock", the commission by order may require the slaughter of livestock, under the direction of the commission, or the sale of livestock for immediate slaughter.

Pursuant to §161.046 entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048 entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054 entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.0541 entitled "Elk Disease Surveillance Program", the commission by rule may establish a disease surveillance program for elk.

Pursuant to §161.101 entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.112 entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113 entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

No other statutes, articles or codes are affected by the proposal.

§47.21. Definitions.

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

(1) Approved Laboratory--A diagnostic laboratory approved by the Administrator to conduct official tests for CWD in accordance with 9 CFR 55.8.

(2) Authorized personnel--For the Chronic Wasting Disease (CWD) program, a person that is certified by the commission as a Certified CWD Postmortem Sample Collector or, for veterinarians, a Certified CWD Veterinarian.

(3) Certified CWD Postmortem Sample Collector--An individual who has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for postmortem CWD testing, and who has been certified by the commission to perform these activities.

(4) Certified CWD Veterinarian--A veterinarian who has authorized personnel status for veterinarians as defined by §47.1 of this title (relating to Definitions), has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for antemortem CWD testing, and who has been certified by the commission to perform these activities.

(5) [~~(4)~~] Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy (TSE) of susceptible species.

(6) [~~(5)~~] CWD Susceptible Species--All species in the cervidae family determined to be susceptible to CWD, which means any species that has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA/APHIS. This includes white-tailed deer (Odocoileus virginianus), mule deer (Odocoileus hemionus), black-tailed deer (Odocoileus hemionus columbianus), North American elk or wapiti (Cervus Canadensis), red deer (Cervus elaphus), Sika deer (Cervus Nippon), moose (Alces alces), and any associated subspecies and hybrids.

(7) [~~(6)~~] Sample Identification Number--The number assigned to a CWD sample on the specimen submission form.

(8) [~~(7)~~] Specimen Submission Form--USDA-APHIS VS form 10-4, electronic VS form 10-4 or equivalent submission form.

§47.22. General Requirements and Application Procedures.

(a) This regulation sets the standards for personnel who perform work in the Certified CWD Authorized Personnel [~~Sample Col-~~

~~lector~~] program pursuant to the Texas Agriculture Code, §161.0417. Personnel may collect samples for official CWD testing in Texas as follows:

(1) Effective September 1, 2015, a person, other than an accredited veterinarian licensed to practice veterinary medicine in Texas, shall be a Certified CWD Postmortem Sample Collector to collect and submit samples for official postmortem CWD testing.

(2) Effective October 15, 2016, an individual shall be a Certified CWD Veterinarian to collect and submit samples for antemortem CWD testing.

(3) [~~(2)~~] To become a Certified CWD Sample Collector or a Certified CWD Veterinarian, a person must meet the requirements and apply for Certified CWD Authorized Personnel status [~~Sample~~] Collector as prescribed in §47.2 of this title (relating to Requirements and Application Procedures).

(4) [~~(3)~~] A person desiring to perform official CWD testing shall participate in a certification program on CWD program requirements and procedures before performing any CWD program functions, including but not limited to review of the disease, proper sample collection techniques, sample preservation and laboratory submission, recordkeeping, and identification of animals.

(b) A Certified CWD Postmortem Sample Collector or Certified CWD Veterinarian shall meet the following requirements:

(1) Comply with §47.4 of this title (relating to Standards for Authorized Personnel);

(2) Comply with §47.5 of this title (relating to Recordkeeping);

(3) Submit CWD samples only to approved laboratories; and

(4) Follow all instructions as prescribed by the commission for collection of samples, including:

(A) collecting the proper samples necessary for CWD detection by an approved laboratory;

(B) labeling of specimen collection containers. The side label of a specimen collection container must include the following information:

(i) date of collection;

(ii) owner name;

(iii) name of the Certified CWD Postmortem Sample Collector or Certified CWD Veterinarian [~~name~~];

(iv) species, age and sex of animal;

(v) type of specimen(s);

(vi) herd ID (if applicable), official animal identification number;

(vii) sample identification number;

(C) packaging specimens to meet Federal transportation guidelines; and

(D) fully and accurately completing the specimen submission form, which includes listing the clinical signs of CWD observed in samples collected from CWD susceptible species:

(i) date of collection;

(ii) owner name, address, and phone number;

(iii) [~~Certified CWD Sample Collector~~] name, address, phone number, and email address for the Certified CWD Postmortem Sample Collector or Certified CWD Veterinarian;

(iv) species, age, and sex of the animal;

(v) type of specimen(s);

(vi) herd ID (if applicable), all animal identification devices with a quarter-sized piece of tissue (ear, hide, etc.) attached to each device; and

(vii) sample identification number.

§47.23. Duration and Additional Training Requirements.

(a) Unless otherwise suspended or revoked, Certified CWD Sample Collector status shall be valid for the period of three years from the date of initial certification.

(b) Unless otherwise suspended or revoked, Certified CWD Veterinarian status shall be valid for the period of three years from the date of initial certification.

(c) [~~(b)~~] Certified CWD Postmortem Sample Collector status or Certified CWD Veterinarian status must be renewed by submitting a renewal application to the commission, paying any applicable fees, and meeting any additional requirements determined by commission rule, 30 days prior to the certificate expiration date.

(d) [~~(c)~~] In determining whether additional training shall be required of current Certified CWD Postmortem Sample Collectors or Certified CWD Veterinarians before certificate renewal, the commission may consider changes in technology, treatments, procedures, programs, and the performance or competency of the individual in performing CWD program activities.

(e) [~~(d)~~] If the commission requires general training or testing for all CWD authorized personnel, the commission will publish notice at least six months in advance of the certificate renewal date.

(f) [~~(e)~~] If the commission requires individual training or testing as a result of the CWD authorized personnel's performance or inability to perform CWD program activities, the commission may give notification and set a time and place for training or testing.

§47.24. Grounds for Suspension or Revocation.

Suspension or revocation of Certified CWD Postmortem Sample Collector status or Certified CWD Veterinarian status may be made upon a determination that one or more of the following has occurred:

(1) Violating one or more of the provisions prescribed in §47.6 of this title (relating to Grounds for Suspension or Revocation);

(2) Failing to comply with one or more of the provisions prescribed in §47.4 of this title (relating to Standards for Authorized Personnel);

(3) Observing clinical signs or lesions of CWD and failing to immediately report those findings to the commission; or

(4) Failing to complete additional training or testing as prescribed in §47.23 of this title (relating to Duration and Additional Training 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 May 27, 2016.

TRD-201602711

Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 719-0722

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER H. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.802

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program.

The purpose of the amendments to 10 TAC §5.802 is to remove definitions, eligibility criteria, the application process, and requirements relating to procuring new Local Operators because the Department is no longer utilizing new Local Operators, and clarifies the responsibilities and eligibility criteria and performance requirements for Local Operators.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be clarity of program requirements and programmatic adherence to federal guidelines. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 6, 2016, to July 6, 2016, to receive input on the proposed amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: cadrulecomments@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. July 6, 2016.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The proposed amendments affect no other code, article, or statute.

§5.802. Local Operators for the Section 8 Housing Choice Voucher Program.

(a) Purpose. This chapter clarifies the performance responsibilities [~~roles~~] and duties of the Local Operators [~~(LO)~~] for Housing Choice Vouchers [~~(Section 8)~~] administered by the Texas Department of Housing and Community Affairs [~~(the Department); identifies a process for potential expansion of the Department's Housing Choice Voucher program to additional areas of the state;~~] and outlines the procedures for the Department to [~~procure new LOs and~~] renew existing LOs.

(b) Definitions.

[~~(1) Applicant--A Person who has submitted an Application for Department funds or other assistance.~~]

[~~(2) Application--A request for funds submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material.~~]

[~~(3) Application Acceptance Period--The period of time that Applications may be submitted to the Department as more fully described in the applicable Notice of Funding Availability (NOFA).~~]

[~~(4) Application Deficiency--A deficiency or inconsistency, which in the Department's reasonable judgment, may be cured by supplemental information or explanation that will not necessitate a substantial reassessment or re-evaluation of the Application.~~]

(1) [~~(5)~~] Board--The governing board of the Texas Department of Housing and Community Affairs.

(2) [~~(6)~~] Contract--The executed written agreement between the Department and a Local Operator [~~an Administrator~~] performing an activity related to a program that outlines performance requirements and responsibilities as identified in [~~assigned by~~] the document.

(3) [~~(7)~~] Department--The Texas Department of Housing and Community Affairs.

(4) Housing Quality Standards--(HQS) are minimum standards for tenant-based programs and are required both at initial occupancy and during the term of the lease. HQS standards apply to the building and premises, as well as to the unit.

[~~(8) Effective Date--The date on which all applicable parties have signed a Contract.~~]

[~~(9) Executive Director--Executive Director of the Texas Department of Housing and Community Affairs.~~]

(5) [~~(10)~~] HUD--U.S. Department of Housing and Urban Development.

[~~(11) Local government--A county, municipality, special district, or any other political subdivision of the state, a public, nonprofit housing finance corporation created under Chapter 394 of the Texas Local Government Code, or a combination of those entities. (§2306.004).~~]

(6) [~~(12)~~] Local Operators (LOs)--LOs are the local administrators who perform unit inspections, provide client processing, and perform other administrative duties on the Department's behalf as Housing Choice Vouchers are issued and maintained in some of the local communities served by the Department's Housing Choice Voucher Program.

[~~(13) Material Deficiency--Any individual Deficiency or group of Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of a LO Application or eligibility for LO Renewal or~~

which, are repeated and pervasive that they indicate a failure by the LO to submit a substantively complete and accurate Application.]

[(14) NOFA--Notice of Funding Availability, published in the Office of the Secretary of State's Texas Register Publication.]

[(15) Nonprofit Organization--A public or private organization that:]

[(A) has evidence of a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3) of the Internal Revenue Code of 1986, a charitable, nonprofit corporation, or §501(c)(4) of the Internal Revenue Code of 1986, a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective throughout the length of any contract agreements; or a current group exemption letter from the IRS that is dated 1986 or later, that reflects the Applicant classified as a subordinate of a central non-profit organization under the Internal Revenue Code. The group exemption letter must specifically list the Applicant; and]

[(B) a private nonprofit organization's pending Application for §501(c)(3) or (4) of the Internal Revenue Code of 1986, status cannot be used to comply with the tax status requirement.]

[(16) Open Application Cycle--A defined period during which Applications may be submitted according to a published NOFA and which will be reviewed on a first come-first served basis until all funds available are committed or until the NOFA is closed, whichever is earlier.]

(7) [(17)] Owner--The Person who owns a unit for which a Section 8 Housing Choice Voucher is being considered or being used.

(8) [(18)] Program--The Section 8 Housing Choice Voucher Program operated by the Department.

[(19) Program Noncompliance--LOs of the Department's Section 8 program will be in Program Noncompliance if they do not meet the performance requirements or the LO eligibility requirements.]

(c) Performance Requirements. The duties and expectations of the LO include the following and will be included in the LO contract. LO must:

(1) follow and comply with HUD's rules and regulations, including the U.S. Housing Act of 1937, the Annual Contributions Contract between the Department and HUD, the Housing Assistance Program contract between the Department and the owner of the unit occupied by an assisted family, as well as the Department's Administrative Plan and other applicable laws covering the Program;

(2) designate a specific contact to serve as a liaison with the Department;

(3) disseminate [to Housing Choice Voucher recipients] information concerning the availability and nature of housing assistance for lower-income families;

(4) seek [make public invitations] to increase the number of local property Owners willing to make dwelling units available for leasing to eligible families;

[(5) assist in receiving and reviewing applications from the public for participation in the program;]

[(6) assist in verifying program eligibility and selecting eligible families for participation according to Departmental rules and policies;]

(5) [(7)] assist in the issuance of Housing Choice Vouchers to selected eligible families and provide the family with necessary information regarding the program in accordance with 24 CFR §982.301;

[(8) determine each eligible family's unit size requirements in accordance with Subpart K of 24 CFR Part 982;]

[(9) assist in determining the amount of total tenant payment and housing assistance payment, including calculation of allowances for utilities and other services under 24 CFR §982.505;]

(6) [(10)] certify rent reasonableness under 24 CFR §982.507;

(7) [(11)] assist in facilitation of the Owner's [owner's] execution of the Housing Choice Voucher Contract in a form prescribed by HUD under 24 CFR §982.451;

(8) [(12)] annually, assist in re-determination of [families] eligibility and calculation of the amount of housing assistance payment in accordable with HUD established schedules and under 24 CFR §982.516, and submit redetermination information to the Department within ninety (90) to one-hundred-twenty (120) days of request;

(9) [(13)] perform any necessary Housing Quality Standard inspections (or other inspections required by HUD) and notify Owners and families of property inspection determinations;

(10) [(14)] perform any necessary Housing Quality Standard inspections for new admissions within sixty (60) days, or within one-hundred-twenty (120) days with Department approval of sixty (60) day extension;

(11) [(15)] assist in coordination of portability requests [from housing choice voucher families] in accordance with Department policies;

(12) [(16)] assist in processing changes in income and changes in household requests in accordance with Department policies;

[(17) provide for prompt and timely lease up of vouchers when released by the Department or when existing vouchers become available through clients exiting the Program;]

(13) [(18)] maintain confidential client files in a manner that protects the privacy of each client and maintains [to maintain] the same for future reference;

(14) [(19)] store physical client files in a secure space in a manner that ensures confidentiality and in accordance with program [LO] policies and procedures; and

[(20) add, based on availability, housing choice vouchers to the LO service area; and]

(15) [(21)] perform such other functions as directed by the Department.

(d) Eligibility of Local Operators.

(1) Eligibility Criteria for [Applicants and] LO Contract Renewals. Currently [New applicants for LO designation and currently] designated LOs wishing to renew their contract must meet the following eligibility criteria:

[(A) Organizations or entities eligible to be a LO of the Department's Housing Choice Voucher Program are:]

[(i) Nonprofit organizations;]

[(ii) Local Units of Government;]

[(iii) For-profit organizations;]

~~[(iv) Public Housing Authorities (PHA's); or]~~

~~[(v) Other eligible entities.]~~

(A) [~~(B)~~] Eligible organizations must have a publicly accessible confidential meeting space available to meet with Housing Choice Voucher families.

(B) [~~(C)~~] Eligible organizations must have access to the internet, electronic mail, and a telephone for communication with the Department.

(2) Ineligibility Criteria for LOs. The following conditions will cause [~~a new Applicant for LO designation or~~] a currently designated LO wishing to renew their contract, to be ineligible:

~~[(A) Program Noncompliance--Each Application and Contract Renewal will be reviewed for Program Noncompliance. Applications and contract renewals found in Program Noncompliance or otherwise violating this chapter at the time of Application and prior to Contract execution are ineligible for funding and will be terminated without being processed as a material deficiency.]~~

(A) [~~(B)~~] Failure to comply with federal and state law and/or failure to comply with the terms outlined in the LO contract; or refusal by the LO to assist in issuing Housing Choice Vouchers [~~housing choice vouchers~~] in a timely manner and/or unwillingness to add vouchers to the LO service area [~~may result in the termination of a LO contract~~].

(B) [~~(C)~~] The LO [~~Applicant~~] has failed to perform the performance requirements outlined in subsection (c) of this section.

(C) [~~(D)~~] The LO had [~~Applicant is an Administrator of~~] a previously funded Contract for which Department funds have been partially or fully de-obligated due to failure to meet contractual obligations during the prior 12 months [~~prior to the Application submission date~~].

(D) [~~(E)~~] The LO [~~Applicant~~] has failed to submit or is delinquent in a response to provide an explanation, or evidence of corrective action as a result of a technical assistance visit by the Department.

(E) [~~(F)~~] The LO [~~Applicant~~] has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the "List of Parties Excluded from Procurement of Non-procurement Programs" or has otherwise been debarred by HUD or the Department.

(F) [~~(G)~~] The LO [~~Applicant~~] has violated the state's revolving door policy.

(G) [~~(H)~~] The LO [~~Applicant~~] has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses [~~within 15 years preceding the Application deadline~~].

(H) [~~(I)~~] The LO [~~Applicant~~] at the time of renewal [~~Application submission~~] is:

(i) subject to an enforcement or disciplinary action under state or federal securities law or by the Financial Industry Regulatory Authority (FINRA) is subject to a federal tax lien; or

(ii) is the subject of an enforcement proceeding with any governmental entity.

(e) Local Operator Contract Execution and Renewal.

(1) Upon determination that a renewal is eligible and desired by both parties [~~Upon Board approval of a new LO~~], the Department's Executive Director or Deputy Executive Director that oversees the Housing Choice Voucher Program and the LO shall enter into and execute an agreement for the administration of the Housing Choice Voucher program. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications, amendments or extensions to the contract.

(2) Contracts will be for a [~~an initial~~] one year period [~~with an automatic renewal in one year increments for a period not to exceed four (4) additional years conditioned on maintaining compliance with the eligibility criteria in subsection (d) of this section and having performed according to the performance requirements outlined in subsection (c) of this section. If the LO meets these requirements and is not in Program Noncompliance with the Department, the contract with the LO will be renewed~~].

(3) LOs in an existing contract will, upon expiration of the current contract, be eligible to execute a contract under paragraph (2) of this subsection so long as they are maintaining compliance with the eligibility criteria in subsection (d) of this section and have performed according to the performance requirements outlined in subsection (c) of this section. [~~If the LO meets these requirements and is not in Program Noncompliance with the Department, the new contract described in paragraph (2) of this subsection will be executed.~~]

~~[(f) New Local Operator Application Procedures and Requirements.]~~

~~[(1) If a LO has terminated its contract with the Department or chosen not to renew a contract with the Department, and the Department chooses to find a replacement LO to continue providing services to existing clients in the geographic area served by the prior LO, the Department will release a Notice of Funding Availability (NOFA) specifying the defined geographic area requiring continued service, information on the volume and geographic locations of the existing pool of voucher holders, and the LO requirements for operating the program if selected.]~~

~~[(2) The Department will develop and publish the NOFA and Application materials on its website. Applicants must verify and ensure the accuracy, sufficiency and receipt of all submissions to the Department.]~~

~~[(3) The Department reserves the right to request supplemental information or explanation from the Applicant in order to cure an Applicant deficiency.]~~

~~[(4) Applications must be submitted within the Application Acceptance Period as detailed in the NOFA.]~~

~~[(5) Evaluative criteria and any other Application or contractual requirements will be specified in the NOFA. Applications that do not meet minimum threshold criteria will not be considered for LO designation.]~~

~~[(g) Expansion of Section 8 service area. At least once each year, no later than March 31st, the Department will evaluate the availability of voucher funding and the current usage of existing vouchers, and determine whether an announcement of funding availability to expand vouchers outside of the current geographic areas served is appropriate. If deemed appropriate, a Notice of Funding Availability will be released specifying eligible geographic areas, evaluative criteria, any restrictions on voucher populations and LO requirements for operating the program if selected.]~~

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 May 27, 2016.

TRD-201602712
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 475-3884

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.4

The Texas Alcoholic Beverage Commission proposes amendments to §31.4, relating to Public Information Signs.

Section 31.4 addresses signs that must be posted at a licensed premises informing consumers how to file a complaint with the commission about the sale or service of alcoholic beverages at the establishment, and signs that must be posted at licensed or permitted premises that are authorized to sell alcoholic beverages for consumption on the premises informing consumers of health risks associated with drinking alcohol during pregnancy.

The proposed amendments provide the statutory authorization for each sign requirement. The proposed amendments clarify that the complaint sign requirement applies to businesses that hold permits as well as to those which hold licenses. The proposed amendments also indicate that complaints may be filed by using the commission's website or a commission-authorized mobile application, as well as by mail or telephone.

Section 31.4 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the statutory authority for the rule will be stated and additional means of filing a complaint will be available.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, §5.53(d), which authorizes the commission to require the posting of signs informing the public of how to notify the commission of a complaint, and §11.042 and §61.111, which provides that the commission shall by rule require the posting of signs regarding the health risks of drinking during pregnancy.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 5.53, 11.042, and 61.111 and Government Code §2001.039.

§31.4. Public Information Signs.

(a) Complaint Sign. In accordance with Alcoholic Beverage Code §5.53(d), any [~~Any~~] licensed or permitted business location in the state which sells or serves alcoholic beverages to the ultimate consumer shall display at his place of business in a prominent place easily seen by the public, i.e. near the door or by the cash register, a sign that provides the following information: "If you have a complaint about the sale or service of alcoholic beverages in this establishment, please contact the Texas Alcoholic Beverage Commission by mail at[,] P.O. Box 13127, Austin, Texas 78711-3127, by [~~or~~] phone at (512) 206-3333, by internet at www.tabc.texas.gov, or by a TABC-authorized mobile application."

(1) This sign shall be no smaller than 6 inches by 3-1/2 inches and shall be in lettering or type of a size sufficient to render it both conspicuous and readily legible.

(2) The sign shall be made of sturdy material; if made of paper, the weight shall be no less than 65# stock.

(b) Health Risk Warning Sign. In accordance with Alcoholic Beverage Code §§11.042 and 61.111, a [~~A~~] holder of a license or permit authorizing the sale of alcoholic beverages for on premises consumption shall display a health risks warning sign. The health risks warning sign must:

(1) be posted at each egress of all public restrooms on the licensed premises;

(2) be placed at a level where the sign can be easily seen by persons exiting the restroom;

(3) be not less than 8 1/2 x 11 inches in size;

(4) the following language shall be printed in English and in Spanish, in bold black type on a white surface, or other clearly legible graphic design, with a font or type set size of not less than 28 point Arial or Helvetica:
Figure: 16 TAC §31.4(b)(4)

(c) The responsibility of furnishing the required signs in this section is the sole responsibility of the licensee or permittee.

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 May 24, 2016.

TRD-201602532

Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 206-3489

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CHAPTER 33. LICENSING
SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.7

The Texas Alcoholic Beverage Commission proposes amendments to §33.7, relating to Warning Sign Requirements.

Section 33.7 implements Alcoholic Beverage Code §104.06(b), which requires the commission to adopt rules for making a determination whether 51 percent of the gross receipts of a premises for which the license or permit is issued are from the sale or service of alcoholic beverages for on-premises consumption. If the commission determines that 51 percent of the gross receipts are from such sales or service, Alcoholic Beverage Code §104.06(c) requires the license or permit holder to comply with Government Code §411.204. That section of the Government Code requires certain types of license or permit holders who meet the 51 percent threshold to post a sign that gives notice to persons who are licensed to carry a handgun that it is unlawful for them to carry a handgun on the premises.

The proposed amendments retitle the section to more precisely reflect the commission's role, which is to monitor sales data and make the 51 percent determination. The proposed amendments more accurately reflect the statutory requirement that the commission make such determination regarding any premises that allows on-premises consumption and not just those premises that are subject to the posting requirements in Government Code §411.204. For the same reason, the exemption for food and beverage certificate holders in subsection (c) of the current rule is deleted in the proposed amendments.

Section 33.7 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the commission's statutory duties are more accurately described.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §104.06(b), which requires the commission to adopt rules for making the determinations that are required in subsection (a) of that section.

The proposed amendments affect Alcoholic Beverage Code §5.31 and §104.06, and Government Code §2001.039.

§33.7. Monitoring Sales Data [~~Warning Sign Requirements~~].

(a) This rule is adopted pursuant to §104.06 of the Alcoholic Beverage Code.

(b) Each applicant for an original or renewal permit or license that allows on-premise consumption of any alcoholic beverage [~~of a beer and wine retailer's permit, mixed beverage permit, private club registration permit, or retail dealer's on-premise license~~] shall furnish sales data or, if not available, projection of sales for the location at which the license or permit is located or will be located. The projection or sales data should include a sufficient breakdown of sales into the categories of food, alcoholic beverages, and other major categories of sales at the location.

[~~(c) Holders of a food and beverage certificate are not subject to the provisions of this section; however, the holders of wine and beer retailer's permits and retail dealer's on-premise licenses are subject to record keeping provisions set forth in §33.5 of this title (relating to Food and Beverage Certificate).~~]

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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Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3489

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SUBCHAPTER C. LICENSE AND PERMIT ACTION

16 TAC §33.34

The Texas Alcoholic Beverage Commission proposes new §33.34, relating to Reporting Permit or License Changes.

Currently, permittees and licensees report any changes to the information provided in their original application (or most recent renewal application) at the time of renewal. This complicates, and thus slows, the processing of renewal applications. In addition, if a change occurs that would disqualify a permit or license

holder, the commission may not be aware of it until the end of the two-year term of the permit or license. Proposed new §33.34 establishes timelines for reporting changes prior to renewal.

Proposed subsection (a) provides the reason for the rule and the statutory authority for it. It also establishes that the rule applies to changes in the information that was provided to the commission in connection with an original application, or changes to the most recent information that has been provided to the commission.

Proposed subsection (b) sets forth the types of changes that must be reported within 30 days following the date the change occurred, including changes to the type of business, contact information, criminal history, property ownership, arrangements with management companies or concession companies, the employer of certain agent permittees or licensees, or (in most circumstances) the organization (as that term is defined by Business Organizations Code §1.002(62), which includes corporations, partnerships, limited liability companies, etc.). Certain organizational changes that fall under proposed subsection (d) have a different timeline.

Proposed subsection (c) provides that changes to the corporate control of a mixed beverage permittee (as described in Alcoholic Beverage Code §28.04) or to the tradename of any permit or license must be reported prior to the date the change will occur.

Proposed subsection (d) provides that a change to a business entity that is described in Alcoholic Beverage Code §11.12 or §61.14 must be reported not later than the 11th day preceding the date the change will occur, as prescribed by those sections of the Code.

Proposed subsection (e) refers to two types of changes (a change of the mailing address or of the licensed or permitted location) that are subject to the timelines established by other commission rules.

Proposed subsection (f) provides that all changes subject to the section must be reported on forms prescribed by the commission.

Proposed subsection (g) clarifies that nothing in the section restricts the commission's authority under Alcoholic Beverage Code §5.32 to get necessary information at any time.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on local government attributable to it. There should be no fiscal impact on state government.

The proposed new rule will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. The proposed new rule simply establishes new timelines for reporting information that is already being reported at the time of renewal.

There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the commission will have more current information about its permittees and licensees, which will help ensure that they are qualified to hold their permits or licenses. In addition, the processing of renewal applications should be expedited.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rule on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed new rule affects Alcoholic Beverage Code §§5.31, 5.32, 11.08, 11.12, 28.04, 61.09 and 61.14 and Business Organizations Code §1.002(62).

§33.34. Reporting Permit or License Changes.

(a) In order to process renewal applications efficiently and to assure that permittees and licensees are qualified throughout the term of their permits or licenses, the commission prescribes the following reporting timelines for changes to information that was provided in connection with an original application or for changes to the most recent information that has been reported to the commission. For the reasons recited above, the commission finds that the timelines are necessary to accomplish the purposes of the Alcoholic Beverage Code pursuant to Alcoholic Beverage Code §5.32.

(b) Any of the information described in this subsection that changes from the information provided in the original application, or that was provided in the most recent reported change to the commission, must be reported to the commission within 30 days following the date the change occurred:

(1) the addition or removal of a person whose name was included on the original application or whose name would be required if a new original application was being submitted, regardless of the title, position or ownership held;

(2) a change to the type of business;

(3) a change to a phone number or email address;

(4) a change to a person's criminal history that affects their qualifications to hold a permit or license;

(5) a change of the owner of the premises, a sublessor, a management company, or a concession company, or to the terms of any agreements with any such persons;

(6) a change of the employer of a holder of a Distiller's Agent's Permit, an Agent's Permit, a Manufacturer's Agent Permit, or an Agent's Beer License; or

(7) a change of organization as that term is defined in Business Organizations Code §1.002(62), other than a change of business entity described in Alcoholic Beverage Code §11.12 or §61.14 which is subject to the requirements of subsection (d) of this section.

(c) Any of the information described in this subsection that changes from the information provided in the original application, or that was provided in the most recent reported change to the commission, must be reported to the commission prior to the date the change will occur:

(1) a change in corporate control pursuant to Alcoholic Beverage Code §28.04; or

(2) a change of tradename.

(d) A change of business entity described in Alcoholic Beverage Code §11.12 or §61.14 must be reported not later than the 11th day preceding the date the change will occur.

(e) This section does not apply to:

(1) a change of mailing address, which is subject to the requirements of §33.33 of this Title; or

(2) a change in the licensed or permitted location pursuant to Alcoholic Beverage Code §11.08 or §61.09, which is subject to the requirements of §33.13 of this Title.

(f) All changes subject to this section must be reported on forms prescribed by the commission.

(g) Nothing in this section limits the commission's authority to request information from a permittee or licensee at any time to determine if a change has occurred.

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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Martin Wilson
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CHAPTER 35. ENFORCEMENT

SUBCHAPTER A. TRANSPORTATION OF LIQUOR

16 TAC §35.2

The Texas Alcoholic Beverage Commission proposes amendments to §35.2, relating to Importation of Liquor.

Section 35.2 addresses the transportation by holders of carrier permits or private carrier permits of liquor imported into the state. Although both types of carriers are required by subsection (b) to have invoices covering a shipment of liquor into the state, subsection (c) only applies its obligation regarding the specificity of such an invoice to private carrier permittees. Similarly, subsection (d) only imposes the obligation to use the most direct route practical on private carrier permittees.

The proposed amendments change the title of the section to more precisely reflect that the substance of the rule deals with the transportation, rather than the actual importation, of liquor. The proposed amendments also apply the obligations imposed by subsections (c) and (d) to any type of carrier.

Section 35.2 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because all carriers transporting liquor will be subject to the same requirements.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 41.01 and 41.02, and Government Code §2001.039.

§35.2. Transportation of Imported [~~Importation of~~] Liquor.

(a) This rule relates to liquor imported into the state under the authority of §§41.01(a) or 42.01(a) of the Alcoholic Beverage Code.

(b) Liquor imported into the state for resale may only be transported by the holder of a carrier's permit or a private carrier's permit. Shipments of liquor into the state must be accompanied by a copy of the invoice covering that liquor.

(c) Non-resident sellers delivering liquor for importation to any class of [~~private~~] carrier permittees shall cause the invoice covering that shipment of liquor to show delivery to the [~~private~~] carrier.

(d) All classes of [~~Private~~] carriers shall transport liquor by the most direct route practical to the place of destination.

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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Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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SUBCHAPTER D. PLACE OR MANNER

16 TAC §35.32

The Texas Alcoholic Beverage Commission proposes amendments to §35.32, relating to Reporting a Breach of the Peace.

Section 35.32 addresses the procedures to be followed by a permittee or licensee who is reporting to the commission a breach of the peace that has occurred at a licensed or permitted location. Subsection (c) describes the methods by which such reports may be made.

The proposed amendments to subsection (c) update the commission's e-mail address. Also, proposed new paragraph (5) would allow reports to be made using a commission-authorized mobile application. The commission anticipates rolling out such an application soon.

The commission intends to review the remainder of §35.32 at a later date under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because there will be another convenient means of filing breach of peace reports, thus removing a possible impediment to making these required filings.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31.

§35.32. Reporting a Breach of the Peace.

(a) This section relates to Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31).

(b) Except as provided in this subsection, a permittee or licensee shall report to the commission a breach of the peace on a licensed premises as soon as possible, but not later than five calendar days after the incident. If a shooting, stabbing or murder, or an incident involving serious bodily injury, occurs on the licensed premises, the permittee or licensee shall report the breach of the peace not later than 24 hours from the time of the incident.

(c) Unless the report is required to be made in a specific manner pursuant to subsection (d) of this section, the report required by this section shall be made:

(1) in person at any commission office;

(2) by facsimile transmission to the appropriate commission office;

(3) through the commission's website; [~~or~~]

(4) by e-mail to breachofpeace@tabc.texas.gov; or [~~"breachofpeace@tabc.state.tx.us."~~]

(5) by a commission-authorized mobile application.

(d) The administrator or administrator's designee may require, in writing, that a permittee or licensee make any reports required by this section in a specific manner as instructed, if the permittee or licensee has previously violated Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(31).

(e) At a minimum, the report required by this section shall include the information required in paragraphs (1) - (9) of this subsection, but may include other information the person making the report wishes to include:

(1) the date and time of the report;

(2) the date and time of the incident being reported;

(3) the trade name of the licensed premises where the incident occurred;

(4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;

(5) the name of the person filing the report, that person's relationship to the holder of the permit or license, and contact information for that person;

(6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the permit or license to answer questions from the commission about the incident, that person's relationship to the permit or license holder, and contact information for that person;

(7) a brief description of the incident;

(8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and

(9) the names and contact information of any witnesses to the incident (if known).

(f) For purposes of subsection (b) of this section and subject to the provisions of subsection (g) of this section, a reportable "breach of the peace" occurs when law enforcement or emergency medical services personnel respond to the licensed premises, or when a disturbance is created on the licensed premises by a person:

(1) shooting, stabbing or murdering a person;

(2) causing bodily injury to another person;

(3) threatening another person with a weapon;

(4) discharging a firearm on the licensed premises; or

(5) destroying the permittee's or licensee's property, if the incident is reported by the permittee or licensee to a law enforcement agency.

(g) For purposes of this section:

(1) conduct identified in subsection (f) of this section (other than a shooting, stabbing or murder, or an incident involving serious bodily injury) creates a "disturbance", and therefore is a reportable breach of the peace, when it:

(A) occurs at a time when the permittee or licensee, or any person allowed by the permittee or licensee, is on the licensed premises; and

(B) interferes with, interrupts, or intrudes upon the operation or management of the licensed premises;

(2) a shooting, stabbing or murder, or an incident involving serious bodily injury, on the licensed premises is always a "disturbance", and therefore is always a reportable breach of the peace;

(3) a "licensed premises" is as defined in Alcoholic Beverage Code §11.49;

(4) a "permittee" is as defined in Alcoholic Beverage Code §1.04(11); and

(5) a "licensee" is as defined in Alcoholic Beverage Code §1.04(16).

(h) A permittee or licensee may not be held administratively liable for failing to file a report or failing to file a timely report under this section if the permittee or licensee can demonstrate that he had no knowledge, nor in the exercise of reasonable care should have had knowledge, of the alleged breach of peace on the licensed premises.

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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CHAPTER 39. PORT OF ENTRY

16 TAC §39.1

The Texas Alcoholic Beverage Commission proposes amendments to §39.1, relating to Tax Stamps.

Section 39.1 applies to stamps used in connection with the commission's tax collection activities at ports of entry. Subsections (a) and (b) address the liability of commission representatives relating to the value of the stamps and the funds collected for their issuance. Subsections (c) and (d) address classes of stamps and types of beverages.

The commission has determined that the rule is archaic and proposes amendments to make the section more current and useful, including a change to the title of the section.

The proposed amendments to subsection (a) state the commission's statutory authority regarding the use of stamps to demonstrate the payment of taxes.

The proposed amendments to subsection (b) clarify that alcoholic beverages imported into the state for personal consumption must pay the applicable state tax plus a $3.00 administrative fee. The proposed amendments also provide that the posted tax rates will include the administrative fee.

The proposed amendments to subsection (c) provide that the payment of the fees and taxes described in subsection (b) must be documented by a tax stamp.

The proposed amendments delete subsection (d) as unnecessarily duplicative of the Alcoholic Beverage Code §1.04(4) definition of "illicit beverage."

Section 39.1 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for a rule addressing taxation at ports of entry continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the statutory authority for the rule will be stated, obsolete requirements will be removed from the commission's rules, and personal importation of alcoholic beverages will be addressed.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 107.07, 201.71, and 201.81 and Government Code §2001.039.

§39.1. Personal Importation [~~Tax Stamps~~].

(a) This section applies to alcoholic beverages imported into this state for personal use under the authority of Alcoholic Beverage Code §§107.07, 201.71 and 201.81. [~~The commission representative in charge of each port of entry shall be accountable to the commission on his bond for the value of all stamps delivered to him.~~]

(b) All alcoholic beverage containers imported into Texas for personal consumption are subject to the state tax and a $3.00 administrative fee. This administrative fee shall be included in the posted tax rates. [~~Funds received by the commission from the issuance of such stamps shall be deposited by the commission representative in charge~~

~~at each respective port of entry in a bank or banks designated by the administrator and shall be electronically transferred to the State Treasury by the commission.~~]

(c) Payment of the fees and taxes must be documented by a tax stamp. [~~It shall be unlawful for any person to affix a state tax stamp to any alcoholic beverage container unless such stamp as indicated by its class corresponds with the type of beverage in such container.~~]

~~[(d) Any alcoholic beverage to which a stamp of a different class has been affixed shall be deemed an illicit beverage and subject to confiscation.]~~

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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CHAPTER 41. AUDITING
SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.28

The Texas Alcoholic Beverage Commission proposes amendments to §41.28, relating to Sale and Delivery of Beer to Retail Premises and Private Clubs.

Section 41.28 addresses transporting beer through a dry area and consummating its sale at a retailer's premise or a private club located in a wet area.

The proposed amendments clarify the language of the rule and include references to additional authorized sellers who may engage in the activity.

Section 41.28 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the language of the rule will be clearer.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.28. Sale and Delivery of Beer to Retail Premises and Private Clubs.

(a) Beer intended to be delivered in sales transactions consummated at a licensed retailer's place of business or at a private club located in a wet area may be transported through dry areas [~~or through any incorporated city or town or any part thereof wherein the manufacture, storage, sale, delivery, or transportation of liquor or beer is prohibited by charter or ordinance~~] upon vehicles owned or leased and operated [~~in such transportation~~] by the holder of a manufacturer's self-distribution license, any type of [~~a licensed manufacturer or~~] distributor license, or a brewpub license who is authorized to sell to retailers or private clubs located in wet areas. The[~~; provided, however, that this shall apply only to the transportation of beer from one wet area for sale and delivery in another wet area; and provided further that the~~] person directly in charge of the vehicle used in such transportation must possess [~~shall have in his possession~~] a written statement furnished and signed by the authorized seller showing [~~shipper that such beer is delivered into the charge of said person,~~] the quantity of beer so delivered to such person, the origin thereof, and the fact that said beer is intended for delivery only upon any sale that may be consummated by such person acting as agent for the authorized seller [~~shipper~~] at the place of business of a licensed retail dealer or a private club located in a wet area.

(b) A [~~It shall be unlawful for any~~] person into whose charge beer is delivered as [~~herein~~] provided in this section and who is delivering and obtaining payment for [~~to sell or deliver~~] any such beer at [~~or consummate any sale of beer except to~~] a licensed retailer's [~~retailer at his~~] place of business or at [~~to~~] a private club located in a wet area must at that time provide a sales invoice for such beer that must be signed by the purchaser of the beer. The invoice must show the[~~. All such sales shall be recorded on sales tickets indicating the~~] purchaser, the quantity of each type of container sold, and the price. A copy of such invoice [~~sales ticket~~] shall be furnished to the purchaser at the time of sale and a copy of the signed sales invoice must [~~shall~~] be furnished to the authorized seller [~~shipper~~] of such beer within 24 hours from the time of its delivery.

(c) A [~~It shall be unlawful for any~~] person into whose charge beer is delivered as [~~herein~~] provided in this section must possess the signed sales invoices required by subsection (b) [~~to make any false report of a delivery or to fail to have in his possession all beer so delivered to him or in lieu thereof the proper sales tickets herein required~~] for any such beer that is not in the person's [~~his~~] possession. The[~~, or to fail to exhibit his~~] records pertaining to any such shipment must be shown to [~~upon the demand of~~] any representative of the commission or any peace officer on demand.

~~[(d) It shall be unlawful for any manufacturer or distributor to fail to require of each person into whose charge beer is delivered, as~~

~~herein provided for redelivery in sales transactions consummated at the place of business of a licensed retailer or private club located in a wet area, to account for any beer so delivered by him within 24 hours after any such delivery is made; or to fail to require said person to deliver to said manufacturer or distributor a proper sales ticket as herein required covering each sale and delivery of beer made by such person; or to fail to make and keep a record of each such sale of beer in the manner required in the Alcoholic Beverage Code, §62.05 or §64.04.]~~

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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Assistant General Counsel
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16 TAC §41.30

The Texas Alcoholic Beverage Commission proposes amendments to §41.30, relating to Sale and Delivery of Ale to Retail Premises.

Section 41.30 addresses transporting ale through a dry area and consummating its sale at a retailer's premise or a private club located in a wet area.

The proposed amendments clarify the language of the rule and include references to additional authorized sellers who may engage in the activity.

Section 41.30 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the language of the rule will be clearer.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.30. Sale and Delivery of Ale to Retail Premises and Private Clubs.

(a) The [~~It shall be lawful for the~~] holder of a brewpub license who is authorized to sell to retailers or private clubs located in wet areas, wholesaler's permit, any type of [~~or~~] Class B wholesaler's permit, or a brewer's self-distribution permit may [~~who is also the holder of a private carrier's permit to~~] transport ale under a private carrier permit and sell it [~~ale~~] to licensed retailers or private clubs located in wet areas [~~holders of package store permits, wine only package store permits, wine and beer retailer's permits, and mixed beverage permits~~] without obtaining previous purchase orders from such licensed retailers or private clubs located in wet areas.[~~; provided, however, that no invoice shall be required for the transportation of ale unless in the course of such transportation it is necessary to cross territory in which the manufacture, sale and distribution of ale is prohibited.~~]

(b) Ale intended to be delivered in sales transactions consummated at a licensed retailer's place of business or at a private club located in a wet area may be transported in a vehicle permitted under a private carrier permit through dry areas [~~or through any incorporated city or town or any part thereof wherein the manufacture, storage, sale delivery or transportation of ale is prohibited by charter or ordinance upon vehicles owned and operated in such transportation~~] by the holder of a brewpub license authorized to sell to retailers or private clubs located in wet areas, wholesaler's permit, any type of [~~or~~] Class B wholesaler's permit, or a brewer's self-distribution permit. The person [~~who is of a private carrier's permit; provided, however, that this shall apply only in the transportation of ale from one wet area for sale and delivery in another wet area; and provided further that such person~~] directly in charge of the vehicle used in such transportation must possess [~~shall have in his possession~~] a written statement furnished and signed by the seller [~~shipper~~] showing [~~that such ale is delivered into the charge of said person,~~] the quantity of ale so delivered to such person, the origin thereof, and the fact that said ale is intended for delivery only upon any sale that may be consummated by such person acting as agent for the seller [~~shipper~~] at the place of business of a licensed retailer or at a private club located in a wet area [~~retail dealer~~].

(c) A [~~It shall be unlawful for any~~] person into whose charge ale is delivered as [~~herein~~] provided in this section and who is delivering and obtaining payment for [~~to sell or deliver any~~] such ale [~~upon any sale consummated~~] at the retailer's or private club's place of business must at that time provide a sales invoice for such ale that must be signed by the purchaser of the ale. The invoice must show the purchaser, [~~without then and there obtaining a signed receipt for such ale redelivered by him, showing~~] the quantity of each type of container sold, and [~~thereof,~~] the price [~~at which the same is sold~~], and whether such sale is made upon cash or credit terms. The person must[~~; or to fail to make~~] report the delivery and provide a copy of the signed sales invoice to the seller [~~shipper~~] of such ale within 24 hours from the time of its delivery[~~, or to make any false report of such delivery~~].

(d) A [~~It shall be unlawful for any~~] person into whose charge ale is delivered as [~~herein~~] provided in this section must possess the signed sales invoices required by subsection (c) [~~to fail to have in his possession all ale so delivered to him or in lieu thereof the receipts~~

~~herein required~~] for any such ale that is not in the person's [~~his~~] possession. The[~~, or to fail to exhibit his~~] records pertaining to any such shipment must be shown to [~~upon the demand of~~] any representative of the commission or any peace officer on demand.

~~[(e) It shall be unlawful for the holder of a wholesaler's permit or Class B wholesaler's permit to fail to require of each person into whose charge ale is delivered, as herein provided for redelivery in sales transactions consummated at the place of business of a licensed retailer, to account for any ale so delivered by him within 24 hours after any such delivery is made; or to fail to require said person to deliver to said wholesaler or Class B wholesaler a receipt as herein required covering each sale and delivery of ale made by such person; or to fail to make and keep a record of every such sale of ale in the manner required in the Alcoholic Beverage Code, §206.01.]~~

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 May 25, 2016.

TRD-201602566
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.48

The Texas Alcoholic Beverage Commission proposes amendments to §41.48, relating to Changes Relating to Control.

Section 41.48 applies to mixed beverage permits and private club permits. It defines "effective control" and "managerial control" and addresses how they relate to qualifications for holding a mixed beverage or private club permit. Subsection (d) describes certain changes relating to these permits that must be reported to the commission.

The commission is separately proposing a new §33.34 which sets forth timelines for reporting certain changes relating to permits and licenses. To avoid any conflict in the reporting obligations of mixed beverage or private club permittees, the commission proposes to amend §41.48 by deleting subsection (d) simultaneously with its proposal for new §33.34.

The commission intends to review the remainder of §41.48 at a later date under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because there will not be a conflict in the reporting obligations of certain permittees.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31.

§41.48. Changes Relating to Control.

(a) Definitions. Any terms defined in the Alcoholic Beverage Code shall have the meaning assigned to it by such code subject to modifications expressed in this section.

(1) Any change of--Any one of the following:

(A) any addition of a person;

(B) any removal of a person; and

(C) any transfer of title, responsibility, dominion or power from one or more persons to another person or persons.

(2) Effective control--Shall include, but is not limited to, situations in which a person (or persons) is in fact able to direct the general course of corporate affairs, even though such person or persons may not hold controlling ownership.

(3) Managerial control--With reference to any business conducted under authority of a permit, this term severally includes, but is not limited to, each of the following:

(A) having discretion to formulate and institute operating policy regarding purchases, disbursements, maintenance of records or handling of funds;

(B) having authority to hire or fire personnel; and

(C) having general supervisory authority over the operation of the business on a regular basis.

(4) Permit--Shall mean only a mixed beverage permit or private club permit and subsidiary permits of either. The original permit and all renewals thereof shall constitute a single, continuous authority within the meaning of this section.

(b) Disqualification. Any corporation which by any means is effectively controlled, jointly or severally, by a person or persons not then individually qualified for the issuance of a mixed beverage permit of his own, shall be disqualified to hold a mixed beverage permit.

(c) Change of control.

(1) Each corporation holding a mixed beverage permit shall report to the commission any change of effective control.

(2) Each corporation or unincorporated association holding a private club permit shall report to the commission any change of effective control.

[~~(d) Reporting corporate change. Regardless of whether or not any change of control results therefrom, each corporation holding a mixed beverage permit and each holder of a private club shall report to the commission the following:~~]

[~~(1) any change of officers;~~]

[~~(2) any change of directors;~~]

[~~(3) if a corporation, any change of persons who severally hold not less than 10% of the outstanding shares of voting stock in such corporation;~~]

[~~(4) if a corporation, any change of persons who severally hold not less than 25% of the outstanding shares of nonvoting stock in such corporation;~~]

[~~(5) any creditor of the corporation or unincorporated association holding demand for term certain obligations of such corporation in a cumulative amount equal or exceeding 25% of the book value of the assets of the corporation; and~~]

[~~(6) any change of persons exercising managerial control of the business conducted under authority of the permit.~~]

(d) [~~(e)~~] Disclosure. Upon request of the administrator, any corporation holding a mixed beverage permit, or any holder of a private club permit, shall disclose to the commission any information which may assist the administrator in determining whether or not any change has occurred in the control of that corporation or unincorporated association.

(e) [~~(f)~~] Determination of effective control. If the administrator has reason to believe that a change may have occurred in the effective control of any corporation holding a mixed beverage permit [~~Mixed Beverage Permit~~], he may hold hearings to determine if such a change has occurred, and further to determine whether or not said corporation is presently, or was at any time within the present or next proceeding permit term, disqualified for renewal of said permit by virtue of any person or persons jointly or severally controlling such corporation.

(f) [~~(g)~~] Cancellation. If upon notice and hearing the administrator finds that a change of control has occurred, and further finds that at any time within the present or next preceding permit term the persons jointly or severally controlling such corporation were, while so situated, not qualified for the issuance of a mixed beverage permit individually, the administrator shall immediately cancel said permit; provided, however, that if the administrator affirmatively finds to his satisfaction that no participant acted with intent to circumvent this rule or related provisions of the Alcoholic Beverage Code, he shall not cancel said permit but may, in his discretion, suspend said permit for a period not exceeding 60 days or dismiss the cause; and the administrator is hereby authorized in such cases to issue a conditional order, but no conditional status shall exceed one year beyond the entry of the order.

(g) [~~(h)~~] Affidavit. In each instance in which this section requires information to be reported to the commission, such information shall be conveyed by affidavit from an officer of the corporation or unincorporated association and shall be due in the offices of the commission within 10 days of the event, unless the administrator shall allow or direct a different method or time.

(h) [~~(i)~~] Reporting chain of control. In the event that a corporation holding a permit is jointly or severally controlled by another corporation, the corporation holding a permit shall report to the commission the same information about such other corporation as the permittee is required to report about itself. In the event that such other corporation is, in turn, jointly or severally controlled by a third corporation, and further regarding any additional chain of control in like manner, the corporation holding the permit shall report to the commission information about each corporation in the chain of control the same as is required of the corporation holding the permit.

(i) [~~(j)~~] Failure to provide information. Upon notice and hearing, the administrator may suspend for a period not exceeding 60 days, or cancel, any mixed beverage permit or private club permit if he finds that the permittee has failed or refused to provide any information required by this section.

(j) [~~(k)~~] Timeliness. Upon notice and hearing, the administrator may suspend for a period not exceeding 60 days, or cancel, any mixed beverage permit or private club permit if he finds that the permittee has failed or refused to provide information required by this section in the time or manner prescribed by this section.

(k) [~~(l)~~] Privilege. The reports required by this section shall not be deemed "periodic reports" within the meaning of §5.48 of the Alcoholic Beverage Code, and, unless otherwise made public under the provisions of the code, all such information shall be protected by the privilege declared in §5.48 of the Alcoholic Beverage Code.

(l) [~~(m)~~] Administrator's discretion. The administrator shall have discretion to modify the application of this section to holders of private club exemption certificate permits, but he shall at all times invoke such requirements herein as he may deem necessary to ascertain that such permits are in fact controlled by the organization to whom the permit is issued.

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 May 24, 2016.

TRD-201602534
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.49

The Texas Alcoholic Beverage Commission proposes amendments to §41.49, relating to Private Clubs--Temporary Memberships.

Section 41.49 addresses requirements relating to temporary memberships at private clubs pursuant to Alcoholic Beverage Code §32.09.

The proposed amendments eliminate a reference in subsection (c) to typewriters as a means of filling blanks on temporary membership cards. In its place the proposed amendments impose a requirement that the name of the temporary member, the name of the club, the city and the time period covered be legibly completed on the temporary membership card.

In subsection (d), the proposed amendments substitute the title of executive director for administrator, consistent with Alcoholic Beverage Code §5.11(b).

Section 41.49 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commis-

sion has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because references within the rule will be accurate.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §32.09(c), which provides that temporary memberships at private clubs shall be governed by rules promulgated by the commission.

The proposed amendments affect Alcoholic Beverage Code §5.31 and §32.09 and Government Code §2001.039.

§41.49. Private Clubs--Temporary Memberships.

(a) This rule relates to §32.09 of the Alcoholic Beverage Code.

(b) Temporary membership card.

(1) A holder of a private club registration permit shall issue a temporary membership card to any person who intends to be served alcoholic beverages on its licensed premises, except a person who is a member of the club, or a guest of a member of the club, or, if the club is located in a hotel, a patron of the hotel who is at the hotel for overnight lodging and is a guest of the hotel manager who is a member of the club.

(2) The word "guest" shall mean an individual who is personally known by the member or one of the member's family and who is admitted to the club premises by personal introduction of, or in the physical company of, the member or one of the member's family.

(3) A holder of a private club registration permit shall prepare a record with entries made in chronological order showing the following about temporary membership cards issued: the date issued, the name of the person to whom the card was issued, and the serial number of the temporary membership card.

(c) A holder of a private club registration permit shall not serve an alcoholic beverage to a person who holds a temporary membership card, unless the temporary card is as follows:

(1) Issued by the commission to the club.

(2) Issued by the manager of the club, or other person in charge of the premises of the club, to the temporary member.

(3) The blanks, except signature blanks, on the temporary membership card have been properly and legibly completed to include the name of the temporary member, club name, city, and time period covered. [~~filled by use of a typewriter or by printing in ink.~~]

(4) Signed at the time of issuance by the manager of the club or other person in charge of the licensed premises.

(5) In possession of the temporary member to whom issued.

(d) Remittance.

(1) A temporary membership card shall not be issued to a club by the commission until the commission has received advance remittance of the effective fee established in the Texas Alcoholic Beverage Code. Such remittance shall be made only by cashier's check, certified check, corporate check, or United States postal money order payable to the Texas Alcoholic Beverage Commission.

(2) Temporary membership cards shall be issued by the commission upon written request of a club on forms provided by the commission together with the proper remittance.

(3) The commission shall issue temporary membership cards to any holder of a private club registration permit only in quantities of at least 50 cards at one time. If larger quantities are requested, the same shall be issued only in multiples of 50; provided, however, that the Executive Director [~~administrator~~] is hereby empowered to authorize different multiples if necessary to conform with changes in the method of production of temporary membership cards.

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 May 25, 2016.

TRD-201602573
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.51

The Texas Alcoholic Beverage Commission proposes amendments to §41.51, relating to Private Clubs--Purchases.

Section 41.51 addresses pool systems used by private clubs to purchase alcoholic beverages.

The proposed amendments add the words "pool systems" to the title to accurately reflect the scope of the rule as amended and add a new subsection (b) describing the authorized operation of pool replacement systems. Subsequent subsections are appropriately renumbered, and subsection (a) is clarified to appropriately describe the authorized operation of pool equal assessment systems.

The proposed amendments make appropriate changes in newly renumbered subsection (c) to clarify that its requirements apply to both types of pool systems and make a grammatical change in newly renumbered subsection (d) to accurately reflect the intent of the requirement.

Section 41.51 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because it will address both types of pool systems used by private clubs to purchase alcoholic beverages.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.texas.gov/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.51. Private Clubs--Purchases--Pool Systems.

(a) Each holder of a private club registration permit operating under a [~~the~~] pool system that requires [~~shall require~~] each member of the pool to participate equally in the purchase and replacement of [~~all~~] alcoholic beverages [~~and the replacement of all alcoholic beverages~~] shall purchase all such alcoholic beverages [~~be purchased~~] with money assessed and collected in advance from each member equally. The assessment fee must be initially set by the club's by-laws or governing body and may be increased or decreased as needed by the club's governing body. Any increase or decrease in the assessment fee must be approved by the governing body and recorded in the club's minutes before the fee can be changed. No money from any other source may be used to purchase or replace alcoholic beverages purchased for use under a [~~the~~] pool equal assessment system.

(b) The holder of a private club registration permit may elect to operate under a pool replacement system by which a designated percentage of daily service charges collected for the service of alcoholic beverages is set aside to replace alcoholic beverages served to club members and their guests, and to temporary membership card holders. The percentage must initially be set by the club's by-laws or governing body and may be increased or decreased as needed by the club's governing body. Any increase or decrease in the percentage must be approved by the governing body and recorded in the club's minutes before the percentage can be changed. No money from any other source may be used to purchase or replace alcoholic beverages purchased for use under a pool replacement system.

(c) [~~(b)~~] Each holder of a private club registration permit operating under the pool system using either equal assessments or a replacement percentage shall prepare a record showing separately the pool assessments or replacement funds collected from the membership [~~each member~~] and the disbursements of these collections for purchases of alcoholic beverages.

(d) [~~(c)~~] The [~~Each~~] holder of a private club registration permit or a [~~and~~] private club exemption certificate permit may purchase wine only from [~~only~~] the holder of a local distributor's permit.

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 May 25, 2016.

TRD-201602578
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 206-3489

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §70.30

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 70, §70.30, regarding the Industrialized Housing and Buildings program.

The proposed amendment is to implement Senate Bill 1264 (S.B. 1264), 84th Legislature, Regular Session (2015), which amended the Occupations Code, Chapter 1202, to change a size limitation affecting the regulation of industrialized housing and buildings. The proposed amendment is necessary to reflect the change in law made by S.B. 1264, which took effect September 1, 2015.

The proposed amendment to §70.30 reflects the change in statute made by S.B. 1264 that expands the applicability of the industrialized housing and buildings rules to include structures up to four stories or 60 feet in height from the previous limitation of three stories or 49 feet in height.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rule. The proposed amendment does not impose new fees or other expenses or cost to persons electing to construct or build industrial housing and buildings to the new heights or maximum number of floors. There is no estimated gain or loss in revenue to the state as a result of enforcing or administering the proposed rule.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendment is in effect, the public

will benefit by the rules acknowledging that the statute provides for having access to larger industrialized housing and buildings.

There will be no anticipated economic effect on small and micro-businesses that are required to comply with the rule as proposed. Any impact that may occur would be a direct result of the statutory change made by S.B. 1264 and not a result of this proposed rule.

Since the agency has determined that the proposed amendment will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to *erule.comments@tdlr.texas.gov.* The deadline for comments is 30 days after publication in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Chapters 51 and 1202, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposal.

§70.30. Exemptions.

(a) The scope of this chapter is limited by Chapter 1202; accordingly, it does not apply to:

(1) - (3) (No change.)

(4) any residential or commercial structure which is in excess of four [~~three~~] stories or 60 [~~49~~] feet in height;

(5) - (7) (No change.)

(b) (No change.)

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 May 25, 2016.

TRD-201602540
Brian E. Francis
Deputy Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 463-8614

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.64

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.64, Content Requirements for Qualifying Real Estate Courses, in Chapter 535, General Provisions.

The amendments are proposed to provide consistency and better quality in Real Estate Marketing qualifying courses and are recommended by the Commission's Education Standards Advisory Committee.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be better educated license holders and therefore greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to *general.counsel@trec.texas.gov.* The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.64. Content Requirements for Qualifying Real Estate Courses.

(a) (No change.)

(b) Elective qualifying courses. To be approved by the Commission, the following elective qualifying courses must contain the content outlined below:

(1) Property Management, which shall contain the following topics, the units of which are outlined in the PROPM-0, Qualifying Real Estate Course Approval Form, Property Management, hereby adopted by reference:

(A) Professional Property Management - 120 minutes;

(B) Feasibility of Property Management - 90 minutes

(C) Marketing Plan - 60 minutes;

(D) Management Operations - 130 minutes;

(E) Owner Relations - 120 minutes;

(F) Market Analysis and Management of Housing - 95 minutes;

(G) Leases - 100 minutes;

(H) Tenant Relations - 115 minutes;

(I) Federal, State and Local Laws - 230 minutes;

(J) Maintenance and Construction - 90 minutes;

(K) Commercial Property Management - 150 minutes;

(L) Risk and Environmental Issues - 110 minutes; and

(M) Safety and Security Issues for Property Managers and Staff - 90 minutes;

(2) Real Estate Marketing, which shall contain the following topics, the units of which are outlined in the REM-0, Qualifying Real Estate Course Approval Form, Property Management, hereby adopted by reference:

(A) Real Estate Marketing - 80 minutes;

(B) The Marketing Concept - 80 minutes

(C) Marketing Research and Data Analysis - 150 minutes;

(D) Prospecting and Target Marketing - 80 minutes;

(E) Technology and Online Marketing - 100 minutes;

(F) Social Media Marketing - 120 minutes;

(G) Product and Pricing Strategies - 180 minutes;

(H) Compensation Models - 60 minutes;

(I) Characteristics of a Successful Sales Agent - 150 minutes;

(J) Understanding Clients - 90 minutes;

(K) Negotiating and Selling Skills - 120 minutes;

(L) Steps to Executing Agreements - 50 minutes;

(M) State and Federal Laws - 90 minutes; and

(N) Ethics and Real Estate Professionalism - 150 minutes;

(3) [~~(2)~~] other than Property Management, meet the requirements of §1101.003 of the Act; or

(4) [~~(3)~~] Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to:

(A) repair-related contract forms and addenda;

(B) inspector and client agreements;

(C) inspection standards of practice and standard inspection report form;

(D) tools and procedures;

(E) electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations); and

(F) structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

(c) - (d) (No change.)

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 May 24, 2016.

TRD-201602515

Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 936-3092

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

The Texas Board of Veterinary Medical Examiners (Board) proposes amendments to §573.10, concerning Supervision of Non-Veterinarians, §573.14, concerning Alternate Therapies, §573.15, concerning Use of Ultrasound in Diagnosis, §573.29, concerning Complaint Information, §573.41, Use of Prescription Drugs, §573.44, Compounding Drugs, §573.45, Extra-Label or Off-Label Use of Drugs, §573.51, Rabies Control, §573.52, Veterinarian Patient Record Keeping, §573.53, Equine Dental Provider Patient Record Keeping, §573.65, Proof of Acceptable Continuing Education, and §573.69, Conditions Relative to License Suspension.

In general, the purpose of these amendments to 22 TAC Chapter 573 is to implement changes resulting from the Board's review of the chapter under Texas Government Code §2001.039. The notice of intention to review the chapter was published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8814). No comments were received in response to the notice. The notice of the adopted rule review was published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2180).

Overall, the proposed amendments make clarifications and technical corrections.

The amendment to §573.10 serves to make all items in the list parallel. The amendments to §§573.14, 573.15, and 573.41 conform the term "veterinarian-client-patient relationship" to its appearance in the Veterinary Licensing Act. The amendment to §573.29 clarifies what is required on a licensee's notice to clients about complaint information. The amendments to §573.44 and §573.45 conform the term "food-producing animals" to its appearance in the Veterinary Licensing Act. The amendment to §573.51 modernizes the language of the rule.

The amendments to §573.52 and §573.53 will reflect the original intent of the rule to require a veterinarian or an equine dental provider to maintain patient records for a minimum of five years from the date of the last treatment. The amendments to §573.65 are technical corrections as is the amendment to §573.69.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rules are in effect there are no fiscal implications for state government. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rules as proposed. Ms. Oria has further determined that the amendments to the rules will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be that

the rules in Chapter 573 are clearer for licensees, the public, and Board staff.

Ms. Oria has determined that for the first five-year period the proposed rules are in effect, there will be no additional costs to persons or small businesses who are required to comply with the rules. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendments to the rules from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@veterinary.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register.*

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §§573.10, 573.14, 573.15

The amendments to 22 TAC §§573.10, 573.14, and 573.15 are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the Board shall adopt rules to protect the public; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

§573.10. Supervision of Non-Veterinarians.

(a) - (e) (No change.)

(f) A non-veterinarian shall not perform the following health care services:

(1) surgery;

(2) invasive dental procedures except as allowed for licensed equine dental providers under §573.19 of this title, and as allowed for licensed veterinary technicians under subsection (d)(1) of this section;

(3) diagnosis and prognosis of animal diseases and/or conditions;

(4) prescribing drugs and appliances; or

(5) initiation of [~~initiate~~] treatment without prior instruction by a veterinarian, except in an emergency without expectation of compensation.

(g) - (k) (No change.)

§573.14. Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation.

(a) (No change.)

(b) Treatment using animal chiropractic and other forms of MSM. Animal chiropractic and other forms of MSM may only be performed by the following.

(1) A licensed veterinarian. Animal chiropractic and MSM may be performed by a licensed veterinarian under the following conditions:

(A) a valid veterinarian-client-patient [~~veterinarian/client/patient~~] relationship has been established as defined in the Act;

(B) an examination has been made by the licensee to determine that animal chiropractic/MSM will not likely be harmful to the patient; and

(C) the licensee obtains as a part of the patient's permanent record a signed acknowledgment by the owner or other caretaker of the patient that animal chiropractic or MSM is considered by Texas law to be an alternate therapy.

(2) A non-veterinarian employee or an independent contractor. A non-veterinarian employee or an independent contractor may perform these procedures on an animal under the direct or general supervision of the veterinarian if the conditions in paragraph (1)(A) - (C) of this subsection have been met.

(3) An individual to whom the exceptions of the Act, §801.004, apply.

(c) (No change.)

§573.15. Use of Ultrasound in Diagnosis or Therapy.

(a) - (b) (No change.)

(c) Use of ultrasound by persons who are not licensed veterinarians.

(1) For diagnostic purposes. A person who is not a licensed veterinarian may perform ultrasonography on an animal for diagnostic purposes only if: the person administering the ultrasound is doing so at the request of a licensed veterinarian; the veterinarian has established a veterinarian-client-patient [~~veterinarian/client/patient~~] relationship; and it is the veterinarian who uses the ultrasonography to make a diagnosis.

(2) For therapeutic purposes. A person who is not a licensed veterinarian may perform ultrasonography on an animal for therapeutic purposes only if a veterinarian has: established a veterinarian-client-patient [~~veterinarian/client/patient~~] relationship; made a diagnosis; prescribed ultrasonics as a treatment; and the person administering the ultrasound is doing so at the specific request of a licensed veterinarian.

(d) Prohibited acts. Any person who uses ultrasound on animals in a manner inconsistent with this rule shall be in violation of this rule and the Texas Veterinary Licensing Act.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 305-7563

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.29

The amendment to 22 TAC §573.29 is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(c), which states that the Board shall adopt rules to protect the public; and §801.203, which states that the Board by rule shall establish methods by which consumers and service recipients are notified of how to direct a complaint to the Board.

§573.29. Complaint Information and Notice to Clients.

(a) A licensed veterinarian or licensed equine dental provider shall provide an effective way to inform clients and other visitors to the premises, clinic or hospital of how to file complaints with the Board. The licensee must provide:

(1) the following specific address: Texas State Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942;

(2) the Board's telephone number [~~numbers~~]: (512) 305-7555; fax number: (512) 305-7556; and

(3) a toll-free complaint information number: 1-800-821-3205.

(b) Acceptable forms of providing the information in subsection (a) of this section may include a:

(1) written notice form, with print size of at least 14 point, prominently displayed in the area of each clinic or hospital that is most frequented by the public;

(2) brochure available in the area of each clinic or hospital that is most frequented by the public; or

(3) statement on each written bill, invoice or receipt.

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

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SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §§573.41, 573.44, 573.45

The amendments to 22 TAC §§573.41, 573.44, and 573.45 are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public.

§573.41. Use of Prescription Drugs.

(a) It is unprofessional conduct for a licensed veterinarian to prescribe, administer, dispense, deliver, or order delivered any prescription drug without first having established a veterinarian-client-patient [~~veterinarian/client/patient~~] relationship and determined that such prescription drug is therapeutically indicated for the health and/or well-being of the animal(s). Prescription drugs include all controlled substances in Schedules I - V and legend drugs which bear the federal legends, recognized as such by any law of the State of Texas or of the United States.

(b) It shall be unprofessional conduct and a violation of the rules of professional conduct for a licensed veterinarian to prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person prescription drugs that are not necessary or required for the medical care of animals, or where the use or possession of such drugs would promote addiction thereto. Prescription drugs are defined in subsection (a) of this section.

(c) A licensed veterinarian prescribing, administering, dispensing, delivering, or ordering delivered any prescription drug must comply with the laws, including all rules, of both the United States and the State of Texas, including but not limited to Chapter 483 of the Texas Health and Safety Code.

§573.44. Compounding Drugs.

(a) - (d) (No change.)

(e) Compounding for Food-]Producing Animals.

(1) For animals intended for human consumption, a veterinarian must establish an extended withdrawal interval for the compounded product sufficient to ensure food safety and may not compound from any drugs prohibited for use in food-]producing animals. The withdrawal period must be supported by scientific information, and the veterinarian shall note the method used to determine the withdrawal interval in the patient records.

(2) A veterinarian shall not compound or order a drug compounded if the compounded drug results in violative food residue, or any residue that may present a risk to public health.

(3) Compounding from a human drug for use in food-producing animals is not permitted if an approved animal drug can be used for compounding.

(4) Veterinarians shall ensure that procedures are in place to maintain the identity of treated animals, and shall note those procedures in the patient records.

(f) (No change.)

§573.45. Extra-Label or Off-Label Use of Drugs.

(a) - (c) (No change.)

(d) Extra-Label Drug Use in Food-Producing Animals.

(1) For animals intended for human consumption, a veterinarian must establish an extended withdrawal interval sufficient to ensure food safety. The withdrawal period must be supported by scientific information, and the veterinarian shall note the method used to determine the withdrawal interval in the patient records.

(2) A veterinarian shall not prescribe an extra-label drug in a manner that will result in violative food residue, or any residue that may present a risk to public health.

(3) Veterinarians shall ensure that procedures are in place to maintain the identity of treated animals, and shall note those procedures in the patient records.

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 F. RECORDS KEEPING

22 TAC §§573.51 - 573.53

The amendments to 22 TAC §§573.51, 573.52, and 573.53 are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public.

§573.51. Rabies Control.

(a) - (c) (No change.)

(d) A veterinarian who ceases the practice of veterinary medicine shall deliver to the local health authority all duplicate rabies vaccination certificates issued by the veterinarian within the preceding five-year period. A veterinarian who sells or leases his or her practice to another veterinarian may transfer duplicate rabies certificates with the records of the practice which are transferred to a new owner.

§573.52. Veterinarian Patient Record Keeping.

(a) (No change.)

(b) Maintenance of Patient Records.

(1) Patient records shall be current and readily available for a minimum of five years from [~~the anniversary date of~~] the date of last treatment by the veterinarian.

(2) A veterinarian may destroy medical records that relate to any civil, criminal or administrative proceeding only if the veterinarian knows the proceeding has been finally resolved.

(3) Veterinarians shall retain patient records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(4) Patient records are the responsibility and property of the veterinarian or veterinarians who own the veterinary practice, provided however, the client is entitled to a copy of the patient records pertaining to the client's animals.

(5) If the veterinarian discontinues his or her practice, the veterinarian may transfer ownership of records to another licensed veterinarian or group of veterinarians only if the veterinarian provides notice consistent with §573.55 of this title (relating to Transfer and Disposal of Patient Records) and the veterinarian who assumes ownership of the records shall maintain the records consistent with this chapter.

(c) (No change.)

§573.53. Equine Dental Provider Patient Record Keeping.

(a) (No change.)

(b) Maintenance of Patient Records.

(1) Patient records shall be current and readily available for a minimum of five years from [~~the anniversary date of~~] the date of last treatment by the equine dental provider.

(2) Patient records are the responsibility and property of the equine dental provider, provided however, that equine dental providers shall give copies of records to the owner or caretaker authorizing treatment of the patient at the time of treatment, and shall provide copies of records to the supervising veterinarian on request, within 15 business days of the request.

(3) An equine dental provider may destroy medical records that relate to any civil, criminal or administrative proceeding only if the equine dental provider knows the proceeding has been finally resolved.

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 G. OTHER PROVISIONS

22 TAC §573.65, §573.69

The amendments to 22 TAC §573.65 and §573.69 are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.307 which states that the Board may adopt rules relating to continuing education.

§573.65. Proof of Acceptable Continuing Education.

(a) Acceptable Continuing Education.

(1) Continuing Education hours shall be acceptable if they relate to clinical matters. For veterinary licensees, continuing education hours shall be acceptable if they relate to practice management.

(2) Acceptable continuing education hours shall be earned by:

(A) veterinary licensees and licensed veterinary technicians attending meetings sponsored or co-sponsored by the American Veterinary Medical Association (AVMA), AVMA's affiliated state veterinary medical associations and/or their continuing education organizations, AVMA recognized specialty groups, regional veterinary medical associations, local veterinary medical associations, and AVMA-accredited veterinary medical colleges and veterinary technician programs;

(B) equine dental provider licensees attending meetings sponsored or co-sponsored by the International Association of Equine Dentistry;

(C) veterinary licensees taking correspondence courses that require the licensee to take a test at the conclusion of the course and yield a certificate of completion;

(D) all licensees participating in verifiable, monitored on-line and video programs or other telecommunication discussions that yield a certificate of completion and meet the following minimum standards:

(i) Inclusion of the following interactive experiences:

(I) direct, two-way verbal communication between attendees and the instructor at all times;

(II) direct, two-way verbal communication between attendees at all times; and

(III) visual communication with the instructor;

(ii) The ability to document active participation by attendees through:

(I) verbal interaction and software documentation; and

(II) the use of real time on-line surveys that promote audience interaction and document the attendance and engagement of the participants;

(E) all licensees' self study, through any form of continuing education from which the licensee does not receive a certificate of completion, including reading articles in professional journals or periodicals, listening to audio tapes or CD's or viewing video tapes or similar devices that transmit a video image; or

(F) any other methods approved by the Executive Director and a Board member appointed by the Board president, by an advisory committee appointed by the Board president, or approved for veterinary licensees and licensed veterinary technicians by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB).

(b) - (c) (No change.)

§573.69. Conditions Relative to License Suspension.

If a Board disciplinary action is taken against a licensee that results in the suspension of a license for a specified period of time, the Board shall identify specific conditions (or prohibitions) relative to the suspension. The conditions (or prohibitions) should be clearly stated as part of the negotiated settlement or Board order. The following guidelines will be utilized when specifying the conditions of a license suspension.

(1) - (6) (No change.)

(7) A disciplined licensee [~~Licensee~~] shall abide by the Board's order and conform to all laws, rules, and regulations governing the practice of veterinary medicine and equine dentistry in Texas.

(8) (No change.)

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §573.82

The Texas Board of Veterinary Medical Examiners (Board) proposes new §573.82, concerning Laser Therapy.

Texas Occupations Code §801.151(c)(2) requires the Board to adopt rules to ensure that alternate therapies, including laser therapy, are performed only by a veterinarian or under the supervision of a veterinarian. New §573.82 is proposed to meet that statutory requirement.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there are no fiscal implications for state government. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that the Board's expectations regarding the use of laser therapy are clearly set out.

Ms. Oria has determined that for the first five-year period the proposed rule is in effect, there will be no increase in costs to persons or small businesses who are required to comply with the rule. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@veterinary.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register.*

The new rule is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public and to ensure that laser therapy is performed only by a veterinarian or under the supervision of a veterinarian.

No other statutes, articles or codes are affected by the proposal.

§573.82. Laser Therapy.

(a) Definition. For the purpose of this rule, Laser Therapy is an acceptable therapy through the use of laser or IPL device radiation for the purpose of diagnosis, therapy, or treatment in the practice of veterinary medicine.

(b) Use of Laser Therapy in the treatment of animals. A licensed veterinarian may perform or prescribe Laser Therapy after a valid veterinarian-client-patient relationship has been created in accordance with the Act and Board Rules. An LVT or non-veterinarian employee of a veterinarian may perform Laser Therapy under the general supervision of the veterinarian if the other conditions within this subsection (b) have been met. The veterinarian and his or her employees performing Laser Therapy must be in compliance with all other relevant federal and Texas laws and rules. The veterinarian and his or her employee(s) performing Laser Therapy must comply with the accepted safety standards for use of lasers in health care for animals.

(c) Standard Used in Determining Appropriate Use of Laser Therapy. If the Board receives a complaint against a licensee about treatment involving the use of Laser Therapy, investigation of the complaint may include opinions from other licensees who use Laser Ther-

apy in their treatment of animals. However, veterinarians who practice Laser Therapy shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances, including the type of practice, by average members of the veterinary medical profession in good standing in the locality or geographic community in which they practice, or in similar communities.

(d) Other Board Rules Not Preempted. Nothing in this rule shall remove or limit in any way the applicability of other rules of the Board as they apply to the practice of veterinary medicine.

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) proposes amendments to §577.15, concerning the Fee Schedule.

In accordance with Senate Bill 195, passed during the 84th Legislative Session, the amendment increases the renewal fee for certain veterinary licenses by $7.85. Senate Bill 195 transfers the Texas Prescription Program (TPP) from the Department of Public Safety to the Texas State Board of Pharmacy (TSBP) and authorizes the Board to collect a fee in an amount sufficient to cover the cost of administering the TPP. Fees collected for the purpose of administering TPP are transferred to the TSBP.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, the fiscal implications for state government are no more than the changes in the fee increase listed in the rule. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that the Board is compliant with the funding obligation set out in Senate Bill 195.

Ms. Oria has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses who are required to comply with the rule are no more than the fee increase listed in the rule. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *vet.board@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter. The amendment is also proposed under the authority of Texas Occupations Code 554.006, as amended by Senate Bill 195, which authorizes the Board to increase fees for the purpose of funding the TPP.

No other statutes, articles or codes are affected by the proposal.

§577.15. Fee Schedule.

The Texas Board of Veterinary Medical Examiners has established the following fixed fees as reasonable and necessary for the administration of its functions. Other variable fees exist, including but not limited to costs as described in §575.10 of this title (relating to Costs of Administrative Hearings), and are not included in this schedule.
Figure: 22 TAC §577.15

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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Executive Assistant
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.102

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §7.102.

Background and Summary of the Factual Basis for the Proposed Rule

The Memorandum of Understanding (MOU) between the Texas State Soil and Water Conservation Board (TSSWCB or Board) and TCEQ became effective on June 9, 1997 *(See* §7.102). A Letter of Agreement (LOA) regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on animal feeding operations (AFOs) with a certified water quality management plan (WQMP) and dry poultry litter op-

erations became effective on August 24, 2007. Changes to the MOU are necessary to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the LOA into the MOU. To update the MOU, the TSSWCB initiated rulemaking for 31 TAC §523.5 on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). During the TSSWCB comment period no comments were received. On January 21, 2016, the TSSWCB adopted the amendment to 31 TAC §523.5 (Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality), specifically adopting the MOU and making the rule effective (41 TexReg 1253). This rulemaking proposes to repeal the current MOU in §7.102 and replace it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Section Discussion

The proposed amendment to §7.102 changes the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality" and adopts by reference the MOU adopted by the TSSWCB in 31 TAC §523.5.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rule is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The original MOU between the agencies became effective June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are also necessary to incorporate applicable conditions of the LOA into the MOU. The proposed amendment would replace the LOA.

The proposed rule does not meet the definition of a major environmental rule because the proposed rule only explains existing agency responsibilities rather than creates substantive requirements to protect the environment. The intent of the rule is merely to clarify and explain jurisdiction of the respective agencies. Because the intent of the rule does not create or require actions for the purpose of protecting the environment or reducing risks to human health from environmental exposure, the proposed rule is not an environmental rule. Additionally, the proposed rule does not meet the definition of a major environmental rule because it is not anticipated that the proposed rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rule merely explicates jurisdiction of the respective agencies and does not impose new requirements. Finally, the proposed rule action does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Therefore, the commission concludes that the proposed rule does not meet the definition of a major environmental rule. The commission invites comment on the Draft Regulatory Impact Determination. Comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The proposed rulemaking would substantially advance this stated purpose by providing one reference point interpreting the jurisdiction of the respective agencies. Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of public or private real property because the proposed rule does not affect real property. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The proposed rule merely clarifies and explains jurisdiction of the respective agencies. Therefore, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule would implement an MOU between the TSSWCB and TCEQ. The original MOU became effective on June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are necessary to incorporate applicable conditions of the LOA into the MOU and to update the MOU to reflect TCEQ's current statutory name as well as the TSSWCB and TCEQ's current procedures for coordinating jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs.

The TSSWCB initiated rulemaking to update the MOU on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register.* During the TSSWCB comment period, no comments were received. On January 21, 2016, the TSSWCB adopted the amendment, specifically adopting the MOU and making the rule effective. This rulemaking proposes to repeal the current MOU in §7.102

and replace it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Incorporating existing procedures for coordinating the jurisdictional authority, program responsibilities, and the procedural mechanisms for point and nonpoint source pollution programs through the repeal of the current MOU and adopting by reference the full text of the revised MOU, is not expected to have any fiscal impact for the agency or any other unit of state or local government.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be updated rule for the coordination between the TSSWCB and TCEQ and continued safeguarding of the state's water quality.

The proposed rules is not anticipated to result in fiscal implications for businesses or individuals. Incorporating existing procedures for coordinating the jurisdictional authority, program responsibilities, and the procedural mechanisms for point and nonpoint source pollution programs through the repeal of the current MOU and adopting by reference the full text of the revised MOU, is not expected to have any fiscal impact for any business or individual.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The proposed rule imposes no new requirements or regulations on small or micro-businesses and imposes no new costs.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect and is intended to enhance the public health, safety, environmental, and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and 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.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on July 12, 2016, at 10:00 a.m., Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Public Comment

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: http://www1.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-020-007-OW. The comment period closes July 15, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kerry Niemann, Planning & Implementation Section, (512) 239-0483.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.104, concerning Memoranda of Understanding (MOUs), which authorizes the commission to enter into MOUs and adopt them as rules with other state agencies. Additionally, the amendment is proposed under TWC, §5.103 concerning Rules and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed amendment implements 31 TAC §523.5.

§7.102. Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~].

[~~(a)~~] The regulations of this section adopt by reference 31 TAC §523.5 (relating to Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality) as adopted and published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1253). [~~This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.~~]

[~~(1) Whereas, the Texas State Soil and Water Conservation Board, here within called the Board, is the state agency with the primary responsibility for activities relating to agricultural and silvicultural nonpoint source (NPS) pollution abatement; and~~]

[~~(2) Whereas, the board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on matters relating to agricultural and silvicultural nonpoint source pollution abatement; and~~]

[~~(3) Whereas, for purposes of this MOU, the board is responsible for NPS pollution abatement activities on all agricultural and~~

~~silvicultural land as defined by Senate Bill (SB) 503, Texas 73rd State Legislature; and]~~

~~[(4) Whereas, the board has established and implemented a water quality management plan certification program, in accordance with SB 503 of the Texas 73rd State Legislature for agricultural and silvicultural lands; and]~~

~~[(5) Whereas, the Texas Natural Resource Conservation Commission here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and]~~

~~[(6) Whereas, the commission has been designated as the lead agency for the Federal Clean Water Act, §319 program administered by the EPA; and]~~

~~[(7) Whereas, the commission shall coordinate all its activities related to this MOU with the board; and]~~

~~[(8) Whereas, consistent with the intent of Federal Clean Water Act, §319, the board and the commission are committed to the development and implementation of a coordinated NPS pollution program for the State; and]~~

~~[(9) Whereas, for the purpose of this MOU, the commission is responsible for the enforcement of all point source and NPS pollution regulations, including that on agricultural and silvicultural lands; and]~~

~~[(10) Whereas, consistent with Texas law and public policy, the board and commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and]~~

~~[(11) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:]~~

~~[(b) The Texas Natural Resource Conservation Commission agrees to:]~~

~~[(1) Administer, for the State, the Federal Clean Water Act, §319 grant program for NPS pollution. The commission will be responsible for coordinating the preparation of grant work programs.]~~

~~[(2) Execute cooperative agreements and associated amendments, and grant awards and contracts. The commission will be responsible for monitoring implementation of work programs and providing EPA with necessary financial and programmatic reporting information for non-agricultural/silvicultural surface and ground water work program elements.]~~

~~[(3) Implement the provisions of the EPA-approved Federal Clean Water Act, §319 management programs for non-agricultural/silvicultural surface and ground water NPS pollution.]~~

~~[(4) Complete, under current administrative procedures, all projects and programs for which grant funds have been awarded, under Federal Clean Water Act, §319. All future projects and programs implementing the EPA-approved Federal Clean Water Act, §319 management program for agricultural/silvicultural NPS pollution, and supported by §319 federal grants, will be administered by the board via a separate grant with EPA.]~~

~~[(5) Develop and maintain state guidance for all NPS pollution abatement projects other than agricultural or silvicultural NPS pollution projects as described by this MOU and SB 503.]~~

~~[(6) Coordinate with the board those compliance and enforcement actions relative to agricultural and silvicultural pollution.]~~

~~[(7) Provide to the board all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.]~~

~~[(8) Provide the board with access to the commission's electronic database for all current agricultural waste management plans.]~~

~~[(9) Investigate and/or monitor compliance of all animal feeding operations (AFO), as defined under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations), other than those covered by subsection (c)(12) of this section.]~~

~~[(10) In response to a general complaint, investigate a facility to determine whether a permit or written authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) is required of the facility. If problems are documented or conditions exist which have the potential to adversely impact the environment, the facility owner or operator will have the option of being referred to the board for the purpose of obtaining a certified water quality management plan or obtaining authorization under Chapter 321 of this title from the commission. If the owner or operator of a facility requests referral to the board in order to obtain a certified water quality management plan, the commission will send the board all pertinent documentation within five working days of the investigation.]~~

~~[(11) Retain the responsibility for pursuing any enforcement action related to a violation of a commission rule or order which occurred prior to the facility operator/owner obtaining a certified water quality management plan.]~~

~~[(12) Pursue appropriate enforcement action in accordance with commission rules against any person referred in accordance with subsection (c)(10) of this section.]~~

~~[(c) The Texas State Soil and Water Conservation Board agrees to:]~~

~~[(1) Serve as the recipient of grants from EPA for agricultural and silvicultural NPS pollution projects as described in this MOU and SB 503 and funded through Federal Clean Water Act, §319.]~~

~~[(2) Coordinate directly with the EPA on matters relating to programmatic and financial issues of agricultural and silvicultural projects funded by the board through separate grants from EPA under Federal Clean Water Act, §319. Notify the commission in writing on any decision made that results in a change in the programmatic or financial status of a project.]~~

~~[(3) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the board by the Federal Clean Water Act, §319. Reports will be submitted in accordance with EPA requirements.]~~

~~[(4) Develop and maintain state guidance for agricultural or silvicultural NPS pollution as described by this MOU and SB 503.]~~

~~[(5) Provide to the commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the NPS Management Plan.]~~

~~[(6) Process citizen complaints related to agricultural and silvicultural NPS pollution in a manner that is consistent with the practices and standards of the commission.]~~

~~[(7) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural NPS pollution project/program activities as negotiated with EPA.]~~

[(8) Develop and maintain a current electronic database to track and document the proceedings of all water quality management plans and corrective action plans. Data recorded will include, but not be limited to, the identification of applicant(s), date of application for each plan, and approval date of each plan.]

[(9) Provide the commission with access to the board's electronic database for all water quality management plans. Software and equipment necessary to facilitate electronic transfer of data should be compatible with that of the commission.]

[(10) Refer to the commission for possible enforcement action any complaint or violation related to a certified water quality management plan for an AFO, a law or rule relating to agricultural or silvicultural nonpoint source pollution for which the board has determined that the necessary corrective action has not been taken. The board, upon referral, shall provide the commission documentation, including but not limited to, any original documents or "certified copies" of the original documents and hard copies of all photographs, sample analyses, correspondence, records and other documents relating to the complaint.]

[(11) Provide the commission with documentation (board rules, policies, guidance, etc.) for development, supervision, and monitoring of individual certified water quality management plans.]

[(12) Investigate complaints and monitor compliance of all AFOs operating under a certified water quality management plan or any facility covered by law or board rule relating to agricultural or silvicultural nonpoint source pollution.]

[(13) Investigate any complaint received by the board to determine whether such a facility will need to obtain authorization from the commission. Those facilities which are determined to require authorization from the commission under Chapter 321 of this title (relating to Control of Certain Activities by Rule) will be referred to the commission within five working days from the date of investigation. If it is determined that the potential for a water quality violation exists at a facility that does not need authorization under Chapter 321 of this title, and the facility owner/operator does not implement a corrective action plan or does not file an application for a certified water quality management plan to resolve the complaint within 45 days of notification of the investigation outcome, the board shall automatically refer the facility to the commission for possible enforcement action, written authorization, or a permit.]

[(14) Refer to the Commission for possible enforcement action, complaints which were initially resolved by an agreement to develop a site specific certified water quality management plan for the involved facility and for which the facility owner/operator has not signed such a plan within 90 days of the date their request for planning assistance was approved by the Soil and Water Conservation District.]

[(15) Refer to the Commission for possible enforcement any complaint received for which there has been an immediate impact to aquatic life. Any investigation by the Board of a complaint related to an AFO holding a certified water quality management plan and for which a violation is documented that causes a situation in which exposure of contaminants to the air, water or land is affecting human health and safety, or will cause serious impact to the environment unless immediate actions are taken, shall be automatically referred to the Commission for possible enforcement action.]

[(d) Both parties agree to:]

[(1) Work together to refine the existing process for screening and prioritization of project proposals to be funded under Federal Clean Water Act, §319.]

[(2) Coordinate efforts in the development and submission of an annual work program to EPA for Federal Clean Water Act, §319, funding.]

[(3) Maintain each party's existing level of effort required by the EPA for the implementation of §319 programs/projects.]

[(4) Communicate and coordinate directly with each other and the EPA on matters relating to program/project planning and implementation of NPS pollution activities/projects funded by Federal Clean Water Act, §319.]

[(5) Provide required reports to the EPA on NPS pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.]

[(6) Meet semi-annually to review and discuss the state's NPS water quality program and to refine agency coordination mechanisms.]

[(7) Work together to develop criteria for the development of water quality management programs that satisfy the state water quality standards as established by the Commission.]

[(8) Comply with all relevant state and federal statutes and procedures, and grant conditions, including financial audits, data quality assurance and quality control, and progress reports.]

[(9) Cooperate on activities related to the implementation of the "Texas State Management Plan for Agricultural Chemicals in Ground Water."]

[(e) General conditions:]

[(1) Term of MOU. The term of this MOU shall be from the effective date until termination.]

[(2) Notice of Termination. Any party may terminate this MOU upon a 90 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of the other agency can this MOU be modified.]

[(3) Cooperation of Parties. It is the intention of the board and the commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.]

[(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.]

[(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective agency as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.]

[(6) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories ac-

~~knowledge that they are acting under proper authority from their governing bodies.]~~

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 May 26, 2016.

TRD-201602663
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 239-2613

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §745.8561 and §745.8608 in Chapter 745, concerning Licensing. The purpose of the new rules is to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that was organized by Texas CASA (Court Appointed Special Advocates); On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

One of the changes related to normalcy includes a definition for the "reasonable and prudent standard". The changes to Chapter 745 clarify how the reasonable and prudent parent standard will be used by CCL during investigations and when imposing an enforcement action.

Rule §745.8561 clarifies that CCL will use the reasonable and prudent parent standard when conducting an investigation of a designated person or foster parent that is alleged to have inappropriately allowed a child to participate in a childhood activity or denied a child access to a childhood activity.

Rule §745.8608 clarifies that CCL will not take enforcement actions against a General Residential Operations (GRO) or Child-Placing Agency (CPA) when a designated person or foster parent appropriately uses the reasonable and prudent parent standard when determining whether a child will be allowed to participate in a childhood activity.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed new sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Ms. Subia also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the safety of children in care and the quality of their care will be improved by integrating the use of "reasonable and prudent parent standard" into Chapter 745. There will be no effect on small or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

Ms. Subia has determined that the proposed new sections do 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@dfps.state.tx.us. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-543, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

DIVISION 5. ABUSE AND NEGLECT

40 TAC §745.8561

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§745.8561. When will Licensing use the "reasonable and prudent parent standard" in conducting an investigation of a child-placing agency or general residential operation?

We will use the "reasonable and prudent parent standard" when we investigate whether:

(1) A child-placing agency or general residential operation was deficient in a standard, rule, or other law because a foster parent or designated person:

(A) Allowed a child to participate in a childhood activity; or

(B) Denied a child access to a childhood activity or activities; or

(2) A foster parent or designated person breached a duty in §745.8559 of this title (relating to What is neglect?) by allowing a child to participate in a childhood activity.

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 May 26, 2016.

TRD-201602679
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 438-5559

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SUBCHAPTER L. REMEDIAL ACTIONS
DIVISION 1. OVERVIEW OF REMEDIAL ACTIONS

40 TAC §745.8608

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§745.8608. How will Licensing implement the "reasonable and prudent parent standard" when determining whether to impose an enforcement action against a child-placing agency or general residential operation?

We will not impose an enforcement action against a child-placing agency or general residential operation based on the conduct of a foster parent or designated person who appropriately followed the reasonable and prudent parent standard when determining whether a child will be allowed to participate in a childhood activity.

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 May 26, 2016.

TRD-201602680
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 438-5559

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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.685, 748.863, 748.881, 748.931, 748.1003, 748.1339, and 748.4701; and new §§748.701, 748.703, 748.705, 748.707, 748.709, 748.868, 748.882, and 748.944, in Chapter 748, concerning Minimum Standards for General Residential Operations. The purpose of the new rules and amendments is to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy and for clarity and consistency. Both S.B. 1407 and the federal law require that normalcy requirements apply to General Residential Operations (GROs).

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that were organized by Texas CASA (Court Appointed Special Advocates); On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

A summary of the changes related to normalcy include: (1) creating an independent Normalcy Division in Chapter 748 to clarify and highlight the issues and make the rules related to normalcy easier to find; (2) clarifying that children must participate in childhood activities, including unsupervised childhood activities (activities that are away from and not supervised by the operation) as much as possible; (3) defining "normalcy" and the "reasonable and prudent parent standard"; (4) listing items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; (5) clarifying who will make decisions regarding whether a child may participate in a childhood activity; (6) clarifying that a child's participation in childhood activities must be discussed during service planning meetings; (7) clarifying that each GRO must designate one or more persons to make these normalcy decisions for a child; (8) clarifying which persons may be designated to make normalcy decisions; (9) requiring two hours of pre-service training regarding normalcy for certain employees; (10) requiring that two hours of normalcy training be included in the mandated annual training for all caregivers; and (11) providing a list of curriculum components that must be included in the general pre-service and annual normalcy training.

New definitions for "childhood activities" and "unsupervised childhood activities" are being added to §748.43 of this title (relating to What do certain words and terms mean in this chapter?). Since there will be many other changes to definitions in §748.43 in response to the comprehensive review of Chapter 748, it is anticipated that the definition changes will be proposed at the July 2016 DFPS Council Meeting and subsequently published in the *Texas Register.* However, for purposes of

understanding these proposed changes the proposed §748.43 definitions are as follows: (1) childhood activities--activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §748.705 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities; and (2) unsupervised childhood activities--childhood activities that a child in care participates in away from the operation and the caregivers. Childhood activities that an operation sponsors, conducts, or supervises are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

In addition, some minor changes related to normalcy are being made to the Chapter 748 rules relating to service planning and children's rights. Since there are other more significant changes being made to the service planning and children's rights rules, those rules are also being proposed in a different set of rules that will also make changes to Chapter 748 and be published in the same issue of the *Texas Register*.

Finally, there are some additional rule review changes not related to normalcy that are being proposed in these rules, including: (1) requiring that trauma informed care training be included in the mandated general pre-service training for all caregivers; (2) requiring that two hours of trauma informed care training be included in the mandated annual training for all caregivers; and (3) updating the language and numbering of tables for consistency and ease of understanding.

A summary of the changes follows:

The amendment to §748.685: Clarifies that a caregiver must: (1) be aware of a child's special supervision needs; and (2) provide, arrange, or confirm an appropriate method of transportation for an unsupervised childhood activity. The amendment also moves and revamps the current subsection (d) to new Division 6, Normalcy.

New §748.701 defines "normalcy."

New §748.703 states that: (1) children must participate in childhood activities, including unsupervised childhood activities, as much as possible; and (2) service planning meetings must discuss normalcy for the child.

New §748.705: (1) defines the "reasonable and prudent parent standard"; and (2) lists the items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity.

New §748.707 states that: (1) a GRO must designate at least one person to make decisions regarding a child's participation in childhood activities; (2) when making these decisions the designated person must follow the reasonable and prudent parent standard; and (3) the service plan may not require prior approval of the parent before the designated person may consent to a child's participation in childhood activities.

New §748.709 requires: (1) caregivers hired after August 31, 2016, to receive either a two hour pre-service training or annual training regarding normalcy before the caregiver may be a designated person that makes decisions regarding a child's participation in childhood activities; (2) a designated person to work at the same location where the child resides and be knowledgeable of the child's current needs and history; and (3) the name of each designated person to be documented on the face sheet of the child's record.

The amendment to §748.863 requires two additional hours of pre-service training regarding normalcy for child care administrators, professional level service providers, treatment directors, and case managers.

New §748.868 provides an exemption to the requirement of two additional hours of pre-service training regarding normalcy for child-care administrators, professional level service providers, treatment directors, and case managers when the individuals have been trained on normalcy within the last 12 months.

The amendment to §748.881: (1) adds water safety as a topic that is appropriate for general pre-service training; and (2) adds trauma informed care and normalcy as required components for general pre-service training.

New §748.882 lists the curriculum components that must be included in the pre-service training regarding normalcy.

The amendment to §748.931: (1) requires that the mandatory annual training for caregivers and professional level service providers, treatment directors, and case managers who do not hold a relevant professional license must include two hours of training specific to trauma informed care; (2) requires that the mandatory annual training for caregivers, any designated persons, and professional level service providers, treatment directors, and case managers who do not hold a relevant professional license must include two hours of training specific to normalcy; and (3) clarifies the language and adds numbering to be more consistent throughout the rule and to make it easier to read.

New §748.944 requires: (1) the annual training regarding normalcy to include the curriculum components that are required in §748.882 of this chapter; and (2) subsequent training to further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented.

The amendment to §748.1003 clarifies the language of this rule and deletes an outdated cite.

The amendment to §748.1339: (1) requires a designated person to be involved in the development of the initial service plan; and (2) clarifies that a child that is verbal and developmentally able to participate must be invited to participate in the development of the child's service plan; and the service planning meeting must include discussions regarding the child's participation in childhood activities.

The amendment to §748.4701 clarifies the language of this rule and deletes an outdated cite.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for each of the first five years that the amendments and new rules will be in effect, there will not be costs or revenues to state or local government as a result of enforcing or administering the amendments and new rules.

Ms. Subia also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the amendments and new rules will be that the safety of children in care and the quality of their care will be improved by integrating normalcy and trauma informed care into the minimum standards. There is an anticipated adverse

impact on businesses, including small and micro-businesses, which must comply with the proposed rule changes. GROs will be impacted. The DFPS 2014 Annual Report and Data Book states that there are 239 GROs operating in Texas. There is no anticipated economic cost to persons who are required to comply with the proposed rule changes, other than the persons who have a financial stake in a GRO.

Licensing has identified six proposed rules in Chapter 748 as potentially having an adverse fiscal impact on GROs. The rules are discussed herein.

The size of the GRO and the number of residents that each operation has varies significantly. A few GROs have hundreds of residents; others GROs have 20 to 50 residents, while others have even fewer residents. Given this variation, it is not possible to project the fiscal impact to each GRO; however, it is possible to project an average "unit cost" for certain types of activities that are newly required by the new and amended rules.

The fiscal impact to GROs primarily results from additional staff time needed to

(1) attend new pre-service training regarding normalcy; and (2) update and develop curriculum.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail herein, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some GROs.

For GROs, the staff time required to comply with the standards will impact case managers, professional level service providers, treatment directors, and the child-care administrators. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of GRO staff, as follows (actual salaries paid to staff by a GRO may be greater or less than the averages used for these projections):

Case Managers - The 2016 average salary for Foster and Adoptive Development (FAD) Workers (Child Protective Services (CPS) Specialists I - V) was used to determine the salary costs for case managers because it is assumed they perform the functions most similar to those performed by case managers. The Fiscal Year (FY) 2016 average salary for a FAD Worker is $43,768 per year or $21.04 per hour.

Professional Level Service Providers and Treatment Directors - The 2016 average salary for CPS Foster and FAD Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the professional level service providers and treatment directors, because it is assumed they perform functions similar to those performed by professional level service providers and treatment directors. The FY 2016 average salary for a FAD Supervisor is $52,071 per year or $25.03 per hour.

Child-Care Administrator - The 2016 average salary for CPS Regional Directors was used to determine the salary costs for the child-care administrator, because it is assumed that this position functions in a similar capacity to that of a child-care administrator. The FY 2016 average salary for a CPS Regional Director is $93,862 per year or $45.13 per hour.

Fiscal Impact for Proposed §748.709: The new rule requires new caregivers to have either a two hour pre-service or annual training regarding normalcy before the caregiver may be a designated person that makes decisions regarding a child's participation in childhood activities. Any costs for annual training is noted in the "Fiscal Impact for Proposed §748.931 and §748.941." Licensing is assuming that most GROs will not designate new caregivers as a person that makes decisions regarding a child's participation in childhood activities. However, in some instances GROs may want to designate new caregivers as a person that makes decisions regarding a child's participation in childhood activities, for example in cottage homes. Licensing is assuming that most GROs provide substantially more than the required pre-service training hours, and in these situations CCL is assuming two additional hours of pre-service training regarding normalcy can be incorporated into the current pre-service training. Therefore, Licensing does not anticipate any costs regarding this new rule.

Fiscal Impact for Proposed §748.863: Revisions to §748.863 add requirements for pre-service training regarding normalcy for GRO administrators, professional level service providers, treatment directors, and case managers. The proposed change to this rule requires two new hours of pre-service training regarding normalcy. The training must be completed before the employee can be a designated person that makes decisions regarding a child's participation in childhood activities or within 90 days of hire, whichever occurs earlier. There are two costs associated with the increase in hours for general pre-service training regarding normalcy for GRO employees: the hourly wages paid to the training participants while attending a class and instruction costs.

The average cost of group caregiver training offered by local resource and referral agencies is $20 per hour. Licensing assumed that training for these staff is 25% more expensive than training caregivers given that the level of expertise of trainers is usually higher. As such, the cost of instruction for pre-service training on normalcy would be $25 per hour per employee trained.

The training will only apply to new staff. But the cost to train these staff for two hours is estimated as follows:

(1) Child Care Administrators - $140.26 {(hourly wage of $45.13 x 2 hours of training) + ($25.00 x 2 hours of instruction costs)};

(2) Professional Level Service Providers and Treatment Directors - $100.06 {(hourly wage of $25.03 x 2 hours of training) + ($25.00 x 2 hours of instruction costs)}; and

(3) Case Managers - $92.08 {(hourly wage of $21.04 x 2 hours of training) + ($25.00 x 2 hours of instruction costs)}.

Fiscal Impact for Proposed §748.881: Revisions to this rule require two new curriculum components, normalcy and trauma informed care, to be included in a GRO's general pre-service training that is mandated for caregivers and employees. There is no increase in training hours, so the only fiscal impact relates to the update of the curriculum. The costs for developing the pre-service training curriculum regarding normalcy is included in "Fiscal Impact for Proposed §748.882." The costs for developing the annual training curriculum, regarding trauma informed care, is included in "Fiscal Impact for Proposed §748.931 and §748.944." It should be a minimal impact to incorporate portions of the pre-service training curriculum regarding normalcy and the annual training curriculum regarding trauma informed care into the general pre-service training. In addition, it will be a one-time cost. It is anticipated that a professional level service provider or an employee similarly situated will spend an average of 10 to 20 hours to incorporate the curriculum for each topic into the general pre-service training. Therefore, the one-time cost to update the curriculum regarding these two topics will be between ap-

proximately $500.60 {$25.03 (the hourly wage of a professional level service provider) x 10 hours x 2 topics} and $1,001.20 20 {$25.03 (the hourly wage of a professional level service provider) x 20 hours x 2 topics} per GRO. (Note: GROs that currently contract with DFPS have been required, by contract since 2012, to train their staff on trauma informed care.)

Fiscal Impact for Proposed §748.882: This new rule specifies the curriculum components that must be included in the pre-service training regarding normalcy for the child care administrator, professional level service providers, treatment director and case managers. The costs for sending these persons to training was discussed in "Fiscal Impact for Proposed §748.863." However, if a GRO determines they want to provide this training in-house, then the instruction costs noted above ($50 per each employee for the two hours of training) would no longer be applicable, but the normalcy training curriculum would need to be developed. The training for normalcy must be two hours. CCL is estimating 30 to 50 hours to develop one hour of training. It is anticipated that a professional level service provider or some employee similarly situated will spend an average of 60 hours (30 hours x 2 training hours) to 100 hours (50 hours x 2 training hours) to develop the curriculum. Therefore, the one-time cost to update the curriculum regarding normalcy will be between approximately $1,501.80 {$25.03 (the hourly wage of a professional level service provider) x 60 hours} and $2,503.00 {$25.03 (the hourly wage of a professional level service provider) x 100 hours} per GRO.

Fiscal Impact for Proposed §748.931 and §748.944: Revisions to §748.931 require that the currently mandated annual training for caregivers and employees of GROs must now include training regarding trauma informed care and normalcy. Revisions to §748.944 list the curriculum components that must be included in the required annual normalcy training. There is no increase in the number of annual training hours required; there is only the requirement that training must include two hours of training specific to normalcy and two hours of training specific to trauma informed care. Since there is only a change in the content of the training, there is no fiscal impact in the delivery of the training because the GRO already pays for or delivers the annual training for the same number of training hours. If the GRO is currently paying for outside annual training, then there are no additional costs for the GRO. However, there is a fiscal impact when a GRO actually delivers the training and must now develop a new curriculum for trauma informed care and may need to modify the normalcy curriculum that was developed for the pre-service training regarding normalcy, see "Fiscal Impact for Proposed §748.882." The training for trauma informed care must be two hours. CCL is estimating 30 to 50 hours to develop one hour of training. To modify the pre-service normalcy curriculum, CCL is estimating it will take 20 hours. It is anticipated that a professional level service provider or some employee similarly situated will spend an average of 80 hours {(30 hours to develop the trauma informed care curriculum x 2 training hours) + 20 hours to modify the normalcy curriculum} to 120 hours {(50 hours to develop the trauma informed care curriculum x 2 training hours) + 20 hours to modify the normalcy curriculum} to develop/modify the curriculum for these two topics. Therefore, the one-time cost to develop/modify the curriculum regarding trauma informed care and normalcy will be between approximately $2,002.40 {$25.03 (the hourly wage of a professional level service provider) x 80 hours} and $3,003.60 {$25.03 (the hourly wage of a professional level service provider) x 120 hours} per GRO. (Note: GROs that currently contract with DFPS have been required by contract since 2012 to train their staff on trauma informed care.)

Regulatory Flexibility Analysis - As previously noted, the amendments and new rules apply to the approximately 239 GROs. Of the 239 GROs, it is estimated that only 25% (or 60 GROs) are small businesses, and 16% (or 38 GROs) are micro-business. These 60 small businesses and 38 micro-businesses fall within the statutory definition, because only these businesses are for-profit businesses.

The projected economic impact on small and micro-businesses was addressed for GROs in the foregoing section of the preamble. As noted herein, with the widely varying number of children cared for by GROs, the fiscal impact of these rules to particular GROs will vary, with the total dollar impact likely to be greater for GROs that serve a larger number of children and less for GROs that serve a smaller number of children.

DFPS did not consider any alternatives to the rule amendments being proposed that require additional training for normalcy and trauma informed care to ameliorate the impact on GROs who are small or micro-businesses, because the very purpose of this legislative requirement and these rule changes is to ensure the health and safety of children and to improve their quality of care, regardless of the size of the GRO. However, DFPS did consider different training times for normalcy, but decided a shorter training time frame was not adequate, and a longer time frame was excessive.

Ms. Subia has determined that the proposed amendments and new sections do 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@DFPS.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-543, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER E. PERSONNEL

DIVISION 5. CAREGIVERS

40 TAC §748.685

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.685. What responsibilities does a caregiver have when supervising a child or children?

(a) - (b) (No change.)

(c) Caregivers must:

(1) Be aware of the children's habits, interests, and any special needs, including any special supervision needs;

(2) - (6) (No change.)

(d) [~~A child may be away from the operation and caregivers in order to participate in an unsupervised activity, as appropriate based on the caregiver's assessment of the child and the supervision instructions in the child's service plan. The caregiver's assessment of the child must include the factors outlined in subsection (b) of this section. The child's service plan must specify if unsupervised activities are allowed, and under what circumstances. The unsupervised activity may extend into sleeping hours.~~] If a child is participating in an unsupervised childhood activity, the caregiver must:

(1) - (2) (No change.)

(3) Provide, arrange, or confirm an appropriate method of transportation to and from the activity;

(4) [~~(3)~~] Give the child a way to contact the caregiver in an emergency; and

(5) [~~(4)~~] Be available to respond if the child contacts the caregiver and needs immediate assistance.

(e) - (f) (No change.)

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-5559

DIVISION 6. NORMALCY

40 TAC §§748.701, 748.703, 748.705, 748.707, 748.709

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.701. What is "normalcy"?

Normalcy is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

§748.703. Are children in care required to participate in childhood activities?

(a) Children in care must participate in childhood activities, including unsupervised childhood activities, as much as possible.

(b) Service planning meetings, and any decision making regarding the child's need for supervision, must include discussions on how normalcy for the child can be achieved, and discussions, if applicable, regarding a child's refusal to participate in childhood activities. The child's service plan must specify whether there are any restrictions on the child's participation in these activities and whether the activities may extend into sleeping hours.

§748.705. What is the "reasonable and prudent parent standard"?

(a) The reasonable and prudent parent standard is the standard of care that a parent of reasonable judgment, skill, and caution would use to maintain the health, safety, and best interest of the child and encourage the emotional and developmental growth of the child.

(b) When using the reasonable and prudent parent standard, a person must take into consideration the following when deciding whether a child may participate in childhood activities:

(1) The child's age and level of maturity;

(2) The child's cognitive, social, emotional, and physical development level;

(3) The child's behavioral history and ability to participate in a proposed activity;

(4) The child's overall abilities;

(5) Whether the activity is a normal childhood activity;

(6) The child's desires;

(7) The surrounding circumstances, hazards, and risks of the activity;

(8) Outside supervision of the activity, if available and appropriate;

(9) The supervision instructions in the child's service plan; and

(10) The importance of providing the child with the most normal family-like living experience possible.

§748.707. Who makes the decision regarding a foster child's participation in childhood activities?

(a) A General Residential Operation (GRO) must designate one or more persons to make decisions regarding a child's participation in childhood activities, except as otherwise provided in subsection (c) of this section.

(b) When making decisions regarding a child's participation in childhood activities, a designated person must follow the reasonable and prudent parent standard.

(c) The service plan may not require the prior approval of the parent before a designated person may consent to a child's participation in childhood activities. However, if the parent provides notice in advance that the child is prohibited from participating in a specific activity, a designated person must follow the parent's decision.

§748.709. Are there any restrictions on who can be a designated person that makes decisions regarding a child's participation in childhood activities?

(a) Caregivers hired after August 31, 2016, may not be a designated person that makes decisions regarding a child's participation in childhood activities until the caregiver completes either a two hour pre-service training regarding normalcy or the annual training specific to normalcy.

(b) A designated person that makes decisions regarding a child's participation in childhood activities must:

(1) Work at the location where the child resides; and

(2) Be knowledgeable about the child's current needs and history.

(c) The name of each designated person must be documented on the face sheet of the child's 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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SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

40 TAC §748.863, §748.868

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

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

(a) Caregivers and certain employees must complete the following training hours before the noted time frame:
Figure: 40 TAC §748.863(a)

(b) (No change.)

§748.868. Must I provide pre-service training regarding normalcy to a child-care administrator, professional level service provider, treatment director, or case manager who was previously employed by a residential child-care operation?

(a) A child-care administrator, professional level service provider, treatment director, or case manager is exempt from completing the pre-service training regarding normalcy if the person:

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

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

(3) Can document that the training has been received.

(b) You must document the exemption factors in the appropriate 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 4. GENERAL PRE-SERVICE TRAINING AND PRE-SERVICE TRAINING REGARDING NORMALCY

40 TAC §748.881, §748.882

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

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

The general pre-service training curriculum must include the following 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, strategies and techniques for monitoring and working with these children, and age-appropriate activities for the children;

(2) - (3) (No change.)

(4) Preventing the spread of communicable diseases; [~~and~~]

(5) The location and use of fire extinguishers and first-aid equipment;[.]

(6) Trauma informed care; and

(7) Normalcy.

§748.882. What curriculum components must be included in the pre-service training regarding normalcy?

The pre-service training regarding normalcy must include the following 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.

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 6. ANNUAL TRAINING

40 TAC §748.931, §748.944

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

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

(a) Caregivers and certain employees must complete the following training hours:

Figure: 40 TAC §748.931(a)

(b) (No change.)

§748.944. What curriculum components must be included in the annual normalcy training?

(a) The annual training regarding normalcy must include the curriculum components covered in the pre-service training regarding normalcy, see §748.882 of this title (relating to What curriculum components must be included in the pre-service training regarding normalcy?).

(b) Subsequent annual training regarding normalcy should further develop and refine an employee's knowledge and understanding or normalcy and how it should be implemented.

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 G. CHILD/CAREGIVER RATIOS

40 TAC §748.1003

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.1003. For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?

(a) - (c) (No change.)

(d) [~~A child may be away from the operation and caregivers in order to participate in an approved unsupervised activity as outlined in §748.685(d) of this title (relating to What responsibilities does a caregiver have when supervising a child or children?).~~] A child does not count in the child/caregiver ratio while participating in an approved unsupervised childhood activity.

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 I. ADMISSION, SERVICE PLANNING, AND DISCHARGE
DIVISION 4. SERVICE PLANS

40 TAC §748.1339

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.1339. Who must be involved in developing an initial service plan?

(a) A service planning team must develop the service plan. The team must consist of:

(1) At least one of the child's current caregivers; [~~and~~]

(2) A person designated to make decisions regarding a child's participation in childhood activities; and

(3) [~~(2)~~] At least one professional level service provider who provides direct services to the child.

(b) (No change.)

(c) The child, if verbal and developmentally able to participate [~~as appropriate~~], and the parents must be invited to the meeting to develop the service plan, including discussions regarding the child's participation in childhood 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.

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For further information, please call: (512) 438-5559

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SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE TRAFFICKING VICTIM SERVICES
DIVISION 5. CHILD/CAREGIVER RATIOS

40 TAC §748.4701

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.4701. For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?

(a) (No change.)

(b) A child does not count in the child/caregiver ratio while the child is away from the operation participating in an approved unsupervised childhood activity[~~, as outlined in §748.685(d) of this title (relating to What responsibilities does a caregiver have when supervising a child or children?)~~].

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 May 26, 2016.

TRD-201602690
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 438-5559

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendment to §§749.43, 749.61, 749.305, 749.307, 749.421, 749.423, 749.425, 749.501, 749.503, 749.509, 749.513, 749.515, 749.535, 749.539, 749.551, 749.553, 749.571, 749.573, 749.577, 749.581, 749.585, 749.633, 749.635, 749.663, 749.667, 749.669, 749.673, 749.675, 749.679, 749.725, 749.761, 749.767, 749.801, 749.861, 749.867, 749.869, 749.881, 749.901, 749.933, 749.935, 749.937, 749.939, 749.941, 749.945, 749.1005, 749.1007, 749.1011, 749.1021, 749.1107, 749.1109, 749.1111, 749.1113, 749.1115, 749.1131, 749.1133, 749.1135, 749.1151,

749.1153, 749.1183, 749.1187, 749.1291, 749.1301, 749.1307, 749.1309, 749.1313, 749.1317, 749.1321, 749.1323, 749.1331, 749.1335, 749.1339, 749.1363, 749.1369, 749.1371, 749.1401, 749.1409, 749.1415, 749.1421, 749.1423, 749.1425, 749.1433, 749.1463, 749.1469, 749.1503, 749.1521, 749.1541, 749.1581, 749.1583, 749.1803, 749.1813, 749.1815, 749.1819, 749.1863, 749.1891, 749.1893, 749.1895, 749.1921, 749.1923, 749.1925, 749.1957, 749.1959, 749.1961, 749.2001, 749.2151, 749.2201, 749.2203, 749.2231, 749.2305, 749.2403, 749.2445, 749.2447, 749.2451, 749.2453, 749.2471, 749.2475, 749.2487, 749.2488, 749.2497, 749.2599, 749.2623, 749.2635, 749.2655, 749.2803, 749.2805, 749.2815, 749.2903, 749.2904, 749.2905, 749.2909, 749.2911, 749.2913, 749.2917, 749.2931, 749.2961, 749.3027, 749.3031, 749.3039, 749.3061, 749.3075, 749.3103, 749.3133, 749.3135, 749.3137, 749.3139, 749.4153, and 749.4259; repeal of §§749.101, 749.103, 749.105, 749.107, 749.131, 749.133, 749.161, 749.163, 749.331, 749.333, 749.335, 749.337, 749.339, 749.341, 749.343, 749.345, 749.347, 749.349, 749.351, 749.353, 749.355, 749.357, 749.359, 749.507, 749.531, 749.533, 749.601, 749.671, 749.681, 749.769, 749.771, 749.1003, 749.1523, and 749.2902; and new §§749.101, 749.103, 749.105, 749.107, 749.109, 749.111, 749.113, 749.115, 749.117, 749.119, 749.121, 749.123, 749.125, 749.127, 749.129, 749.131, 749.133, 749.135, 749.137, 749.139, 749.141, 749.151, 749.153, 749.161, 749.304, 749.529, 749.531, 749.533, 749.534, 749.769, 749.1003, 749.1312, 749.1336, 749.2902, and 749.3151, in Chapter 749, concerning Minimum Standards for Child-Placing Agencies (CPA). The purpose of the amendments, new sections, and repeals is for Child Care Licensing (CCL) to be in compliance with Texas Human Resources Code (HRC) §42.042(b) which requires CCL to conduct a comprehensive review of all rules and minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 749.

During this review of standards, CCL's goal was to balance the concerns of child advocacy groups, child-placing agencies, foster parents, children, and biological parents to formulate standards that promote the safety of every child in care.

In preparation for the review of minimum standards, CCL conducted a web-based survey open to permit holders, caregivers, advocates, parents, and anyone in the general public interested in commenting on the standards. The survey was available for public input from late August through December 2014. The next step in the review was to hold a series of 13 stakeholder forums throughout the state between September and November 2015 to solicit additional input from the public about proposed changes to the minimum standards.

Between the web-based survey and the stakeholder forums, CCL received almost three hundred comments (for both Chapters 748 and 749) from stakeholders for consideration in the review. These comments, along with a line-by-line review of all minimum standards conducted by both regional and State Office Licensing staff, formed the basis of the first round of recommendations that were then presented to a temporary workgroup. The temporary workgroup, comprised of 13 participants, including providers from child-placing agencies and general residential operations and representatives from Child Protective Services, Residential Contracts, and Licensing, met twice on December 16, 2015 and February 2, 2016. The workgroup reviewed and provided additional comments regarding the recommendations.

DFPS received some comments related to adoption services in the surveys and in the forums. After reviewing these comments and the related current minimum standards, DFPS decided to maintain the adoption minimum standards as they are currently written. However, DFPS will continue to look at minimum standard changes related to adoption over the next year to determine whether to propose any changes. To that end DFPS will hold workgroup meetings with providers and clients for further guidance on recommended changes.

This comprehensive review includes changes to over two hundred minimum standards. Some of the changes are minimal (e.g. changing the cite to a rule, or deleting a masculine pronoun), other changes are small but have more of an impact (e.g. changing the treatment service terminology of "mental retardation" to "intellectual disability"), and still other changes are more complex and will have a wider impact. Below is a broad overview of some of the different areas and types of changes that DFPS is proposing:

(1) Updating definitions and treatment service types;

(2) A rewrite and reorganization of the Divisions 1, 2, and 8 of Subchapter C, Organization and Responsibilities, relating to Permit Holder Responsibilities; Governing Body; and Policies and Procedures. The focus of the rewrite and the reorganization is to clarify:

(A) The plans, policies, and procedures that are required during the application process; and

(B) A CPA's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities;

(3) Clarifying training requirements, for example:

(A) Only permitting 10 hours of non-required pre-service training to be carried over to use as annual training during the upcoming year; and

(B) Increasing the number of annual training hours that may come from self-instructional training from 1/3 to 1/2;

(4) Continuing to modify the rules to improve normalcy for children, for example:

(A) Changing the Children's Rights rule to make the rights easier to understand and find by modifying the language of some of the rights and listing the rights under seven different categories (e.g. Safety and Care, Living a Normal Life, Discipline, etc.);

(B) Requiring a child 14 and older to review and sign the child's service plan;

(C) Allowing more discretion by foster parents when monitoring the use of trampolines for older children; and

(D) Allowing more discretion by foster parents when monitoring swimming activities for older children who are competent swimmers;

(5) Clarify service planning requirements, for example:

(A) Increasing the time to complete a service plan from 40 days to 45 days;

(B) Permitting foster parent and parent notifications for a service planning meeting to come from other parties;

(C) Permitting multiple meetings to complete the service planning meeting requirements; and

(D) Permitting a single service plan to continue throughout the time a child is in residential care as long as the CPA completes a preliminary service plan at admittance and continues to review and update the plan;

(6) Strengthening the minimum standards when it is necessary for the safety of children, for example:

(A) Requiring older runaway children to be reported missing within two hours (this is already the requirement for younger children);

(B) Restricting the use of e-cigarettes or any kind of vapors; and

(C) Requiring transfer/closing summaries of foster homes to include a recommendation for verification in the future, including whether there would be any recommended limitations or restrictions on the verification; and

(6) Allowing more discretion by providers while still ensuring the safety of children, for example:

(A) Clarifying that electronic and digital signatures, including e-mail and electronic approvals, are appropriate;

(B) Shortening the experience requirements for child placement staff and child placement management staff;

(C) Clarifying that an emergency admission includes when a CPA has 72 hours to place a child; and

(D) Modifying the requirement of a face-to-face contact every 15 days for children with primary medical needs to "twice every month with no more than 20 days between visits".

The summary of the changes are:

The amendment to §749.43 clarifies the definitions by: (1) updating definitions; (2) deleting definitions that are not used in this chapter; (3) moving definitions from other subchapters that are used throughout the chapter (e.g. chemical restraint, corrective or adverse action, emergency medication, etc.); (4) adding and clarifying definitions regarding "normalcy" issues (e.g. childhood activities and unsupervised childhood activities); and (5) adding definitions to clarify "permit holder" and "governing body" (e.g. corporation or other type of business entity, owner, and partnership).

The amendments to §749.61 update the names and description of the types of treatment services to be consistent with the DSM-5.

The repeal of Subchapter C, Division 1, Permit Holder Responsibilities, rewrites and reorganizes Divisions 1, 2, and 8 of Subchapter C to clarify: (1) the plans, policies, and procedures that are required during the application process; and (2) a CPA's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities.

New Subchapter C, New Division 1, Plans and Policies Required During the Application Process, creates a new division that will clarify the policies that are required during the application process.

Section 749.101 is repealed because: (1) portions of the rule are unnecessary or duplicative; and (2) the other requirements are moved to §745.243, new §749.101, new §749.103, new §749.105, new §749.139, new §749.153, §749.667, and §749.669.

New §749.101 clarifies the plans that are required for the application process by: (1) incorporating portions of repealed §749.101 and §749.163; and (2) adding a requirement that the operation plan must include a list of persons or officers and their titles that comprise the governing body, if applicable.

Section 749.103 is repealed because: (1) portions of the rule are unnecessary or duplicative; and (2) the other requirements are moved to new §749.153.

New §749.103 clarifies the policies that are required for the application process by accumulating a complete list and referencing the relevant minimum standard.

Section 749.105 is repealed and new §749.105 creates a new rule by: (1) including the content of the repealed version of this rule with non-substantive modifications; and (2) adding the written staffing plan requirements from repealed §749.601.

Section 749.107 is repealed and new §749.107 creates a new rule by: (1) including the content of the repealed version of this rule with non-substantive changes; and (2) adding conflict of interest policies from repealed §749.131 and §749.681.

New §749.109 includes the content from repealed §749.333 with non-substantive modifications to the rule.

New §749.111 includes the content from repealed §749.335 with non-substantive modifications to the rule.

New §749.113 includes the content from repealed §749.339 (except paragraph (18) which was moved to new §749.135) with non-substantive modifications to the rule.

New §749.115 includes the content from repealed §749.341 with non-substantive modifications to the rule.

New §749.117 includes the content from repealed §749.343 with non-substantive modifications to the rule.

New §749.119 includes the content from repealed §749.345 with non-substantive modifications to the rule; and deletes the section regarding "respective rights and responsibilities" because it is already included in new §749.121.

New §749.121 includes the content from repealed §749.347 with non-substantive modifications to the rule.

New §749.123 includes the content from repealed §749.349 with non-substantive modifications to the rule; and deletes subsection (a) because these standards are already required for all children, not just children receiving treatment services.

New §749.125 includes the content from repealed §749.351 with non-substantive modifications to the rule.

New §749.127 includes the content from repealed §749.353 with non-substantive modifications to the rule.

New §749.129 Includes the content from repealed §749.355 with non-substantive modifications to the rule.

Subchapter C, Division 2, Governing Body, is repealed to rewrite and reorganize Divisions 1, 2, and 8 to clarify: (1) the plans, policies, and procedures that are required during the application process; and (2) a CPA's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities.

Section 749.131 is repealed because: (1) a grandfather clause is outdated and is no longer needed; (2) portions of the rule are

unnecessary or duplicative; and (3) the other requirements are moved to new §§749.107, 749.139, 749.151, and 749.161.

New §749.131: (1) includes the content from repealed §749.357 with non-substantive modifications to the rule; and (2) deletes paragraph (4) because the "plan for review of adoption plans" was confusing and duplicative. Adoption plans already have to be reviewed.

Section 749.133 is repealed and moves the content to new §749.153.

New §749.133 includes the content from repealed §749.359 with non-substantive modifications to the rule.

New §749.135 creates an independent abuse and neglect policy section that's content was derived from repealed §749.339(18).

New §749.137 includes the content from repealed §749.331(a) and (d) with non-substantive modifications to these subsections.

New §749.139 includes the content from repealed §749.331(b) with significant clarifications to explain how a CPA's plans, policies, and procedures must be adopted by a sole proprietor, partnership, or corporation.

New §749.141 clarifies that Licensing may cite standards in Division 1 for deficiencies after the application process is granted.

Subchapter C, New Division 2, Operational Responsibilities and Notifications, creates a new division that will clarify a CPA's operational responsibilities, including responsibilities for notifications to Licensing.

New §749.151 includes portions of the content from repealed §749.103 with significant modifications, including the combining of some paragraphs and the deletion of some paragraphs because they were unnecessary and/or duplicative.

New §749.153: (1) includes portions of the content from repealed §§749.103, 749.133, 749.507, and 749.681; (2) adds items to be consistent with new §749.101 and new §749.103; and (3) modifies the timeframes for notification to Licensing for consistency.

Section 749.161 is repealed and new §749.161 creates a new rule by: (1) incorporating portions of the content of the repealed version; (2) deleting portions of the content of the repealed version because it was unnecessary and duplicative; and (3) adding portions of the content from repealed §749.163 to new §749.161.

Section 749.163 is repealed and moves the content to two new rules: §749.101 and §749.161.

New §749.304 moves portions of the content from §749.305 to this new rule to clarify where the main and branch offices must be located, but this is a non-substantive change.

The amendment to §749.305 clarifies this rule by: (1) moving the location of the main and branch offices content to new §749.304; (2) deleting an outdated grandfather clause; and (3) modifying the language for clarity, including the caseload limits when offices share the same administrator and/or treatment director.

The amendment to §749.307 clarifies the language of the rule for consistency.

Subchapter C, Division 8, Policies and Procedures, is repealed and Division 9 is renumbered to Division 8.

Section 749.331 is repealed and the content of this rule is moved to four new rules: §§749.137, 749.139, 749.153, and 749.529. One subsection was deleted as unnecessary.

Section 749.333 is repealed and the content is incorporated into new §749.109.

Section 749.335 is repealed and the content is incorporated into new §749.111.

Section 749.337 is repealed and the content is incorporated into §749.1113, except subsection (c) is deleted because it was unnecessary and duplicative.

Section 749.339 is repealed and the content is incorporated into new §749.113, except paragraph (18) which is incorporated into new §749.135.

Section 749.341 is repealed and the content is incorporated into new §749.115.

Section 749.343 is repealed and the content is incorporated into new §749.117.

Section 749.345 is repealed and the content is incorporated into new §749.119.

Section 749.347 is repealed and the content is incorporated into new §749.121.

Section 749.349 is repealed and the content is incorporated into new §749.123.

Section 749.351 is repealed and the content is incorporated into new §749.125.

Section 749.353 is repealed and the content is incorporated into new §749.127.

Section 749.355 is repealed and the content is incorporated into new §749.129.

Section 749.357 is repealed and the content is incorporated into new §749.131.

Section 749.359 is repealed and the content is incorporated into new §749.133.

The amendment to §749.421 adds young adults to the list of adult clients; and clarifies the language of the rule to make it easier to understand.

The amendment to §749.423 clarifies that when informing adult clients of their rights, the: (1) information must be in writing; (2) procedures for making complaints to DFPS only relate to violations of minimum standards; and (3) information regarding other entities where complaints may be filed must include phone numbers and addresses.

The amendment to §749.425 clarifies the language of the rule to make it easier to understand.

The amendment to §749.501 clarifies that serious incidents are those incidents noted in §749.503.

The amendment to §749.503 clarifies several issues, including: (1) requiring a child death to be reported to law enforcement within one hour after the child's death, and reported to Licensing and the parents within two hours after the child's death; (2) making the language for "substantial physical injury" consistent with the new definition for that term; (3) requiring child-on-child physical abuse and sexual abuse to be reported when a CPA or foster parent becomes aware of it; (4) clarifying that a serious incident includes when law enforcement responds to an alleged incident at the foster home; (5) requiring the absence of a 13 year old or older from a foster home that cannot be located to be reported to Licensing, the parents, and law enforcement no

later than two hours from when the absence is discovered (Note: This is already the requirement for children younger than 13); (6) subsection (b) regarding foster parents reporting to the Hotline was deleted and moved to §749.509; (7) adding a subsection from repealed §749.507 stating medical incidents that don't rise to the level of a serious incident don't have to be reported to Licensing, but they must be documented; (8) adding language requiring a report to the Hotline if there is reason to believe an adult resident has been abused, neglected, or exploited; and (9) making the language in these sections consistent with the rest of the chapter.

Section 749.507 is repealed and the content is incorporated into new §749.153 and §749.503.

The amendment to §749.509 clarifies the rule to: (1) add the requirement that foster parents must report directly to the Hotline if an incident involves a child under their care, which is being moved from current §749.503; and (2) delete the requirement for reporting to Licensing in writing, because those issues are now included in new §749.153.

The amendment to §749.513 clarifies the language of the rule for consistency throughout the chapter.

The amendment to §749.515 clarifies that: (1) incident reports must be easily accessible to Licensing; and (2) deletes a subsection because it is unnecessary and duplicative.

New §749.529 incorporates the content from portions of repealed §749.331.

Section 749.531 is repealed and incorporates the content into new §749.531 and §749.533.

New §749.531 incorporates the content from portions of repealed §749.531 and §749.533 with non-substantive modifications.

Section 749.533 is repealed and the content is incorporated into new §749.531.

New §749.533 incorporates the content of repealed §749.531 with non-substantive modifications.

New §749.534 clarifies that electronic signatures, approvals by e-mail, and electronic approvals are allowed.

The amendment to §749.535 clarifies that no written summaries are required, and the records from the foster parents must be submitted within 15 days from the end of the month.

The amendment to §749.539 clarifies that disaster and emergency plans must be maintained at the main office, relevant branch office, or in a central administratively designated location.

The amendment to §749.551 clarifies that all active personnel records must be maintained at the main office or keep individual personnel records at the office where each person is working. In addition, the master list of active and archived personnel records must be kept at the main office and must include a notation of the location of those records.

The amendment to §749.553 clarifies: (1) that employees must sign a statement documenting that the employee has read the operational policies; (2) what must go into a personnel record regarding training; (3) deletes a signed statement requirement regarding the employee's training on abuse and neglect, because it has been clarified what must go into a personnel record regarding training; and (4) the name of the Hotline.

The amendment to §749.571 deletes an outdated and unnecessary cite to a rule.

The amendment to §749.573 clarifies that the master list of active client records must include a notation of the location of those records.

The amendment to §749.577 deletes the requirement that active child records must include the "date of each data entry and the name of the person who makes the data entry".

The amendment to §749.581 clarifies that archived client records must be maintained at the main office, the branch office that served the client, or in a central administratively designated location. In addition, the master list of archived client records must include a notation of the location of those records.

The amendment to §749.585 clarifies the language of the rule.

Section 749.601 is repealed and the content is incorporated into new §749.105(3).

The amendment to §749.633 deletes a confusing caveat in the rule.

The amendment to §749.635 adds to the responsibilities (or assignments) of a child-placing agency administrator to administer and manage the approved plans for evaluating the effectiveness of a CPA's system to comply with standards and the plan to investigate Minimum Standards.

The amendment to §749.663 clarifies that child placement staff have the responsibility for conducting and documenting foster home supervisory visits.

The amendment to §749.667 clarifies the language of the rule, and that child placement management staff must directly perform the responsibilities of the child placement staff, as appropriate.

The amendment to §749.669 clarifies the language of the rule, including making the "re-evaluated" language consistent throughout the chapter.

Section 749.671 is repealed and the content is incorporated into §749.43 to define "corrective and adverse action."

The amendment to §749.673 clarifies the qualifications chart for child placement staff by: (1) reducing the professional qualifications (years of experience) for: (A) Options 2 and 3 (now combined with Option 1 into New Option 1) from two years to one year; and (B) Option 4 (now Option 2) from three years to two years; (2) combining Options 1, 2, and 3 into New Option 1 because the professional qualifications are now the same; and (3) expanding the type of experience required for the New Options to include experience at a general residential operation, as a department conservatorship caseworker, or as a department adoptive home development worker; and the experience must be in conducting assessments, service planning, or case management duties; or (A) for New Option 1, one year of experience working under the direct supervision of child placement management staff; or (B) for New Option 2, two years of experience working under the direct supervision of child placement management staff.

The amendment to §749.675 clarifies the qualifications chart for child placement management staff by: (1) reducing the professional qualifications (years of experience) for: (A) Option 1 from two years to one year; (B) Options 2 and 3 (now combined into New Option 2) from three years to two years and four years to two years, respectively; and (C) Option 4 (New Option 3) from five years to three years; (2) combining Options 2 and 3 into

new Option 2 because the professional qualifications are now the same; (3) expanding the type of experience required for the New Options to include experience at a general residential operation, as department conservatorship caseworker, or as a department adoptive home development worker; and the experience must be in conducting assessments, service planning, or case management duties; and (4) modifying where the nine credit hours on family and individual function and interaction may come from. They may come from undergraduate OR graduate level courses.

The amendment to §749.679 adds a reference to clarify that while there is no specific caseload compliance requirements, §749.305 does have caseload limits for offices that share the same administrator and/or treatment director.

Section 749.681 is repealed and the content is incorporated into new §749.107.

The amendment to §749.725 updates treatment services terminology.

The amendment to §749.761 deletes a subsection regarding requirements for volunteers that provide short-term services through an organization and moves it to §749.767; deletes a masculine pronoun; and updates the name of the Hotline.

The amendment to §749.767 incorporates the content from §749.761 and clarifies that a CPA must determine that the program for a volunteer that provides short-term services through an organization is adequate to protect the health and safety of children.

Section 749.769 is repealed and the content is replaced with new §749.769 to clarify that no person may provide services to an agency if that person is on probation or parole or is performing community service through the courts because of a criminal activity. The prohibition applies to a person who meets the definition of a volunteer or any other person not compensated, including persons providing any type of service even if the person does not have unsupervised access to children in care.

Section 749.771 is repealed because it is outdated and does not appear to be used anymore.

The amendment to §749.801 moves the description of the acronym CEU to §749.935, which is the only place it is used; and clarifies the definition of "instructor-led training".

The amendment to §749.861 clarifies that for a caregiver that doesn't have current experience caring for a child with treatment needs, the CPA's prescribed caregiver experience regimen (which is already required) must now specifically include eight hours of observations and interactions with children receiving similar treatment services.

The amendment to §749.867 clarifies the language of the rule and deletes masculine pronouns.

The amendment to §749.869 clarifies that a qualified instructor for pre-service training must have adequate knowledge and experience in the topic to be delivered.

The amendment to §749.881 adds water safety as an appropriate curriculum topic for the general pre-service training as it relates to the needs of children for whom a caregiver will be providing care; and deletes normalcy in this rule because it is now a separate mandated two hour pre-service training.

The amendment to §749.901 adds a component to the pre-service training regarding emergency behavior intervention, which will require addressing the circumstances when all de-escalation strategies fail.

The amendment to §749.933 clarifies the "within 12-months" language for when an employee's or caregiver's annual training must be completed.

The amendment to §749.935: (1) spells out the acronym CEU; (2) limits to 10 hours the amount of non-required pre-service training hours that may be carried over and counted for annual training hours; (3) clarifies that the "required" pre-service training hours may not be counted for annual training hours; and (4) increases from one-third to one-half the number of annual training hours that may come from self-instructional hours; and clarifying that no more than three of those self-instructional hours may come from reading materials.

The amendment to §749.937 clarifies that while Licensing does not approve or endorse training resources, the requirements for a CPA to ensure reliable training relevant to the population of children served applies to both: (1) employees and caregivers; and (2) instructor-led training and self-instructional training.

The amendment to §749.939 clarifies that transportation safety training must be instructor-led.

The amendment to §749.941 adds water safety and administration of medication as training topics appropriate for annual training; and deletes trauma informed care and normalcy in this rule because they are now mandated topics for annual training.

The amendment to §749.945 deletes masculine pronouns; and clarifies the psychotropic medication training that must be met.

Section 749.1003 is repealed and the content is incorporated into new §749.1003.

New §749.1003: (1) modifies the language of the rule to divide the children rights into seven categories (e.g. Safety and Care, Living a Normal Life, Discipline, etc.) to make the rights easier to understand and find; (2) changes the "right to be free from discrimination" to the "right to fair treatment" and deletes the laundry list of discrimination grounds; and (3) improves the readability of the rule overall.

The amendment to §749.1005 clarifies that a timely signed copy of the "CPS Rights of Children and Youth in Foster Care" will meet the Licensing requirements in this rule.

The amendment to §749.1007 clarifies that appropriate home schooling will meet the educational rights of a child.

The amendment to §749.1011 requires a revaluation by child placement management staff when restrictions are imposed on a child's contact with siblings for more than 60 days (it is currently 90 days). The wording of this rule was also modified to be consistent with other re-evaluations in this chapter.

The amendment to §749.1021 clarifies that the list of the techniques that may not be used on a child is not an exhaustive list.

The amendment to §749.1107 deletes the requirement to document: (1) the child's birthplace; and (2) court orders establishing the managing conservator of the child.

The amendment to §749.1109 adds the Texas Family Code §32.203 requirement that in certain instances a child 16 years or older may sign a placement agreement for a transitional living program without the consent of the child's parent.

The amendment to §749.1111 clarifies that during orientation a child must be provided information on how to make complaints to

outside agencies and how to contact outside parties to a child's case.

The amendment to §749.1113: (1) adds the content of most of repealed §749.337 to provide parents with relevant policies; (2) deletes the requirement that parents must be able to determine whether a program is appropriate for a child and can meet the child needs; and (3) adds the policies and explanations that must be provided to a child that signs a placement agreement as specified in §749.1109.

The amendment to §749.1115 clarifies that one of the special needs that must be shared with caregivers is supervision needs; and the sharing of all special needs must be documented.

The amendment to §749.1131 clarifies that the admission assessment must be completed prior to admission.

The amendment to §749.1133: (1) deletes redundant phrases that are already clarified by a definition; and (2) clarifies that an assessment must establish how the needs of the child can be met.

The amendment to §749.1135: (1) allows any health care professional to evaluate whether foster parents have been trained to meet the needs of a child with primary medical needs and demonstrate competency; (2) deletes a supervision requirement, because it is already required to be reviewed for all children; and (3) updates the treatment services terminology, deletes a masculine pronoun, and corrects a cite to a rule.

The amendment to §749.1151 and §749.1153 deletes a masculine pronoun and changes an acronym in each rule.

The amendment to §749.1183 adds to the list of situations that constitute an emergency admission to include, "if you must place a child within 72 hours"; clarifies the wording of the rule; and deletes a masculine pronoun.

The amendment to §749.1187 makes the terminology for psychiatric evaluation, psychological evaluation, and psychosocial assessment consistent throughout the chapter.

The amendment to §749.1291: (1) clarifies that for all contacts with children in care at least half of them must occur in the foster home; and (2) changes the requirement for face-to-face contacts every 15 days for children with primary medical needs to "twice every month with no more than 20 days between visits".

The amendment to §749.1301 clarifies that the preliminary service plan addressing the immediate needs of the child must be completed within 72 hours; and an example of an immediate need is supervision requirements.

The amendment to §749.1307 clarifies that the initial service plan must be completed within 45 days (currently 40 days).

The amendment to §749.1309 updates the items that are needed for an initial service plan, including: (1) updating the psychiatric evaluation, psychological evaluation, and psychosocial assessment language; (2) deleting redundant phrases that are already included in the definitions; and (3) clarifying references and other language for consistency.

New §749.1312 clarifies that the service planning team may meet in one meeting, two or more meetings, or in separate meetings to discuss and develop a child's service plan, provided that each service planning team member is informed of the discussion and comments regarding the child's service plan that were made in each meeting.

The amendment to §749.1313 clarifies that notice to the parents and foster parents regarding the service planning meeting may be given by someone else as long as the CPA has documentation that the notice was given and was timely.

The amendment to §749.1317 updates treatment services terminology.

The amendment to §749.1321 requires all children 14 years and older to review and sign the initial service plan. If the child disagrees with the plan or refuses to sign it, this information must be documented.

The amendment to §749.1323 clarifies that the service plan must be implemented within 15 days (currently 10 days) after the date of the scheduled service planning meeting involving the parents, foster parents, and the child.

The amendment to §749.1331 updates treatment services terminology.

The amendment to §749.1335 removes the requirement to determine for children receiving treatment services whether the placement should continue, change the child's treatment service designation, transfer the child to a least restrictive setting, or refer the child to an inpatient hospital. This is being deleted because permanency goals should be considered for all children and are broader than this list.

New §749.1336 clarifies that a single service plan that continues throughout the time a child is in residential care is allowed as long as the CPA completes a preliminary service plan at admittance and complies with the review and update rules in this division.

The amendment to §749.1339 updates treatment services terminology.

The amendments to §§749.1363, 749.1369, and 749.1371 delete masculine pronouns in each rule.

The amendment to §749.1401 clarifies what has to be included in a child's record regarding a medical exam. The requirements for the "date of examination" and "procedures completed" are being deleted because these requirements will be in the results of the medical examination. There is also clarification regarding documenting the date and time of an injury or illness resulting in a medical exam.

The amendment to §749.1409 clarifies what has to be included in a child's record regarding a dental exam. The requirements for the "date of examination" and "procedures completed" are being deleted because these requirements will be in the results of the dental examination.

The amendment to §749.1415 clarifies the language of this rule.

The amendment to §749.1421 clarifies that the immunization requirements of the Department of State Health Services (DSHS) must be met, instead of referencing the HRC; and deletes a duplicative statement regarding a child's health passport meeting Licensing documentation standards.

The amendment to §749.1423 clarifies the exemptions and exceptions to the immunization requirements.

The amendment to §749.1425 clarifies the documentation requirements that are acceptable for an immunization record, including documentation of the name and address of the healthcare professional (previously it only said RN) that administered the vaccine.

The amendment to §749.1433 corrects a cite to a rule.

The amendment to §749.1463 clarifies that these requirements only apply to the administration of prescription medication.

The amendment to §749.1469 adds a requirement to inform a child's physician of any non-prescription medication or supplement to make sure there are no contraindications with other medications.

The amendment to §749.1503 clarifies that for a child that is on a self-medication program the CPA/foster parents must ensure there is a system for reviewing the child's medication each day.

The amendment to §749.1521 clarifies the rule by: (1) removing the requirement to store medications "for external use only" separately from other medications; and (2) incorporating the content of repealed §749.1523 (the requirement to destroy outdated medication within 30 days) into this rule.

Section 749.1523 is repealed and the content is incorporated into §749.1521.

The amendment to §749.1541 changes this rule by: (1) replacing "vitamin" with "supplement", which has been defined in §749.43 as "vitamins, herbs, and any supplement labeled dietary supplement"; (2) clarifying that a medication record does not have to be updated immediately but "within 24 hours of administering medication"; (3) requiring the documentation of a non-prescription medication or supplement that is given to the child and how often the child receives the medication or supplement (no cumulative record is required); and (4) requiring documentation in the medical record of any prohibited supplement.

The amendment to §749.1581 clarifies the meaning of an "adverse reaction" to a medication; and adds a requirement to immediately report the reaction to the child's parent.

The amendment to §749.1583 clarifies the meaning of a medication "side effect"; and adds a requirement to immediately report serious side effects to the child's parent.

The amendment to §749.1803 clarifies that infant care items necessary for diaper changing must be kept out of the reach of children, but do not need to be in locked storage.

The amendment to §749.1813 clarifies the language in this rule to be consistent with the Day Care requirements.

The amendment to §749.1815 clarifies that a health-care professional's sleeping orders for an infant must be kept in the child's record.

The amendment to §749.1819 deletes a masculine pronoun.

The amendment to §749.1863 clarifies the language of the rule.

The amendment to §749.1891 clarifies that additional educational facilities or programs are allowed if approved by the child's service planning team. The justification and the approval must be kept in the child's record.

The amendment to §749.1893 clarifies: (1) that extracurricular activities must be determined by a reasonable and prudent parent standard; (2) that a caregiver must provide notice to the parent of the child of any scheduled ARD, IEP, or ITP meetings; and (3) acronyms.

The amendment to §749.1895 updates treatment services terminology and deletes a masculine pronoun.

The amendment to §§749.1921, 749.1923, and 749.1925 updates treatment services terminology in each rule.

The amendment to §749.1957 clarifies the language for prohibited discipline techniques to include not screaming at a child.

The amendment to §749.1959 changes the time from 30 days to 14 days that a foster parent may restrict a child's activities without a review by the child placement management staff or a treatment director.

The amendment to §749.1961 updates a cite to a rule.

The amendment to §749.2001 removes most of the definitions from this section and moves them to §749.43, because the terms that are being moved are used in more than this one subchapter.

The amendment to §749.2151 deletes a masculine pronoun.

The amendment to §749.2201 clarifies that a personal restraint must be monitored to make sure the restraint is being performed appropriately.

The amendment to §749.2203 deletes a masculine pronoun.

The amendment to §749.2231 clarifies that in an emergency behavior intervention (EBI), a child must have bathroom privileges "as needed".

The amendment to §749.2305 adds to the documentation requirements for an EBI to include: (1) the names of any witnesses to the EBI, including child witnesses in the home; and (2) the name of the medical provider, if medical treatment or assistance was obtained for the child.

The amendment to §749.2403 deletes an outdated grandfather clause.

The amendment to §749.2445 clarifies that only a prospective foster family's domestic violence history needs to be reported to Licensing, not all criminal history.

The amendment to §749.2447: (1) clarifies in paragraph (7) that all criminal history results must be assessed in relation to the whole home screening; (2) clarifies in paragraph (19) that persons supporting foster parents during an unexpected event or crisis situation must have a fingerprint-based criminal history check before acting as a caregiver; and (3) renumbers paragraphs (6), (7), (22), and (23) for ease in referencing these standards.

The amendment to §749.2451 deletes the outdated language of "attempts to interview". In the past some interviews of adult children were not mandated, but now all adult children must be interviewed.

The amendment to §749.2453 clarifies the foster home screening update requirements to be consistent with §749.2803, when new or temporary verifications are needed.

The amendment to §749.2471 deletes an unnecessary reference and updates a cite to a rule.

The amendment to §749.2475 adds to the background information that must be shared with other CPAs, including: (1) a plan to achieve compliance; and (2) adverse action plans.

The amendment to §749.2487 clarifies that the agreement between the foster parents and the CPA must be signed.

The amendment to §749.2488 adds the requirement to give verified foster parents copies of the CPA's policies concerning "the rights and responsibilities of the CPA and the foster parents", which was deleted from repealed §749.347(b).

The amendment to §749.2497 adds to the information that must be included in a transfer/closing summary: (1) any plan to achieve compliance or other development plan that was in place within the previous 12 months of the transfer/closing; (2) any adverse action plan; and (3) a statement of whether the CPA would recommend the foster home for verification in the future, including limitations or restrictions on the verification and the basis for the recommendation.

The amendment to §749.2599 clarifies terminology.

The amendment to §749.2623 clarifies that a CPA must inform a child of the plan for respite care before the CPA places the child in respite care.

The amendment to §749.2635 updates a cite to a rule.

The amendment to §749.2655 clarifies the notification requirements of certain changes in a foster home, including referencing a cite to the definition of "a major life change in the foster family" instead of repeating the definition in this rule.

The amendment to §749.2803 clarifies what changes affect a foster home's verification by: (1) deleting confusing terminology like "the conditions of a foster home", "is only valid until", and "prior to"; (2) making it consistent with the definition of "a major life change in the foster family" at §749.2805(a); and (3) making it more accurate and easier to understand.

The amendment to §749.2805 clarifies that a "major life change in the foster family" includes a significant change in a work schedule.

The amendment to §749.2815 clarifies that: (1) child placement staff must conduct the supervisory visits; (2) any significant change in finances is an issue related to the stress levels of foster parents that must be reviewed during supervisory visits; and (3) the names of all household members present at the supervisory visit must be documented.

Section 749.2902 is repealed and proposed as new to replace the current requirements for a health inspection with a new rule that mirrors §749.2903 (fire inspection/evaluation) and allow child placement management staff to conduct a health and safety evaluation using a DFPS checklist.

The amendment to §749.2903 clarifies that when a foster home changes a type of verification, then the foster home must meet the relevant fire safety measures required for the new type of foster home.

The amendments to §§749.2904, 749.2905, 749.2909, and 749.2911 make the language in this chapter regarding a "local health authority or state or local authority" consistent.

The amendment to §749.2913 clarifies that fire extinguishers must have a maintenance check once a year by a person qualified to inspect fire extinguishers.

The amendment to §749.2917 clarifies the language of the rule and deletes the requirement that ferrets must be vaccinated, because this is not required by the Health and Safety Code.

The amendment to §749.2931 clarifies that e-cigarettes and vaporizers, like tobacco products, are also prohibited.

The amendment to §749.2961 clarifies that the adult supervising a child that is using a weapon must be knowledgeable about the weapon.

The amendment to §749.3027 corrects a typographical error and deletes a masculine pronoun.

The amendment to §749.3031 clarifies that mattresses must not be on the floor.

The amendment to §749.3039 allows more discretion by the foster parents when monitoring the use of trampolines for older children.

The amendment to §749.3061 deletes subsection (a), because it is already noted in §749.3063(a)(1).

The amendment to §749.3075 clarifies the language of the rule and updates terminology.

The amendment to §749.3103 makes the language in this chapter regarding a "child passenger seat system" consistent.

The amendment to §749.3133 allows more discretion by the foster parents when monitoring swimming activities for older children who are competent swimmers; and deletes an outdated grandfather clause.

The amendment to §749.3135 allows more discretion by the foster parents when monitoring swimming activities for older children who are competent swimmers.

The amendment to §749.3137: (1) clarifies the chart by: (A) deleting the middle "children in the group" column, because the swimming ratio and supervising the number of children in the group were the same; (B) deleting the cite to §749.2563 and incorporating the requirement from that rule into the chart; and (C) lowering the swimming ratios for foster group homes from 8:1 to 6:1 to be consistent with the swimming ratios for foster family homes; (2) clarifies that subsection (b) always requires at least two adults to supervise four or more children if all four children are actually in the water; (3) clarifies subsection (d) to state that even if a lifeguard is counted in the swimming ratio, one caregiver must always be present and the lifeguard cannot be the only person counted in the swimming ratio; and (4) deletes language in subsection (e), because unsupervised childhood swimming activities will be made by foster parents using a reasonable and prudent parent standard.

The amendment to §749.3139 changes "water activities" to "swimming activities" to make the language in the chapter consistent.

New §749.3151 clarifies that the rules in this division do not apply to swimming activities away from the foster parents and the foster home.

The amendment to §749.4153 updates a cite to a rule.

The amendment to §749.4259 changes "therapy" to "counseling" to make the language in the chapter consistent.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Subia also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that: (1) there will be clarification of the Minimum Standards for Child-Placing Agencies (CPAs); (2) DFPS will be in compliance with HRC §42.042(b); and (3) there will be a reduced risk to children. There is no anticipated economic cost to individual persons who are required to comply with the proposed sections.

There is no anticipated adverse impact on small or micro-businesses as a result of the proposed rule changes. The recom-

mended rule changes should not affect the cost of doing business; do not require the purchase of any new equipment or any increased staff time in order to comply; and while there are some new requirements, these requirements should not require additional costs to comply.

Ms. Subia has determined that the proposed amendments, repeals and new sections do 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to CCLRules@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-553, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §749.43

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Accredited college or university--An institution of higher education accredited by one of the following regional accrediting entities:

(A) The Southern Association of Colleges and Schools[,] Commission on Colleges, a subdivision of the Southern Association of Colleges and Schools;

(B) The Middle States [~~Association of Colleges and Schools,~~] Commission on Higher Education, a component of the Middle States Association of Colleges and Schools;

(C) The [~~New England Association of Schools and Colleges,~~] Commission on Institutions of Higher Education, a subdivision of the New England Association of Schools and Colleges;

(D) [~~North Central Association of Colleges and Schools,~~] The Higher Learning Commission (formerly part of the North Central Association of Colleges and Schools);

(E) The Northwest Commission on Colleges and Universities;

(F) The [~~Western Association of Schools and Colleges,~~] Accrediting Commission for Senior Colleges and Universities, a subdivision of the Western Association of Schools and Colleges; or

(G) The [~~Western Association of Schools and Colleges,~~] Accrediting Commission for Community and Junior Colleges, a subdivision of the Western Association of Schools and Colleges.

[~~(2) Activity space--An area or room used for child activities.~~]

(2) [~~(3)~~] Adaptive functioning--Refers to how effectively a person copes with common life demands and how well the person meets standards of personal independence expected of someone in his particular age group, socio-cultural background, and community setting.

(3) [~~(4)~~] Adoption record--All information received by the child-placing agency that bears the child's name or pertains to the child, including any information about the birth parents and adoptive parents, is considered to be part of the adoption record.

(4) [~~(5)~~] Adoptive home screening--Also known as a pre-adoptive home screening. A written evaluation, prior to the placement of a child in an adoptive home, of the:

(A) Prospective adoptive parent(s);

(B) Family of the prospective adoptive parents; and

(C) Environment of the adoptive parents and their family in relation to their ability to meet the needs of a child, and if a child has been identified for adoption, the needs of that particular child.

(5) [~~(6)~~] Adult--A person 18 years old or older.

(6) Adverse action--See corrective or adverse action.

(7) Babysitting--Temporarily caring for a child in foster care for no more than 12 consecutive hours.

(8) Caregiver--A caregiver:

(A) Is a person counted in the child/caregiver ratio for foster care services, including employees, foster parents, contract service providers, and volunteers, whose duties include direct care, supervision, guidance, and protection of a child in care. This includes any person that is solely responsible for a child in foster care. For example, a child-placement staff that takes a foster child on an appointment or doctor's visit is considered a caregiver;[.]

(B) Does not include babysitters, overnight care providers, or respite child-care providers unless they are:

(i) Verified foster parents;

(ii) Licensed foster parents; or

(iii) Agency employees;[.]

(C) Does not include a contract service provider who:

(i) Provides a specific type of service to your agency for a limited number of hours per week or month; [~~or~~]

(ii) Works with one particular child; or[.]

(iii) Is a nurse being reimbursed by Medicaid; and

(D) Does not include a person left alone momentarily with a child in care while the caregiver leaves the room.

(9) Certified fire inspector--Persons certified by the Texas Commission on Fire Protection to conduct fire inspections.

(10) Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(11) Chemical restraint--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of medications that have a secondary effect of immobilizing or sedating a child, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons, is not chemical restraint and is not regulated as such under this chapter.

(12) Childhood activities--Activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §749.2605 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities.

(13) [~~(11)~~] Child in care--A child who has been placed by a child-placing agency in a foster or adoptive home, regardless of whether the child is temporarily away from the home[~~, as in the case of a child at school or at work or receiving respite child-care services~~]. Unless a child has been discharged from the child-placing agency, the child is considered a child in care.

(14) Corporation or other type of business entity--May include an association, corporation, nonprofit association, nonprofit corporation, nonprofit association with religious affiliation, nonprofit corporation with religious affiliation, limited liability company, political subdivision, or state agency. For purposes of this chapter, this definition does not include any type of "partnership", which is defined separately.

(15) Corrective or adverse action--Is any action by you that places a restriction or condition on a foster home's verification, including the revocation of the verification. Note: For information regarding a corrective or adverse action which Licensing is taking against you, see Subchapter L of Chapter 745 (relating to Enforcement Actions);

[~~(12) Child passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.~~]

(16) [~~(13)~~] Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(17) [~~(14)~~] Days--Calendar days, unless otherwise stated.

(18) [~~(15)~~] De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(19) [~~(16)~~] Department--The Department of Family and Protective Services (DFPS).

(20) [~~(17)~~] Discipline--A form of guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

[~~(18) Disinfecting solution--A disinfecting solution may be:~~]

[~~(A) A self-made solution, prepared as follows:~~]

~~*[(i)* One tablespoon of regular strength liquid household bleach to each gallon of water used for disinfecting such items as toys, eating utensils, and nonporous surfaces (such as tile, metal, and hard plastics); or~~]

~~*[(ii)* One-fourth cup of regular strength liquid household bleach to each gallon of water used for disinfecting surfaces such as bathrooms, crib rails, diaper-changing tables, and porous surfaces, such as wood, rubber or soft plastics; or~~]

[~~(B) A commercial product that is registered with the Environmental Protection Agency (EPA) as an antimicrobial product and includes directions for use in a hospital as a disinfectant. You must use the product according to label directions. Commercial products must not be toxic on surfaces likely to be mouthed by children, like crib rails and toys.~~]

(21) [~~(19)~~] Emergency Behavior Intervention (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(22) Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. A medication is not regulated as an "emergency medication" under this chapter if:

(A) It is prescribed by a treating health-care professional and administered solely for a medical or dental reason (e.g. benadryl for an allergic reaction or medication to control seizures); and

(B) Its use for a medical or dental reason has a secondary effect of modifying a child's behavior.

(23) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury, so that intervention is immediately necessary to prevent:

(A) Imminent probable death or substantial physical injury to the child because the child attempts or continually threatens to commit suicide or substantial physical injury; or

(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.

[~~(20) Family applicants--All residents, part- or full-time, of a household that are being considered for verification as an agency foster home or approved as an adoptive home.~~]

(24) [~~(21)~~] Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

[~~(22) Food service--The preparation or serving of meals or snacks.~~]

(25) [~~(23)~~] Foster family home--A home that is the primary residence of the foster parent(s) and provides care for six or fewer children or young adults, under the regulation of a child-placing agency.

(26) [~~(24)~~] Foster group home--A home [~~An operation~~] verified:

(A) After January 1, 2007, that is the primary residence of the foster parent(s) and provides care for seven to 12 children or young adults, under the regulation of a child-placing agency; or

(B) Prior to January 1, 2007, that provides care for seven to 12 children or young adults, under the regulation of a child-placing agency.

(27) [~~(25)~~] Foster home--As referred to in this chapter means both types of homes, foster family homes and foster group homes.

(28) [~~(26)~~] Foster home screening--A written evaluation, prior to the verification of the [~~placement of a child in a~~] foster home, of the:

(A) Prospective foster parent(s);

(B) Family of the prospective foster parent(s); [~~and~~]

(C) All other part- or full-time household members; and

(D) [~~(C)~~] Environment of the foster parent(s) and their family in relation to their ability to meet the child's needs.

(29) [~~(27)~~] Foster parent--A person verified to provide child-care [~~who provides foster care~~] services in the foster home.

(30) [~~(28)~~] Full-time--At least 30 hours per week.

(31) Governing body--A group of persons or officers of the corporation or other type of business entity having ultimate authority and responsibility for the child-placing agency.

[~~(29) Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.~~]

(32) [~~(30)~~] Health-care professional--A licensed physician, licensed advanced practice registered nurse, physician's assistant, licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the person's license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(33) [~~(31)~~] High-risk behavior--Behavior of a child that creates an immediate safety risk to the child or others. Examples of high-risk behavior include suicide attempt, self-abuse, physical aggression causing bodily injury, chronic running away, substance abuse [~~drug addiction~~], fire setting, and sexual aggression or perpetration.

(34) [~~(32)~~] Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(35) [~~(33)~~] Immediate danger to self or others--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury, or the probability of bodily harm resulting from a child running away [~~if less than 10 years old chronologically or developmentally~~]. Immediate danger does not include:

(A) Harm that might occur over time or at a later time; or

(B) Verbal threats or verbal attacks.

(36) [~~(34)~~] Infant--A child from birth through 17 months.

[~~(35) Livestock--An animal raised for human consumption or an equine animal.~~]

[~~(36) Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.~~]

[~~(37) Long-term placement--A placement intended to last for more than 90 days.~~]

(37) [~~(38)~~] Master record--The compilation of all required records for a specific person or home, such as a master personnel record, master case record for a child, or a master case record for a foster or adoptive home.

(38) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.

(39) Mental health professional--Refers to:

(A) A psychiatrist licensed by the Texas Medical Board;

(B) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(C) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(D) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(E) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(F) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health.

(40) Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(41) Non-mobile--A child that is not able to move from place to place, even with assistance.

[~~(42) Normalcy--The ability of a child in care to live as normal a life as possible, including:~~]

[~~(A) Having normal interaction and experiences within a foster family and participating in foster family activities; and~~]

[~~(B) Engaging in age and developmentally appropriate childhood activities, such as extracurricular activities, social activities in and out of school, and employment opportunities.~~]

(42) [~~(43)~~] Overnight care--Temporary care provided for a child in foster care by someone other than the foster parents with whom the child is placed for more than 12 consecutive hours, but no more than 72 consecutive hours.

(43) Owner--The sole proprietor, partnership, or corporation or other type of business entity who owns a child-placing agency.

(44) Parent--A person who has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(45) Partnership--A partnership may be a general partnership, (general) limited liability partnership, limited partnership, or limited partnership as limited liability partnership.

(46) Permit holder--The owner of the child-placing agency that is granted the permit.

(47) [~~(45)~~] Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(48) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.

(49) [~~(46)~~] Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(50) [~~(47)~~] Post-adoption [~~Post-adoptive~~] services--Services available through the child-placing agency (direct or on referral) to birth and adoptive parents and the adoptive child after the adoption is consummated. Examples include counseling, maintaining a registry if a central registry is not used, providing pertinent, new medical information to birth or adoptive parents, or providing the adult adoptee a copy of his record upon request.

(51) [~~(48)~~] Post-placement adoptive report--A written evaluation of the assessments and interviews, after the adoptive placement of the child, regarding the:

(A) Child;

(B) Prospective adoptive parent(s);

(C) Family of the prospective adoptive parent(s);

(D) Environment of the prospective adoptive parent(s) and their family; and

(E) Adjustment of all individuals to the placement.

(52) [~~(49)~~] Pre-adoptive home screening--See adoptive home screening.

(53) [~~(50)~~] PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(54) [~~(51)~~] Professional service provider--Refers to:

(A) A child placement management staff or person qualified to assist in child placing activity;

(B) A psychiatrist licensed by the Texas Medical Board;

(C) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(D) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(E) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(F) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists;

(G) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health; and

(H) Other professional employees in fields such as drug counseling, nursing, special education, vocational counseling, pastoral counseling, and education who may be included in the professional staffing plan for your agency that provides treatment services if the professional's responsibilities are appropriate to the scope of the agency's program description. These professionals must have the minimum qualifications generally recognized in the professional's area of specialization.

(55) Prone restraint--A restraint in which the child is placed in a chest-down hold.

(56) [~~(52)~~] Psychosocial assessment--An evaluation by a mental health professional of a child's mental health that includes a:

(A) Clinical interview of the child;

(B) Diagnosis from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5), or statement that rules out a DSM-5 diagnosis;

(C) Treatment plan for the child, including whether further evaluation of the child is needed (for example: is a psychiatric evaluation needed to determine if the child would benefit from psychotropic medication or hospitalization; or is a psychological evaluation with psychometric testing needed to determine if the child has a learning disability [~~disabilities~~] or an intellectual disability [~~disabilities~~]); and

(D) Written summary of the assessment.

(57) [~~(53)~~] Re-evaluate--Assessing [~~Re-evaluation--Includes an assessment of~~] all factors required for the initial evaluation [~~only~~] for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(58) [~~(54)~~] Regularly--On a recurring, scheduled basis. Note: For the definition for "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(59) [~~(55)~~] Sanitize--A four-step process that must be followed in the subsequent order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or article to air-dry.

(60) [~~(56)~~] School-age child--A child who is five years old or older and who will attend school in August or September of that year.

(61) [~~(57)~~] Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(62) Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other residents and the placement of the child alone in an area from which the resident is prevented from leaving by a physical barrier, force, or threat of force.

(63) [~~(58)~~] Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(64) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(65) [~~(59)~~] State or local fire authority [~~inspector~~]--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors.

[~~(60) State or local sanitation official--A sanitation official who is authorized to conduct environmental sanitation inspections on behalf of the city, county, or state government.~~]

(66) [~~(61)~~] Substantial physical injury [~~bodily harm~~]--Physical injury serious enough that a reasonable [~~prudent~~] person would conclude that the injury needs treatment by a medical professional, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damages to internal organs. Evidence that physical injury is substantial includes the location and/or severity of the bodily harm and/or the age of the child. Substantial physical injury [~~required professional medical attention. It~~] does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(67) Supine restraint--Placing a child in a chest up restraint hold.

(68) Supplement--Includes vitamins, herbs, and any supplement labeled dietary supplement.

(69) Swimming activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

(70) [~~(62)~~] Toddler--A child from 18 months through 35 months old.

(71) [~~(63)~~] Trafficking victim--A child who has been recruited, harbored, transported, provided or obtained for the purpose of forced labor or commercial sexual activity, including any child subjected to an act or practice as specified in Penal Code §20A.02 or §20A.03.

(72) [~~(64)~~] Trauma informed care (TIC)--Care for children that is child-centered and considers the unique culture, experiences, and beliefs of the child. TIC takes into consideration:

(A) The impact that traumatic experiences have on the lives of children;

(B) The symptoms of childhood trauma;

(C) An understanding of a child's personal trauma history;

(D) The recognition of a child's trauma triggers; and

(E) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment.

(73) [~~(65)~~] Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

[~~(66) Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.~~]

(74) [~~(67)~~] Unsupervised childhood activities [~~activity~~]--Childhood activities that [~~When~~] a child in care participates in [~~an activity~~] away from the foster home and the foster parents. Childhood activities that the foster parents conduct or supervise or the child-placing agency sponsors are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days. [~~caregivers.~~]

(75) [~~(68)~~] Volunteer--A person who provides:

(A) Child-care services, treatment services, or programmatic services under the auspices of the agency without monetary compensation, including a "sponsoring family;" or

(B) Any type of services under the auspices of the agency without monetary compensation when the person has unsupervised access to a child in care.

[~~(69) Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.~~]

(76) [~~(70)~~] Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

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 May 25, 2016.

TRD-201602551
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 438-5559

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DIVISION 2. SERVICES

40 TAC §749.61

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.61. What types of services does Licensing regulate?

We regulate the following types of services:

(1) (No change.)

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children:

(A) With Emotional Disorders who have a current DSM-5 diagnosis, such as mood disorders, psychotic disorders, or dissociative disorders, and [~~who~~] demonstrate two [~~three~~] or more of the following:

[~~*(i)* A Global Assessment Functioning of 50 or below;~~]

[~~*(ii)* A current DSM diagnosis;~~]

(i) [~~(iii)~~] Major self-injurious actions, including a [~~recent~~] suicide attempt within the last 12 months [~~attempts~~];

(ii) [~~(iv)~~] Difficulties that present a significant risk of harm to others, including frequent or unpredictable physical aggression; or

(iii) [~~(v)~~] An additional DSM-5 [~~A primary~~] diagnosis of substance-related and/or addictive disorder with [~~substance abuse or dependency and~~] severe impairment [~~because of the substance abuse~~];

(B) With a DSM-5 diagnosis of Intellectual Disability [~~Disabilities, who have an intellectual functioning of 70 or below and are~~] characterized by prominent, severe [~~significant~~] deficits and pervasive impairment in one or more of the following areas:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care [~~self care~~];

(ii) - (v) (No change.)

(C) With a DSM-5 diagnosis of Autism Spectrum Disorder that is [~~Pervasive Developmental Disorder, which is a category of disorders (e.g. Autistic Disorder or Rett's Disorder)~~] characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care [~~self care~~];

(ii) - (v) (No change.)

(D) - (E) (No change.)

(3) (No change.)

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 10, 2016
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SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §§749.101, 749.103, 749.105, 749.107

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.101. What are my responsibilities as the permit holder before I begin operating?

§749.103. What are my operational responsibilities as the permit holder?

§749.105. What responsibilities do I have for personnel policies and procedures?

§749.107. What must my conflict of interest policies include?

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 1. PLANS AND POLICIES REQUIRED FOR THE APPLICATION PROCESS

40 TAC §§749.101, 749.103, 749.105, 749.107, 749.109, 749.111, 749.113, 749.115, 749.117, 749.119, 749.121, 749.123, 749.125, 749.127, 749.129, 749.131, 749.133, 749.135, 749.137, 749.139, 749.141

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §40.042.

§749.101. What plans must I submit for Licensing's approval as part of the application process?

As part of the application process, you must submit the following plans to us for approval:

(1) An operation plan that must include:

(A) The location and telephone numbers of all of your offices, including branch offices;

(B) Your hours of operation at your main office and any branch offices; and

(C) A list of persons or officers and their titles who comprise the governing body, if applicable;

(2) A fiscal plan that includes:

(A) A detailed estimate of the operating costs of the agency for the first three months;

(B) Documentation of reserve funds or available credit at least equal to operating costs for the first three months;

(C) An estimated 12-month budget of income and expenses; and

(D) Predictable funds sufficient for the first year of operation;

(3) A plan to evaluate the effectiveness of your system for meeting the rules of this chapter, including evaluating the accuracy of foster home screenings and the comprehensiveness of the supervisory visits. This plan must describe how your evaluation process will:

(A) Identify problems, including deficiencies;

(B) Correct the problems identified; and

(C) Document the problems identified and when and how the problems were corrected; and

(4) A plan to ensure that you will:

(A) Investigate reports of minimum standards violations, upon our request; and

(B) Submit reports of your agency's investigative actions and finding to us within 30 days for our review, follow-up, and closure.

§749.103. What policies and procedures must I submit for Licensing's approval as part of the application process?

(a) You must develop the policies and procedures identified in subsection (b) of this section. Your policies and procedures must comply with or exceed the minimum standards specified in this chapter, Chapter 42 of the Human Resources Code, and Chapter 745 of this title (relating to Licensing), and other applicable laws.

(b) As part of the application process, you must submit the following policies and procedures to us for our approval:

(1) Policies and procedures related to record keeping, including where the records will be located. The policies must be consistent with Subchapter D of this chapter (relating to Reports and Records Keeping);

(2) Personnel policies and procedures consistent with §749.105 of this title (relating to What are the requirements for my personnel policies and procedures?);

(3) Conflict of interest policies consistent with §749.107 of this title (relating to What must my conflict of interest policies include?);

(4) Admission policies consistent with §749.109 of this title (relating to What must my admission policies include?);

(5) Placement policies consistent with §749.111 of this title (relating to What must my placement policies include?);

(6) Child-care policies consistent with §749.113 of this title (relating to What child-care policies must I develop?);

(7) Emergency behavior intervention policies consistent with §749.115 of this title (relating to What emergency behavior intervention policies must I develop if my foster homes are permitted to use emergency behavior intervention?);

(8) Discipline policies consistent with §749.117 of this title (relating to What are the requirements for my discipline policies for children in care?);

(9) Foster care policies consistent with §749.119 of this title (relating to What foster care policies must I develop?);

(10) Rights and responsibilities of the child-placing agency and the foster parents consistent with §749.121 of this title (relating to What policies must I develop concerning the rights and responsibilities of the child-placing agency and foster parents?);

(11) Additional policies for foster parents that provide treatment services consistent with §749.123 of this title (relating to What policies must I develop regarding foster parents who provide treatment services to a child with primary medical needs?);

(12) Additional policies for foster parents who offer a transitional living program consistent with §749.125 of this title (relating to What policies must I develop for foster parents who offer a transitional living program?);

(13) Policies for babysitters, overnight care providers, and respite care providers consistent with §749.127 of this title (relating to What policies must I develop for babysitters, overnight care providers, and respite care providers?);

(14) Policies for a legal risk placement program consistent with §749.129 of this title (relating to What policies must I develop for a legal risk placement program for foster-adoptive families?);

(15) Adoption policies, if applicable, consistent with §749.131 of this title (relating to What policies must I develop if I offer adoption services?);

(16) Volunteer policies consistent with §749.133 of this title (relating to What policies must I develop if I use volunteers?);

(17) Abuse and neglect policies consistent with §749.135 of this title (relating to What abuse and neglect policies must I develop?);

(18) An appeal process for adult clients consistent with Division 8 of Subchapter C (relating to Clients and Appeals);

(19) A weapons, firearms, explosive materials, and projectiles policy, for foster care services, consistent with Division 3 of Subchapter O (relating to Weapons, Firearms, Explosive Materials, and Projectiles); and

(20) A tobacco and e-cigarette policy consistent with §749.2931 of this title (relating to What policies must I enforce regarding tobacco products and e-cigarettes?).

§749.105. What are the requirements for my personnel policies and procedures?

Your personnel policies and procedure must:

(1) Include an organizational chart showing the administrative, professional, and staffing structures and lines of authority;

(2) Include written job descriptions, including minimum qualifications and job responsibilities for each position;

(3) Include a written professional staffing plan that:

(A) Demonstrates that the number, qualifications, and responsibilities of professional positions, including the child-placing agency administrator, are appropriate for the size and scope of your services and that workloads are reasonable enough to meet the needs of the children in care;

(B) Describes in detail the qualifications, duties, responsibilities, and authority of professional positions. For each position, the plan must show whether employment is on a full-time, part-time, or continuing consultative basis. For part-time and consulting positions, the plan must specify the number of hours and/or frequency of services; and

(C) Describes how staff or service providers support clients served through branch offices;

(4) Include written training requirements for employees and caregivers;

(5) Comply with background check requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(6) Require your employees to report serious incidents and suspected abuse, neglect, or exploitation. An employee who suspects abuse, neglect, or exploitation must report their suspicion directly to us and may not delegate this responsibility, as directed by Texas Family Code §261.101(b);

(7) Require that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child be informed in writing of their responsibility to maintain child confidentiality; and

(8) Either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?).

§749.107. What must my conflict of interest policies include?

Your conflict of interest policies must include:

(1) A statement that child placement staff and child placement management staff will not conduct, review, or approve foster home screenings, adoptive home screenings, or post-placement adoptive reports if there is a conflict of interest or bias with the family or the child. For example, there would be a conflict of interest if the staff is related to or has a personal relationship with the family or the child;

(2) A statement that it is a conflict of interest for your agency to verify as a foster parent or approve as an adoptive parent any of the following persons or relatives of any of the following persons: any current owner, member of the governing body, executive director, or any other employee or contract service provider of your agency;

(3) A code of conduct on the relationship between your agency's owners (including members of the governing body, if applicable), employees, contract service providers, children in placement, children's families, and prospective and current foster and adoptive parents, including required parameters for entering into independent financial relationships or transactions;

(4) For corporations or other types of business entities, a statement that the majority of the voting members of the governing body must consist of persons who do not have a conflict of interest that would potentially interfere with objective decision making. Persons who have such a conflict of interest include the following:

(A) Family members related by the third degree of consanguinity or second degree of affinity to:

(i) An officer of the governing body;

(ii) The administrator or executive director of the child-placing agency; or

(iii) Any person with a controlling interest in the entity's stock; or

(B) If the governing body is a non-profit entity, persons who benefit financially from the agency, including but not limited to persons employed by or working at the agency, paid consultants, subcontractors, or vendors; and

(5) For adoptions, you may state whether the person whom you evaluated appears to be suitable for adoption, even if there are other individuals requesting adoption. If you have not evaluated parties of a disputed case, you must refrain from making an adoption or custody recommendation, unless otherwise directed by the court.

§749.109. What must my admission policies include?

Your admission policies must include a description of each program you offer, including:

(1) The program's goals and services provided, including whether the program accepts emergency admissions; and

(2) The characteristics of the population the program serves, such as gender, age range, behaviors, and diagnoses. If the program includes treatment services, your policy must describe the type of treatment services the program is designed to treat, including emotional disorders, intellectual disability, autism spectrum disorder, primary medical needs, or trafficking victim services.

§749.111. What must my placement policies include?

Your placement policy must include a description of how you will:

(1) Ensure that your agency will not place a child before determining that foster care and/or adoption is appropriate for the child;

(2) Match a child with a foster and/or adoptive home to ensure that the child's needs are met;

(3) Make every effort to place siblings together and document in each child's record when it is necessary to separate siblings; and

(4) Ensure contact between siblings is maintained when siblings are not placed together or document why contact is not appropriate for one or more of the siblings.

§749.113. What child-care policies must I develop?

You must develop policies that describe:

(1) Visitation rights between the child and family members and the child and friends;

(2) The child's right to correspond by mail with family members and friends, including any policies regarding mail restrictions and receipt of electronic messages and mail;

(3) The child's right to correspond by telephone with family members and friends;

(4) The child's right to receive and give gifts to family, friends, staff or caregivers, or other children in care, including any restrictions on gifts;

(5) How a child obtains clothing;

(6) Personal possessions a child is or is not allowed to have, where the possessions may be stored, and search policies;

(7) Emergency behavior intervention techniques if the use of emergency behavior intervention is permitted in your agency. The policy must be consistent with §749.115(5) of this title (relating to What emergency behavior intervention policies must I develop if my foster homes are permitted to use emergency behavior intervention?);

(8) Any religious program or activity that you offer, including whether children must participate in the program or activity, and if so, with or without caregivers;

(9) The plans for meeting the educational needs of each child;

(10) When trips with caregivers away from the home are allowed and what protocols will be used;

(11) Program expectations and rules that apply to all children, including an overview of your discipline policy;

(12) Child grievance procedures;

(13) The types and frequency of reports to parents;

(14) Procedures for routine and emergency diagnosis and treatment of medical and dental problems;

(15) Routine health care relating to pregnancy and childbirth, if you admit and/or care for a pregnant child;

(16) Your plan for providing health-care services to a child with primary medical needs;

(17) Transitional living policies, if applicable;

(18) How you will determine whether it is appropriate for a child to use weapons, firearms, explosive materials, and projectiles, if applicable. This information must be consistent with §749.103(b)(19) of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?).

§749.115. What emergency behavior intervention policies must I develop if my foster homes are permitted to use emergency behavior intervention?

At a minimum, you must develop emergency behavior intervention policies to implement the requirements in Subchapter L of this chapter (relating to Foster Care Services: Emergency Behavior Intervention). The policies must include the following:

(1) A complete description of emergency behavior interventions that you permit caregivers to use;

(2) The specific techniques that caregivers can use;

(3) The qualifications for caregivers who assume the responsibility for emergency behavior intervention implementation, including required experience and training, and an evaluation component for determining when a specific caregiver meets the requirements of a caregiver qualified in emergency behavior intervention. You must have an on-going program to evaluate caregivers qualified in emergency behavior intervention and the use of emergency behavior interventions;

(4) Your requirements for and restrictions on the use of permitted emergency behavior interventions;

(5) For the orientation required in §749.1111(b)(6) of this title (relating to What orientation must I provide a child?), how you will:

(A) Explain and document to a child in a manner that the child can understand:

(i) Who can use an emergency behavior intervention;

(ii) The actions a caregiver must first attempt to defuse the situation and avoid the use of emergency behavior intervention;

(iii) The situations in which emergency behavior intervention may be used;

(iv) The types of emergency behavior intervention you permit;

(v) When the use of an emergency behavior intervention must cease;

(vi) What action the child must exhibit to be released from the emergency behavior intervention;

(vii) The way to report an inappropriate emergency behavior intervention;

(viii) The way to provide voluntary comments during or after an emergency behavior intervention; and

(ix) The process for making written comments after an emergency behavior intervention, such as comments regarding the incident that led to the emergency behavior intervention, the manner in which a caregiver intervened, and the manner in which the child was the subject or to which they were a witness. You may create a standardized form that is easily accessible or give children the permission to submit comments on regular paper; and

(B) Obtain each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process;

(6) Requirements that caregivers must attempt less restrictive and less intrusive emergency behavior interventions as preventive measures and de-escalating interventions to avoid the use of emergency behavior intervention;

(7) Training for emergency behavior intervention. The policy must include a description of the emergency behavior intervention training curriculum that meets the requirements in the rules of this chapter, the amount and type of training required for different levels of caregivers (if applicable), training content, and how the training will be delivered; and

(8) Prohibitions for discharging or otherwise retaliating against:

(A) An employee, child, foster parent or other adult client, resident, or other person for filing a complaint, presenting a grievance, or otherwise providing in good faith information relating to the misuse of emergency behavior intervention at the agency or foster home; or

(B) A child, foster parent or other adult client, or resident because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of emergency behavior intervention at the agency or foster home.

§749.117. What are the requirements for my discipline policies for children in care?

(a) You must develop discipline policies for children in foster care or in an adoptive placement prior to consummation that must:

(1) Guide caregivers and employees in the methods used for the discipline of children;

(2) Integrate trauma informed care into the care, treatment, and management of each child;

(3) Include measures for positive responses to appropriate behavior;

(4) Include the importance of nurturing behavior, stimulation, and promptly meeting the child's needs; and

(5) Include a statement that discipline of any type is not allowable for infants.

(b) For children in foster care, the discipline policies you develop must also be consistent with Subchapter K, Division 6 of this title (relating to Discipline and Punishment).

§749.119. What foster care policies must I develop?

You must develop foster care policies that include the following:

(1) Criteria and procedures for screening and accepting foster parent applicants or agency home caregivers who can meet the needs of the children your agency serves;

(2) Criteria for making decisions about the number, ages, gender, and needs of children who may be placed in a foster home;

(3) Pre-service and annual training requirements for foster parents or agency home caregivers that at a minimum meet the requirements of Subchapter F of the Chapter (relating to Training and Professional Development); and

(4) Policies on how you will provide services if the home provides more than one type of care.

§749.121. What policies must I develop concerning the rights and responsibilities of the child-placing agency and foster parents?

You must develop policies clearly stating the rights and responsibilities of the child-placing agency and foster parents. The policies must specify:

(1) What decisions you will make, what decisions the foster parents will make, and which ones you and the foster parents must agree upon. This policy must support normalcy consistent with Subchapter M, Division 7 of this chapter (relating to Normalcy);

(2) For training requirements for foster parents:

(A) What part you will provide;

(B) What part the foster parents must acquire on their own; and

(C) A statement about who will be responsible for training fees, travel expenses, and associated child-care costs;

(3) How you and the foster parents will communicate with each other;

(4) The amount of reimbursement you will provide the foster parents and when the foster parents will receive it;

(5) The type of relevant information and pre-placement contact you will provide, so the foster parents can make an informed decision about a placement;

(6) How much discretion the foster parents have in accepting or declining specific placements;

(7) The type and amount of support and services that are available to foster parents, including what support and services you will provide for babysitting, overnight care, and respite child-care services;

(8) The type of information that the foster parents must report to you and within what time frames;

(9) The foster parents' role in the services to children in care, including expectations for the foster parents' participation in service planning and implementation of the service plan;

(10) The foster parents' right to appeal your actions and decisions that affect them and the procedures for making an appeal;

(11) The responsibilities of the child-placing agency and the foster parents for complying with the rules of this chapter; and

(12) How foster parents may review their child-placing agency home record.

§749.123. What policies must I develop regarding foster parents who provide treatment services to a child with primary medical needs?

Your support and services policies for foster parents that are required in §749.121(7) of this title (relating to What policies must I develop concerning the rights and responsibilities of the child-placing agency and foster parents?) must include the provision of overnight care and respite care for foster parents who provide treatment services to a child with primary medical needs. The policies must include:

(1) Making arrangements to provide at least 72 hours of overnight care to the foster parents each year; and

(2) Providing respite child care services as necessary.

§749.125. What policies must I develop for foster parents who offer a transitional living program?

For foster parents who offer a transitional living program, you must develop policies that address the following:

(1) Criteria used to select participants for the program;

(2) Supervision of participants consistent with §749.2597 of this title (relating to Where must the caregivers reside in order to supervise children who are in a transitional living program?);

(3) Expected behaviors of participants and consequences for failure to comply;

(4) Training, education, and experiences to be achieved in the program; and

(5) Roles of participants, agency employees, contract staff, and caregivers.

§749.127. What policies must I develop for babysitters, overnight care providers, and respite care providers?

For both in-home and out-of-home care, you must develop policies specifically for babysitters, overnight care providers, and respite care providers that include:

(1) Minimum age for each type of provider;

(2) Minimum amount and type of prior child-care experience that each type of provider must have;

(3) Amount and type of training each type of provider must have;

(4) Reference and background information that foster parents or you must obtain before using each type of provider;

(5) Number of children that each type of provider can care for;

(6) Information that the foster parents must share with a provider, including information about the children in care and emergency contact information for the foster parent and the agency;

(7) Specific care instructions that the foster parents must share with a provider for children with treatment needs;

(8) A method for contact between the foster parent (and/or the child-placing agency) and provider during the time of the provider's care;

(9) Procedures for agency review and approval of arrangements; and

(10) Requirements for documentation of arrangements, including agency child placement staff review and approval, in the foster home record.

§749.129. What policies must I develop for a legal risk placement program for foster-adoptive families?

If you operate a legal risk placement program, you must develop policies that specify:

(1) The requirements for foster-adoptive families to participate in this program; and

(2) Criteria used in selecting children for appropriate legal-risk placements.

§749.131. What policies must I develop if I offer adoption services?

You must develop policies for adoption services that include:

(1) Procedures and criteria for qualifying, screening, and selecting adoptive parents, including the:

(A) Criteria you will use to evaluate potential adoptive parents;

(B) Criteria you will use to make decisions about placing specific children with an adoptive family; and

(C) Procedures you will use to implement the selection criteria;

(2) Training and programs for the adoptive parents;

(3) Statement of the rights and responsibilities of the agency and adoptive parents prior to the consummation of the adoption;

(4) How you will assist the adoptive homes on how to best preserve the cultural identity of the children in their care;

(5) Fees charged to adoptive parents and reimbursements to birth mothers consistent with Division 5 of this subchapter (relating to Financial Assistance to Birth Mothers);

(6) Services that will be offered to birth parents;

(7) Degree to which birth parents may be involved in planning for and placing their child; and

(8) Post adoption services that will be offered to adoptive parents, adopted children, and birth parents.

§749.133. What policies must I develop if I use volunteers?

If you use volunteers, you must develop policies that:

(1) Include job descriptions and/or responsibilities for the volunteers;

(2) Address qualifications, screening, and selection procedures for the volunteers;

(3) Address orientation and training programs for the volunteers;

(4) Address supervision of volunteers; and

(5) Address volunteer contact with children in care.

§749.135. What abuse and neglect policies must I develop?

You must develop policies on preventing, recognizing, and responding to abuse and neglect of children, including:

(1) Required annual training for employees;

(2) Methods for increasing employee awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect;

(3) Methods for increasing employee awareness of prevention techniques for child abuse and neglect;

(4) Strategies for coordination between the agency and appropriate community organizations; and

(5) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention.

§749.137. What are the general requirements for my agency's policies and procedures?

(a) The requirements for policies only apply to the agency's policies that are required or governed by this chapter.

(b) All employees and caregivers must be aware of and follow your policies and procedures.

§749.139. What requirements must I follow when adopting my child-placing agency's plans, policies, and procedures?

(a) Your agency's plans, policies, and procedures must indicate the date on which you adopted them and their effective date.

(b) You must formalize the adoption of your agency's plans, policies, and procedures as appropriate for your type of ownership:

(1) If you are a sole proprietor, you must sign them;

(2) If you are a partnership, each partner must sign them; or

(3) If you are a corporation or other type of business entity, the governing body must take a written action to adopt (sometimes this may be an order or the adoption may be included in the minutes of the governing body).

§749.141. Can Licensing cite my agency for a deficiency if I fail to operate according to my approved plans, policies, and procedures?

Yes, if you violate plans, policies, or procedures, then we may cite the relevant standard in Division 1 of this Subchapter (relating to Plans and Policies Required During the Application Process) as a deficiency.

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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Trevor Woodruff
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Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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DIVISION 2. GOVERNING BODY

40 TAC §749.131, §749.133

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.131. What are the specific responsibilities of the governing body?

§749.133. After a permit has been issued, what subsequent information regarding my governing body must I provide to Licensing, and when must I provide it?

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DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

40 TAC §749.151, §749.153

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §40.042.

§749.151. What are my operational responsibilities?

While you are operating, you must:

(1) Have a designated full-time child-placing agency administrator who meets the minimum qualifications of §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?);

(2) Operate according to your approved plans, policies, and procedures;

(3) Maintain current, true, accurate, and complete records;

(4) Allow us to inspect your child-placing agency during its hours of operation;

(5) Allow us to inspect or monitor any of your foster homes at any time;

(6) Not offer unrelated types of services that conflict or interfere with the best interests of a child in care, a caregiver's responsibilities, or space in the homes. If you offer more than one type of service, you must determine and document that no conflict exists;

(7) Maintain liability insurance as required by the Human Resources Code, §42.049; and

(8) Prepare the annual budget and control expenditures and ensure compliance with Division 3 of this Subchapter (relating to General Fiscal Requirements).

§749.153. What changes must I notify Licensing about regarding my child-placing agency?

(a) You must provide written notification to your Licensing Representative:

(1) As soon as possible, but at least 30 days before you:

(A) Change the legal structure of your agency or your governing body, if applicable;

(B) Move your agency to another location;

(C) Open a branch office; or

(D) Change your agency's or a branch office's hour of operation;

(2) As soon as possible, but at least 15 days before you:

(A) Make changes to the plans required in §749.101(3) and (4) of this title (relating to What plans must I submit for Licensing's approval as part of the application process?); or

(B) Make changes to the policies and procedures required in 749.103(b) of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);

(3) As soon as possible, but no later than two days after:

(A) You change your child-placing agency administrator.

(B) A new individual becomes a controlling person at your child-placing agency;

(C) An individual ceases to be a controlling person at your child-placing agency; or

(D) There is a significant change in the information we maintain about a controlling person, such as a name change or mailing address change; and

(4) About a foster home's verification status as described in §749.2489 of this title (relating to What information must I submit to Licensing about a foster home's verification status?).

(b) You must report to the Texas Abuse and Neglect Hotline as soon as you become aware of any foster or adoptive placements that appear to have been made by someone other than the child's parents or a child-placing 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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DIVISION 3. GENERAL FISCAL REQUIREMENTS

40 TAC §749.161, §749.163

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.161. What are my general fiscal requirements?

§749.163. What are my specific fiscal 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.

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40 TAC §749.161

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §40.042.

§749.161. What are my fiscal requirements?

(a) You must establish and maintain your agency on a sound fiscal basis, including

(1) Paying your employees timely;

(2) Paying foster parents per your agreement with them; and

(3) Making sure the needs of children in care are being met.

(b) You must maintain complete financial records that comply with Generally Accepted Accounting Principles, including:

(1) Accounting for a child's money separately from the funds of your agency and the foster home. You may not use a child's personal earnings, allowances, or gifts to pay for the child's room and board, unless such a use is a part of the child's service plan and the child's parent approves it in writing. You must give or send the child's money to the child, parent, or next placement within 30 days of the child's discharge; and

(2) Making one of the following available for our review:

(A) An annual review of your financial records conducted by an independent Certified Public Accountant in accordance with the Generally Accepted Accounting Principles; or

(B) Proof of reserve funds equal to at least three months of operating expenses for your 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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DIVISION 7. BRANCH OFFICES

40 TAC §§749.304, 749.305, 749.307

The new section and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC §40.042.

§749.304. Where must I have a main or branch office?

You must have either a main or branch office:

(1) In each region of the department where you verify homes; or

(2) Within 150 miles of each verified foster home.

§749.305. What are the requirements for administrators and treatment directors for a main office and branch offices [~~When are additional staff or offices required for foster care services~~]?

(a) You [~~In each DFPS region where you verify foster homes or within 150 miles of each verified foster home, you~~] must comply with one of the following:

(1) The [~~Maintain a~~] main office and each [~~or~~] branch office, must have a separate [~~with~~]:

(A) Administrator [~~An administrator~~] who meets §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?); and

(B) Treatment [~~A treatment~~] director, if applicable, per §749.721 of this title (relating to Must I have a treatment director?); or

(2) Offices that operate based on the following caseload limits for child placement staff may share the same administrator and treatment director [~~Maintain a main office or branch office that operates based on the following caseload limits~~]:

(A) A caseload of foster children only that does not [~~cannot~~] exceed:

(i) - (iii) (No change.)

(B) A caseload of foster homes only that does not [~~cannot~~] exceed 15 homes; and

(C) A combination caseload of both children and homes that does not [~~cannot~~] exceed 30 cases. Calculate the maximum of 30 cases by counting:

(i) - (iii) (No change.)

[~~(b) If you choose to comply with subsection (a) of this section using the caseload limits in subsection (a)(2) of this section, you are~~

~~only required to have one administrator and one treatment director (if applicable) for each license.~~]

[~~(c) If you were licensed before January 1, 2007, you have until January 1, 2012, to comply with this requirement.~~]

(b) [~~(d)~~] This rule does not apply to a child-placing agency that provides only adoption services, including foster homes verified by a private adoption agency solely for the care of infants awaiting placement in an adoptive home pending the resolution of the child's eligibility for adoption and/or the readiness of an appropriate adoptive home. This exception does not apply to [~~include~~] a foster home that is also the intended adoptive home.

§749.307. What happens to the foster homes supervised by a branch office when the branch office closes?

(a) If the branch office closure is related to a corrective or adverse action which Licensing is taking or has taken against your agency, you must:

(1) (No change.)

(2) Transfer a foster home under that branch office to your main or another branch office, including:

(A) - (B) (No change.)

(C) Amending the [~~Issuing a new~~] verification certificate.

(b) If the branch office closure is not related to a corrective or adverse action which Licensing is taking or has taken against your agency, you may transfer the foster homes to the main office or another branch office without updating the foster [~~homes'~~] home screening [~~studies~~].

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DIVISION 8. POLICIES AND PROCEDURES

40 TAC §§749.331, 749.333, 749.335, 749.337, 749.339, 749.341, 749.343, 749.345, 749.347, 749.349, 749.351, 749.353, 749.355, 749.357, 749.359

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.331. What are the general requirements for my agency's policies?
§749.333. What are the requirements for my admission policies?
§749.335. What information must my placement policy contain?
§749.337. What policies must I provide to the person placing the child?
§749.339. What child-care policies must I develop?
§749.341. What emergency behavior intervention policies must I develop if the use of emergency behavior intervention is permitted in my foster homes?
§749.343. What policies must I develop on the discipline of children in foster care and pre-adoptive care?
§749.345. What foster care policies must I develop?
§749.347. What policies must I develop on the rights and responsibilities of the child-placing agency, foster parents, and caregivers?
§749.349. What additional policies must I develop for foster parents that provide treatment services?
§749.351. What policies must I develop for fosters parents who offer a transitional living program?
§749.353. What policies must I develop for babysitters, overnight care providers, and respite care providers?
§749.355. What policies must I develop for a legal risk placement program for foster-adoptive families?
§749.357. What policies must I develop if I offer adoption services?
§749.359. What policies must I develop if I use volunteers?

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40 TAC §§749.421, 749.423, 749.425

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.421. Who are my clients?

(a) Anyone can request information from you or attend a meeting open to all interested persons. A person becomes your client when you establish a relationship beyond that available to someone who is merely an interested person.

(b) [~~(a)~~] Your child clients include children in:

(1) Foster care; and

(2) Pre-consummated adoptive placement.

(c) [~~(b)~~] Your adult clients include:

(1) Birth parents [~~parent~~], managing conservators [~~conservator~~], or whoever has legal responsibility for children they [~~the child that you~~] are placing in your care;

(2) Foster parent applicants;

(3) Foster parents;

(4) Adoptive applicants;

(5) Adoptive parents prior to consummation of the adoption; [~~and~~]

(6) Adoptive parents and birth parents seeking post adoption [~~adoptive~~] services; and[~~.~~]

(7) Young adults in your care.

[~~(c) Anyone can call you for information or attend a meeting open to all interested persons, but a person becomes your client when you establish a relationship beyond that available to someone who is merely an interested person.~~]

§749.423. What rights do my adult clients have?

When a person becomes your adult client, you must inform the person in writing:

(1) That the rules of this chapter, any [~~the~~] compliance [~~status~~] reports, and your policies are available for review upon their request;

(2) (No change.)

(3) Of procedures for making a complaint to us regarding a violation of minimum standards; and

(4) Of other entities and their phone numbers and addresses where it is appropriate to file complaints, such as the board or state agency that professionally licenses individuals whom you employ or contract with, and the procedures for making complaints to those entities.

§749.425. What must my appeal process include?

(a) (No change.)

(b) The process must describe:

(1) (No change.)

(2) The procedures and time frames for clients to make [~~making~~] an appeal;

(3) The criteria or basis that will be used to make the decision;

(4) [~~(3)~~] Who will hear an appeal and make the decision;

(5) Time frames for making a decision and communicating the decision to the client; and

(6) [~~(4)~~] How the client will be informed of [~~person who requests an appeal will find out about~~] the decision.[~~;~~]

[~~(5) Time frames for making a decision and communicating the decision to the complainant; and~~]

[~~(6) The basis for an appeal decision.~~]

(c) - (d) (No change.)

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SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

40 TAC §§749.501, 749.503, 749.509, 749.513, 749.515

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.501. What is a serious incident?

A serious incident is a non-routine occurrence that has or may have dangerous or significant consequences on the care, supervision, and/or treatment of a child. The different types of serious incidents are noted in §749.503 of this title (relating to When must I report and document a serious incident?).

§749.503. When must I report and document a serious incident?

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:

Figure: 40 TAC §749.503(a)

(b) If there is a medically pertinent incident, such as a seizure, that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as a serious incident. [~~Foster parents must report any serious incident directly to the Child Abuse Hotline if the incident involves a child under the care of the foster parent.~~]

(c) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law [~~law~~] enforcement as outlined in the chart above;[~~.~~]

(2) The [~~You also have to report the incident to the~~] parents, if the adult resident is not capable of making decisions about the resident's [~~his~~] own care; and[~~.~~]

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(d) You must report and document the following types of serious incidents involving your agency, one of your foster homes, an

employee, professional level service provider, contract staff, or a volunteer to the following entities within the specified time frame:
Figure: 40 TAC §749.503(d)

§749.509. How do I make a report of a serious incident or occurrence to Licensing?

(a) All serious incident reports must be made directly to the Texas [~~Child~~] Abuse and Neglect Hotline.

(b) Foster parents must report any serious incidents directly to the Texas Abuse and Neglect Hotline if the incident involves a child under the care of the foster parent. [~~Occurrences that are required to be reported to Licensing in writing must be forwarded to your Licensing representative (See §749.507 (2) and (3) of this title (relating to When must I report other occurrences?)).~~]

§749.513. What additional documentation must I include with a written serious incident report?

You must include the following additional documentation with a written serious incident report, as applicable:
Figure: 40 TAC §749.513

§749.515. How long [~~Where~~] must I keep my incident reports?

[~~(a)~~] You must keep a copy of the incident reports [~~report~~] on file for two years. The reports must be easily accessible to Licensing upon request.

[~~(b) You must permit Licensing to make a copy of incident reports, as requested.~~]

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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40 TAC §749.507

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.042.

§749.507. When must I report other occurrences?

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 2. OPERATION RECORDS

40 TAC §§749.529, 749.531, 749.533 - 749.535, 749.539

The new sections and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections and amendments implement HRC §40.042.

§749.529. What are the retention requirements for my agency's policies?

(a) You must maintain a copy of your policies and procedures at the agency. They must be available for review by employees, contract staff, caregivers, Licensing, or your clients, upon request.

(b) You must maintain copies of all current and previous policies for at least two years.

§749.531. What policies and procedures must I have for protecting records?

You must have policies and procedures for:

(1) Protecting paper and electronic records from destruction and loss; and

(2) Clarifying the persons:

(A) Within your agency who are authorized to access records; and

(B) Outside of your agency who are authorized by law to have access to records.

§749.533. What additional policies and procedures must I have for electronic records?

If you keep electronic records, you must develop policies and procedures in addition to the requirements in §749.531 of this title (relating to What policies and procedures must I have for protecting records?). These policies and procedures must address:

(1) What records must be in the external paper file and what records can be stored in the electronic file;

(2) Computer security systems, including confidentiality, passwords, and employee procedures to ensure the security of the system;

(3) Requirements for routine back-up of data;

(4) Anti-virus protection systems; and

(5) Limit access to your electronic files to persons within your agency authorized to see specific information in an electronic file.

§749.534. Are electronic signatures allowed?

Yes, you may use electronic and digital signatures, including approvals by e-mail and electronic approvals.

§749.535. How current must a record be?

(a) All documentation must be in the record:

(1) (No change.)

[~~(2) Within 15 days from the end of the month for monthly summaries; or~~]

(2) [~~(3)~~] As otherwise specified in this chapter.

(b) Foster parents must submit copies [~~Copies~~] of any records they keep. They must submit them within 15 days from the end of the month. [~~kept by the foster parents must be submitted to you each month.~~] You must file these records in the child's record.

§749.539. Where must I maintain foster home disaster and emergency plans?

You must maintain a copy of each current foster home disaster and emergency plan at the main office, the relevant branch office, [~~agency~~] or in a central administratively designated location.

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40 TAC §749.531, §749.533

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.531. If I keep electronic records, what procedures must I have for those records?

§749.533. What procedures must I have for protecting records?

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DIVISION 3. PERSONNEL RECORDS

40 TAC §749.551, §749.553

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.551. Where must I maintain personnel records?

(a) You must maintain all active personnel records at the main office or keep individual personnel records at the office where each person is working. [~~agency. This may include electronic records in §749.531 of this title (relating to If I keep electronic records, what procedures must I have for those records?).~~]

(b) You must maintain archived personnel records at the main office, the relevant branch office, [~~agency~~] and/or in a central administratively designated location.

(c) - (d) (No change.)

(e) You must maintain in the main office of the agency a master list of active and archived personnel records with a notation of the [~~and their~~] location of those records [~~in the main office of the agency~~].

§749.553. What information must the personnel record of an employee include?

For each employee, excluding foster parents, the personnel record must include:

(1) - (3) (No change.)

(4) Evidence of any valid professional licensures, certifications, or registrations the person must have to meet qualifications for the [~~job~~] position, such as a current renewal card or a letter from the credentialing entity verifying that the person has met the required renewal criteria;

(5) - (6) (No change.)

(7) A statement signed and dated by the employee documenting that the employee [~~he~~] has read a copy of the operational policies required by §749.103 of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);[~~:~~]

[~~(A) Operational policies; and~~]

[~~(B) Personnel policies;~~]

(8) A statement signed and dated by the employee indicating [~~that:~~]

[~~(A)~~] the [~~The~~] employee must immediately report any suspected incident of child abuse, neglect, or exploitation to the Texas [~~Child~~] Abuse and Neglect Hotline and the agency's administrator or administrator's designee; [~~and~~]

[~~(B) The date the employee attended pre-service training in measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploita-~~

~~tion, as required by §749.881(3) of this title (relating to What curriculum components must be included in the general pre-service training?);~~]

(9) - (10) (No change.)

(11) A record of training, including the date of the training, the number of [~~and~~] training hours, and the curriculum covered;

(12) Any documentation of the person's performance [~~tenure~~] with the agency; and

(13) The date and reason for the person's separation [~~from the agency~~], if applicable.

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DIVISION 4. CLIENT RECORDS

40 TAC §§749.571, 749.573, 749.577, 749.581, 749.585

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.571. What client records must I maintain?

You must maintain master records for all clients. The records must be individualized, current, and complete. The master record may include electronic records [~~in §749.531 of this title (relating to If I keep electronic records, what procedures must I have for those records?)~~].

§749.573. Where must I maintain active master records for clients?

(a) - (b) (No change.)

(c) You must maintain a master list of active client records with a notation of the [~~and their~~] location of those records in the main office of the agency.

§749.577. What information must an active child record include?

For each child, the active record must include:

(1) The child's full name and another method of identifying the child, such as a client number; and

(2) Documentation of known allergies and chronic conditions on the exterior of the child's record or in another place [~~location~~] where the information is clearly visible to persons with access to the record, including a notation of "no known allergies" when applicable.[~~; and~~]

[~~(3) The date of each data entry and the name of the person who makes the data entry.~~]

§749.581. Where must I maintain archived master [~~client~~] records for clients?

(a) You must maintain archived client records at the main office, the branch office that served the client, [~~agency~~] and/or in a central administratively designated location.

(b) - (c) (No change.)

(d) You must maintain a master list of archived client records with a notation of the [~~and their~~] location of those records in the main office of the agency.

§749.585. How long must I maintain client records?

(a) - (b) (No change.)

(c) You must maintain records for verified foster homes for at least five years after the foster home is closed. This includes foster homes that did not receive placements.

(d) (No change.)

(e) You must maintain records for applicants for foster or adoptive homes whom you did not verify or approve for at least one year after denial of the application.

(f) You do not have to maintain records of foster or adoptive home applicants who drop out before the completion of a home screening [~~study~~].

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SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §749.601

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.042.

§749.601. What must my written professional staffing plan include?

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DIVISION 2. CHILD-PLACING AGENCY ADMINISTRATOR

40 TAC §749.633, §749.635

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.633. Can a child-placing agency administrator be an administrator for two residential child-care operations?

A child-placing agency administrator can be an administrator for two residential child-care operations, including a general residential operation or residential treatment center, if:

(1) (No change.)

(2) The size and scope of the operations [~~operation~~] are manageable by one person, which is clarified in the written professional staffing plans;

(3) (No change.)

(4) At least one child-placing agency is managing 25 or fewer foster homes[~~, if acting as the administrator for two child-placing agencies~~].

§749.635. What responsibilities must the child-placing agency administrator [~~designated to be responsible for the administration of the agency~~] have?

The child-placing agency administrator must:

(1) Have daily supervision and overall administrative responsibility for all of your offices, including your main office and any branch offices; and[~~.~~]

(2) Be responsible for or assign responsibility for:

(A) Administering and managing the agency according to your [~~the~~] policies [~~adopted by the governing body~~];

(B) (No change.)

(C) Personnel matters, including hiring, assigning duties, training, supervision, evaluation of employees, and terminations; [~~and~~]

(D) Ensuring persons whose behavior or health status presents a danger to children are not allowed at the agency or foster homes; and[~~.~~]

(E) Administering and managing your approved agency plans as stated in §749.101(3) and (4) of this title (relating to What plans must I submit for Licensing's approval as part of the application process?). These plans:

(i) Evaluate the effectiveness or your system for meeting the rules of this chapter; and

(ii) Ensure the investigation of reports of minimum standards violations, upon our request.

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DIVISION 3. CHILD PLACEMENT STAFF AND CHILD PLACEMENT MANAGEMENT STAFF

40 TAC §§749.663, 749.667, 749.669, 749.673, 749.675, 749.679

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.663. What are the responsibilities of child placement staff?

(a) Child placement staff providing foster care services are responsible for:

(1) - (2) (No change.)

(3) Managing the case of a child, including:

(A) (No change.)

(B) Maintaining [~~Stewarding~~] direct contact with the child and the foster parents or other caregivers; and

(C) Performing any additional case management activities, including conducting and documenting supervisory visits for compliance with §749.2815 of this title (relating to How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?);

(4) - (5) (No change.)

(b) Child placement staff providing adoption services are responsible for:

(1) - (2) (No change.)

(3) Managing the case of a child, including:

(A) (No change.)

(B) Maintaining [~~Stewarding~~] direct contact with the child and the foster parents, adoptive parents, or other caregivers; and

(C) (No change.)

(4) - (5) (No change.)

[~~(c) Child placement management staff may directly perform any of these responsibilities.~~]

§749.667. What are the responsibilities of child placement management staff?

Child placement management staff must:

(1) Review and approve:

(A) - (B) (No change.)

(C) Investigation findings of minimum standards deficiencies that Licensing requested you conduct; and

(D) (No change.)

(2) Supervise child placement staff [~~less qualified or experienced employees~~], if any, including planning for the staff's [~~employee's~~] professional development and taking any other appropriate action in regard to their child-placing decisions.

(3) Directly perform the responsibilities of the child placement staff, as appropriate (e.g. the child placement staff is absent or unavailable).

§749.669. How do child placement management staff document approval?

Child placement management staff must review and approve by signing and dating the following documents:

(1) - (2) (No change.)

(3) Foster and adoptive home screenings [~~studies~~];

(4) Investigation reports of minimum standards deficiencies that Licensing requested you conduct;

(5) - (7) (No change.)

(8) Any restrictions you impose [~~imposed~~] on the child:

(A) For [~~for~~] more than 30 days that [~~have not been approved by~~] the treatment director or service planning team has not approved;[~~,~~] and

(B) That [~~any monthly re-evaluations of a restriction that~~] continues for more than 30 days and must be re-evaluated by the child placement management staff;

(9) - (11) (No change.)

§749.673. What are the qualifications that an employee must have to perform child placement activities?

In addition to the requirements that all employees must meet, employees who perform child placement activities must meet the following qualifications:

Figure: 40 TAC §749.673

§749.675. What are the qualifications an employee must have to perform child placement management activities?

In addition to the requirements that all employees must meet, employees who perform child placement management activities must meet the following qualifications:

Figure: 40 TAC §749.675

§749.679. What are the requirements for the caseloads of my child placement staff?

There are no caseload requirements for child placement staff; however, you must:

(1) Maintain compliance with §749.305(a)(2) of this title (relating to What are the requirements for administrators and treatment directors for a main office and branch offices?), if applicable; and

(2) Ensure that all caseloads [~~ensure manageable caseloads that~~] allow child placement staff to meet the needs of children in care and adequately support foster and adoptive homes.

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DIVISION 3. CHILD PLACEMENT STAFF

40 TAC §749.671, §749.681

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.671. What is a corrective or adverse action?

§749.681. What ethical requirements must I follow when conducting a foster home screening, an adoptive home screening, or a post-placement adoptive report?

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DIVISION 4. TREATMENT DIRECTOR

40 TAC §749.725

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.725. What qualifications must a treatment director have?

(a) A treatment director that provides or oversees treatment services for children with intellectual disabilities [~~mental retardation~~] or children with autism spectrum disorder [~~pervasive developmental disorders~~] must be:

(1) (No change.)

(2) Certified by the Texas Education Agency as an education diagnostician, have a master's degree in special education or a human services field, and have three years of experience working with children with intellectual disabilities [~~mental retardation~~] or autism spectrum [~~a pervasive developmental~~] disorder.

(b) - (c) (No change.)

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DIVISION 6. CONTRACT STAFF AND VOLUNTEERS

40 TAC §§749.761, 749.767, 749.769

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §40.042.

§749.761. What are the requirements for a volunteer?

(a) (No change.)

(b) The personnel record must include a statement signed and dated by the volunteer indicating the volunteer [~~he~~] must immediately report any suspected incident of abuse, neglect, or exploitation to the Texas [~~Child~~] Abuse and Neglect Hotline and the agency's administrator or administrator's designee. An internal reporting policy may not require the delegation of the person's responsibility to report suspected abuse, neglect, or exploitation.

[~~(c) If the volunteer provides short-term services through an agency or an organization, you must be aware of and approve the organization or agency's policies on volunteer short-term services before the volunteer can have contact with children.~~]

§749.767. Is a volunteer who is part of another [~~agency or~~] organization subject to my policies and procedures?

If the volunteer provides short-term services through [~~is a part of~~] an organization, including another agency, that provides screening, training, and supervision, you do not have to duplicate these services. However, you must determine that the volunteer program's policies and procedures are adequate to protect the health and safety of children [~~meet the intent of these rules~~], before the volunteer can have contact with children.

§749.769. Can I use a volunteer who is on probation or parole or is performing community service through the courts?

No person may provide services to your agency if that person is on probation or parole or is performing community service through the courts because of criminal activity, including as an alternative to incarceration. This prohibition applies to a person who meets the definition of "volunteer" in §749.43 of this title (relating to What do certain words and terms mean in this chapter?) or any other person whom you are not compensating, including persons providing any type of service even when the person does not have unsupervised access to children in care.

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40 TAC §749.769, §749.771

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The repeals implement HRC §40.042.

§749.769. Can I use a volunteer that is on probation, parole, or referred for community service through the courts?

§749.771. Is a family or organization that invites a child in care for an overnight or weekend a "volunteer"?

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SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 1. DEFINITIONS

40 TAC §749.801

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§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) CEU--Continuing education unit.~~]

(1) [~~(2)~~] CPR--Cardiopulmonary resuscitation.

(2) [~~(3)~~] Hours--Clock hours.

(3) [~~(4)~~] Instructor-led training--Training that is characterized by the communication and interaction that takes place between the student and the instructor. It [~~and~~] must include an opportunity for the student to [~~timely~~] 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[~~, including answering questions, providing~~] feedback on skills practice, provide [~~providing~~] guidance or information on additional resources, and proactively interact [~~interacting~~] with students. Examples of this type of training include classroom training, on-line distance learning, video-conferencing, or other group learning experiences.

(4) [~~(5)~~] Self-instructional training--Training that is designed to be used by one individual working alone and at the individual's [~~their~~] own pace to complete lessons or modules. Examples of this type of training include computer based training, written materials, or video training.

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

40 TAC §§749.861, 749.867, 749.869

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.861. What are the pre-service experience requirements for caregivers?

(a) (No change.)

(b) Before a caregiver can provide care to a child receiving treatment services, you must ensure that the caregiver has the experience to care for the child's treatment need. If a caregiver does not have the necessary experience, your child-placement management staff must prescribe a regimen of specific child-care experience that the caregiver must complete before you place a child with treatment needs in the caregiver's home, including a minimum of eight hours of observations of interactions with children receiving similar treatment services as the prospective caregiver would be providing.

(c) (No change.)

§749.867. Must I provide pre-service training to a caregiver or employee who was previously a caregiver or employee for a residential child-care operation [~~child-placing agency~~]?

(a) A caregiver is exempt from completing the eight hours of general pre-service training if the caregiver [~~he~~] 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 pre-service training regarding emergency behavior intervention if the caregiver or employee [~~he~~]:

(1) - (3) (No change.)

(c) (No change.)

§749.869. What are the instructor requirements for providing pre-service training?

(a) The training must be instructor-led.

(b) [~~(a)~~] A qualified instructor must deliver the pre-service training. A qualified instructor must have adequate knowledge and experience in the topic the instructor delivers.

[~~(b) The training must be instructor led.~~]

(c) - (d) (No change.)

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DIVISION 4. GENERAL PRE-SERVICE TRAINING

40 TAC §749.881

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

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

The general pre-service training curriculum must include the following 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[~~, and normalcy~~];

(2) - (6) (No change.)

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

40 TAC §749.901

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§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?

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

(1) - (6) (No change.)

(7) Less restrictive strategies caregivers can use to work with oppositional children; [~~and~~]

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

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

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DIVISION 6. ANNUAL TRAINING

40 TAC §§749.933, 749.935, 749.937, 749.939, 749.941, 749.945

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§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 you hire the person as an employee or caregiver or verify the person as a foster parent, whichever is applicable [~~the date of his employment~~]; and

(2) During each subsequent 12-month period after the anniversary date of hire or verification.

(b) Alternatively, you have the option of prorating the person's annual training requirements from the date of hire or verification [~~employment~~] 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) (No change.)

§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 [~~CEUs~~] earned through:

(1) - (6) (No change.)

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

(1) The hours of annual training that a person received at another [~~child-placing agency, general~~] residential child-care operation[~~, or residential treatment center~~], if the person:

(A) - (B) (No change.)

(2) - (3) (No change.)

(4) Any [~~The~~] hours of pre-service training that the person earned [~~earns~~] in addition to the required pre-service hours, although you may not carry over more than 10 hours of a person's pre-service training hours for use as annual training hours during the upcoming year[~~. For example, if a person completes 24 hours of pre-service emergency behavior intervention training, and is required to obtain 16 hours, that person may count eight of the hours toward annual training requirements~~];

(5) - (6) (No change.)

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

(1) (No change.)

(2) Required pre-service [~~Pre-service~~] training;

(3) - (4) (No change.)

(d) No more than one-half [~~one-third~~] of the required annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from reading written materials.

(e) (No change.)

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

No. We do not approve or endorse training resources or trainers for training hours. You must, however, ensure that [~~the~~] employees and caregivers receive reliable training relevant to the population of children served, which includes for both instructor-led training and self-instructional training:

(1) - (4) (No change.)

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

(a) (No change.)

(b) Transportation safety training must be instructor-led and provided by:

(1) - (6) (No change.)

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

Other than the mandated annual training topics, annual [~~Annual~~] training must be in areas appropriate to the needs of children for whom the caregiver provides care, which may include:

[~~(1) Trauma informed care;~~]

(1) [~~(2)~~] Developmental stages of children;

(2) [~~(3)~~] Constructive guidance and discipline of children;

(3) [~~(4)~~] Fostering children's self-esteem;

(4) [~~(5)~~] Positive interaction with children;

(5) [~~(6)~~] Strategies and techniques for working with the population of children served;

[~~(7) Normalcy;~~]

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

(7) [~~(9)~~] Preventing the spread of communicable diseases;[~~.~~]

(8) Water Safety; or

(9) Administration of medication.

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

If you permit a caregiver to administer psychotropic medication:

(1) The caregiver's [~~His~~] annual training must meet the psychotropic medication training requirements in §749.885 of this title (relating to Are there additional general pre-service training requirements for a caregiver that administers psychotropic medication?); and

(2) The caregiver [~~He~~] must obtain annual psychotropic medication training no later than 12 months after the caregiver's [~~his~~] last psychotropic medication training.

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 G. CHILDREN'S RIGHTS

40 TAC §749.1003

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department

of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.042.

§749.1003. What rights does a child in care have?

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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40 TAC §§749.1003, 749.1005, 749.1007, 749.1011, 749.1021

The new section and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC §40.042.

§749.1003. What rights does a child in care have?

(a) A child's rights are cumulative of any other rights granted by law or other Licensing rules.

(b) The following categories include the child's rights that you must adhere to:

(1) Safety and care, including:

(A) The right to good care and treatment that meets the child's needs in the most family-like setting possible;

(B) The right to be free from abuse, neglect, and exploitation; and

(C) The right to fair treatment;

(2) Family contacts, including the right to maintain regular contact with the child's parents and siblings, unless restrictions are necessary because of the child's best interest, the decision of an appropriate professional, or a court order;

(3) Living a normal life, including:

(A) The right to speak and be spoken to in the child's own language, including Braille if the child is blind or sign language if the child is deaf. This should also occur within a reasonable time after an emergency admission of a child, if applicable. You must make every effort to place a child with foster parent(s) who can communicate with the child. If these efforts are not successful, you must document in the preliminary service plan your plan to meet the communication needs of the child;

(B) The right to receive educational services appropriate to the child's age and developmental level;

(C) The right to have the child's religious needs met. The child has the right to choose a church or not to practice a religion;

(D) The right to participate in childhood activities, including foster family activities and activities away from the foster home and the foster parents, that are appropriate for the child's age, maturity, and developmental level;

(E) The right to privacy, including sending and receiving unopened mail, making and receiving phone calls, keeping a personal journal, and having visitors, unless the child's best interest, appropriate professionals, or court order necessitates restrictions;

(F) The right to personal care, hygiene, and grooming equipment and supplies and training in how to use them;

(G) The right to have comfortable clothing, which is suitable to the child's age and size and similar to the clothing of other children in the community. Teenagers should have reasonable opportunities to select the clothing;

(H) The right to clothing that protects the child against the weather;

(I) The right to have personal items at the child's home and to get additional things within reasonable limits;

(J) The right to personal space in the child's bedroom to store clothes and belongings;

(K) The right to be informed of search policies and be free of unreasonable searches and unreasonable removal of personal items;

(L) Depending on the child's age and maturity, the right to seek employment, keep the child's own money, have a bank account in the child's name, and get paid for any work done for the agency or home as part of the child's service plan or vocational training, with the exception of assigned routine duties that relate to the child's living environment, such as cleaning the child's room, or other chores, or work assigned as a disciplinary measure;

(M) The right to consent in writing before taking part in any publicity or fund raising activity for the foster home or agency, including the use of the child's photograph;

(N) The right to refuse to make public statements showing gratitude to the foster home or agency; and

(O) The right to not be pressured to get an abortion, give up her child for adoption, or parent her child, if applicable;

(4) Discipline, including:

(A) The right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating treatment or punishment. This means the child must not be:

(i) Shaken;

(ii) Subjected to or threatened with corporal punishment, including spanking or hitting the child;

(iii) Forced to do unproductive work that serves no purpose except to demean the child, such as moving rocks from one pile to another or digging a hole and then filling it in;

(iv) Denied food, sleep, a bathroom, mail, or family visits as punishment;

(v) Subjected to remarks that belittle or ridicule the child or the child's family;

(vi) Threatened with the loss of placement or shelter as punishment; and

(vii) Subjected to demeaning behavior to embarrass, control, harm, intimidate, or isolate the child. "Demeaning behavior" may include using physical force, rumors, threats, or inappropriate comments;

(B) The right to discipline that is appropriate to the child's age, maturity, and developmental level; and

(C) The right to have restrictions or disciplinary policies explained to the child at admittance and when the measures are imposed;

(5) Plans for the child while in care, including:

(A) The right to have a comprehensive service plan that addresses the child's needs, including transitional and discharge planning; and

(B) The right to actively participate in the development of the child's service plan within the limits of the child's comprehension and ability to manage the information. The child has the right to a copy or summary of the plan. A child 14 years of age or older has the right to review and sign the service plan;

(6) Medical care and records, including:

(A) The right to medical, dental, vision, and mental health care and developmental services that adequately meet the child's needs. The right to request that the care or services be separate from adults (other than young adults) who are receiving services;

(B) The right to be free of unnecessary or excessive medication; and

(C) The right to confidential care and treatment, including keeping medical records and agency records private and only discussing them when it is about the child's care; and

(7) Complaints, including the right to make calls, reports, or complaints without interference, coercion, punishment, retaliation, or threats of punishment or retaliation. The child may make these calls, reports, or complaints anonymously. Depending upon the nature of the complaint, the child has the right to call, report, or complain to:

(A) The DFPS Texas Abuse/Neglect Hotline at 1-800-252-5400;

(B) The HHSC Ombusman for Children and Youth Currently in Foster Care at 1-844-286-0769;

(C) The DFPS Office of Consumer Affairs at 1-800-720-7777; or

(D) Disability Rights of Texas at 1-800-252-9108.

§749.1005. How must I inform a child and the child's parents of their rights?

(a) - (c) (No change.)

(d) The person you are informing of the child's rights must sign a statement indicating that the person has read and understands these rights. A copy of a timely signed "CPS Rights of Children and Youth in Foster Care" will meet this standard. You must put the signed copy in the child's record.

§749.1007. What are a child's rights regarding education?

(a) A child must have an appropriate education through participation in an educational/vocational program in the most appropriate and least restrictive educational settings, for example: attending regular classes conducted in an accredited elementary, middle, or secondary school within the community or home schooling.

(b) (No change.)

§749.1011. What right does a child have regarding contact with siblings?

(a) - (b) (No change.)

(c) When you restrict sibling contact, you must include justification in the child's record. Restrictions imposed by you that continue for more than 60 days must be re-evaluated every 60 days by your child placement management staff, who also must: [~~If the restriction lasts more than 90 days, you must document the justification for continuing the restriction in the child's record at least every 90 days.~~]

(1) Explain the reasons for the continued restrictions to the child; and

(2) Document the reasons in the child's record.

(d) (No change.)

§749.1021. What techniques am I prohibited from using on a child?

Certain [~~You may not use any of the following~~] techniques must not be used on a child, including:

(1) - (5) (No change.)

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SUBCHAPTER H. FOSTER CARE SERVICES: ADMISSION AND PLACEMENT

DIVISION 1. ADMISSIONS

40 TAC §§749.1107, 749.1109, 749.1111, 749.1113, 749.1115

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1107. What information must I document in the child's record at the time of admission?

(a) You must include the following in the child's record at the time of admission:

(1) The child's name, gender, race, religion, and date of birth[~~, and birthplace~~];

[~~(2) Court orders establishing who is the managing conservator for the child, if applicable;~~]

(2) [~~(3)~~] The name, address, and telephone number of the managing conservator(s), the primary caregivers for the child, any person with whom the child is allowed to leave the foster home, and any other individual who has the legal authority to consent to the child's medical care;

(3) [~~(4)~~] The names, addresses, and telephone numbers of biological or adoptive parents, unless parental rights have been terminated;

(4) [~~(5)~~] The names, addresses, and telephone numbers of siblings;

(5) [~~(6)~~] The date of admission;

(6) [~~(7)~~] Medication the child is taking;

(7) [~~(8)~~] The child's immunization record;

(8) [~~(9)~~] Allergies, such as food, medication, sting, and skin allergies;

(9) [~~(10)~~] Chronic health conditions, such as asthma or diabetes;

(10) [~~(11)~~] Known contraindications [~~contra-indications~~] of the use of restraint;

(11) [~~(12)~~] Identification of the child's treatment needs, if applicable, and any additional treatment services or programmatic services the child is receiving;

(12) [~~(13)~~] Identification of the child's high-risk behavior(s), if applicable, and the safety plan staff and caregivers will implement related to the behavior(s);

(13) [~~(14)~~] A copy of the placement agreement, if applicable; and

(14) [~~(15)~~] Documentation of the attempt to notify the parent of the child's location as required by §749.1113(c)(3) [~~§749.1113(c)~~] of this title (relating to What information must I share with the parent at the time of placement?), if applicable.

(b) (No change.)

§749.1109. What is a placement agreement?

(a) A placement agreement is your agreement with a child's parent or the child that defines your roles and responsibilities and authorizes you to obtain or provide services for the child. The placement agreement must include:

(1) Authorization permitting you to care for the child;

(2) A medical consent form signed by a person authorized by the Texas Family Code to provide consent; and

(3) The reason for placement and anticipated length of time in care.

(b) A placement agreement must be signed by the child's parent, except as provided in subsection (c).

(c) For a transitional living program, a child 16 years old or older may sign the placement agreement on the child's own behalf, as provided in the Texas Family Code §32.203, without the consent of the child's parent if the child:

(1) Resides separate and apart from the child's parent and manages the child's own financial affairs;

(2) Is unmarried and pregnant; or

(3) Is unmarried and a parent.

§749.1111. What orientation must I provide a child?

(a) (No change.)

(b) Orientation must include information about your policies on the following:

(1) - (11) (No change.)

(12) Internal grievance [~~Grievance~~] procedures.

(c) Orientation must include information on how to:

(1) Make complaints to outside agencies; and

(2) Contact parties to a child's case (i.e. caseworker, attorney ad litem, guardian ad litem, CASA worker, etc.).

(d) [~~(c)~~] You must document in the child's record when the orientation occurred, any item that the orientation did not include, and the reason that the orientation did not include that item.

§749.1113. What information must I share with the parent at the time of placement?

(a) At admission, you must provide the following policies to the parent placing the child:

(1) Fee policies;

(2) Emergency behavior intervention policies;

(3) Discipline policies;

(4) Adoption policies, if applicable; and

(5) Any other policies required by us, upon request of the parent.

[~~(a) The parent must be able to determine whether your program and/or practices are appropriate for the child and can meet the child's needs.~~]

(b) At admission, you must [~~review and~~] provide and explain the following written information and policies [~~materials~~] to the parent placing the child [~~that explain~~]:

(1) (No change.)

(2) Your policies regarding the:

(A) Use of volunteers or sponsoring families, if applicable;

(B) - (C) (No change.)

(3) Information about the [~~The~~] parent's right to refuse to or withdraw consent for a child to participate in:

(A) - (B) (No change.)

(c) If you sign a placement agreement for a transitional living program with a child as specified in §749.1109(c) of this title (relating to What is a placement agreement?), then you:

(1) Must share the policies noted in subsection (a) with the child, instead of the parent;

(2) Do not have to comply with subsection (b), but you must provide and explain to the child your policies regarding the:

(A) Use of volunteers or sponsoring families;

(B) Involvement of the child in any publicity and/or fund raising activity for the agency; and

(C) Child's right to refuse to or withdraw consent to participate in:

(i) Research programs; and/or

(ii) Publicity and/or fund raising activities for the agency; and

(3) Must [~~You must~~] attempt to notify the child's parent [~~of a child that you admit to a transitional living program~~] of the child's location, if the child was admitted without the consent of the parent[~~, as provided in Texas Family Code §32.203~~].

§749.1115. What information must I provide caregivers when I admit a child?

(a) (No change.)

(b) You must inform appropriate caregivers of any special needs, such as medical or dietary needs or conditions or supervision needs, and document that the information was shared with the caregiver.

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DIVISION 2. ADMISSION ASSESSMENT

40 TAC §§749.1131, 749.1133, 749.1135

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1131. When must I complete the admission assessment?

You must complete a non-emergency admission assessment prior to admission [~~according to the time frames required in §749.1133 of this title (relating to What information must an admission assessment include?). For an emergency admission assessment, see §749.1187 of this title (relating to For an emergency admission, when must I complete all of the requirements for an admission assessment?)~~].

§749.1133. What information must an admission assessment include?

(a) (No change.)

(b) Prior to a child's non-emergency admission, an admission assessment must be completed which includes:

(1) - (2) (No change.)

(3) A description of the child's behavior, including appropriate and maladaptive behavior, and any high-risk behavior [~~posing a risk to self or others~~];

(4) - (5) (No change.)

(6) Current mental health and substance abuse status, including available results of any psychiatric evaluation, psychological evaluation, or psychosocial assessment [~~or psychiatric examination~~];

(7) - (8) (No change.)

(9) Any applicable requirements of §749.1135 of this title (relating to What are the additional admission assessment requirements when I admit a child for treatment services?);

(10) - (14) (No change.)

(15) A determination of whether and how you can meet the [~~immediate~~] needs of the child;[~~:~~] and

(16) (No change.)

(c) Prior to completing a child's initial service plan, the following information must be added to the admission assessment:

(1) - (13) (No change.)

(14) A determination of whether and how you can meet the needs of the child, based on an evaluation of the child's special strengths and needs; and

(15) (No change.)

(d) (No change.)

§749.1135. What are the additional admission assessment requirements when I admit a child for treatment services?

When you admit a child for treatment services, you must do the following, as applicable:
Figure: 40 TAC §749.1135

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. REQUIRED ADMISSION INFORMATION

40 TAC §749.1151, §749.1153

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1151. What are the medical requirements when I admit a child into care?

(a) You must ensure that the child has a medical examination by a health-care professional within 30 days after the date of admission. This exam is not required if you have documentation that the child has had a medical examination within the past year, including documentation in the child's health passport if the child [~~he~~] is in the department's [~~DFPS~~] conservatorship.

(b) - (d) (No change.)

§749.1153. What are the dental requirements when I admit a child into care?

(a) (No change.)

(b) A child three years old or older must have a dental appointment scheduled with a dentist within 30 days after the date of admission, and the examination must occur within 90 days after the date of admission. A dental examination is not required if you have documentation that the child has had a dental examination within the past year, including documentation in the child's health passport if the child [~~he~~] is in the department's [~~DFPS~~] conservatorship.

(c) (No change.)

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DIVISION 4. EMERGENCY ADMISSION

40 TAC §749.1183, §749.1187

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1183. What constitutes an emergency admission to my child-placing agency?

It is an emergency admission if: [~~You may admit a child on an emergency basis if the child:~~]

(1) You must place the child within 72 hours;

(2) [~~(1)~~] The child was [~~Is being~~] removed from a situation involving alleged abuse or neglect;

(3) [~~(2)~~] The child is [~~Is~~] an alleged perpetrator of abuse and cannot be served in the child's current placement due to the child's [~~his~~] perpetrating behaviors

(4) [~~(3)~~] The child displays [~~Displays~~] behavior that is an immediate danger to self [~~himself~~] or to others and cannot function or be served in his current setting;

(5) [~~(4)~~] The child was [~~Is~~] abandoned and, after exercising reasonable efforts, the child's identity cannot be immediately determined. You must document the [~~The~~] efforts made to obtain information on the child's identity [~~must be documented~~] in the child's record;

(6) [~~(5)~~] The child was [~~Is~~] removed from the child's [~~his~~] home or placement, and there is an immediate need to find a residence for the child;

(7) [~~(6)~~] A law enforcement or juvenile probation officer releases the child [~~Is released~~] to your authorized child-placing agency [~~by a law enforcement or juvenile probation officer~~]; or

(8) [~~(7)~~] The child is otherwise [~~Is~~] without adult care.

§749.1187. For an emergency admission, when must I complete all of the requirements for an admission assessment?

(a) (No change.)

(b) In an emergency admission of a child receiving treatment services, the child must not continue in care for more than 30 days after the date of admission unless the child has received the required [~~psychological,~~] psychiatric evaluation, psychological evaluation, psychosocial assessment [~~psychometric~~], or medical evaluation that is required by §749.1135 of this title (relating to What are the additional admission assessment requirements when I admit a child for treatment services?), and the evaluation indicates manifestations of the disorder requiring treatment services. All evaluations must be signed, dated, and documented in the child's record.

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DIVISION 7. POST-PLACEMENT CONTACT

40 TAC §749.1291

The amendment proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.1291. What are the requirements for contact between child placement staff and children in foster care?

(a) (No change.)

(b) For children receiving treatment services for primary medical needs, child placement staff or a nurse [~~on staff~~] must have face-to-face contact with a child in care twice every month with no more than 20 days between visits [~~every 15 days~~]. However, staff can miss two visits per year, provided a child does not go longer than 30 days without a visit.

(c) At least half of the contacts must occur in the foster home.

(d) [~~(c)~~] These contacts are to ensure the:

(1) Child is safe;

(2) Needs of a child are being met; and

(3) Placement continues to be appropriate.

(e) [~~(d)~~] If the child is able to communicate in a meaningful way, the contact with the child must:

(1) Be for a length of time sufficient to address the child's needs and determine the appropriateness of the placement;

(2) Provide an opportunity to meet in private; and

(3) Provide an opportunity for the child to express his feelings about how the placement is working out.

(f) [~~(e)~~] If the child is non-verbal or pre-verbal, the contact with the child must be for a length of time sufficient for an appropriate observation of the child and the child's placement, including an assessment of any changes in behavior or developmental progress or delays as well as a verification that the placement is meeting the child's needs as specified in the service plan.

(g) [~~(f)~~] The required contacts must be significant and must be documented in the child's record. The documentation in the child's record must be sufficient to address the requirements of subsections [~~(d) and~~] (e) and (f) of this section.

(h) [~~(g)~~] Child placement management staff must review and approve documentation of contacts.

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SUBCHAPTER I. FOSTER CARE SERVICES: SERVICE PLANNING, DISCHARGE

DIVISION 1. SERVICE PLANS

40 TAC §§749.1301, 749.1307, 749.1309, 749.1312, 749.1313, 749.1317, 749.1321, 749.1323

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §40.042.

§749.1301. What are the requirements for a preliminary service plan?

(a) You must complete a preliminary service plan that addresses the immediate needs of the child within 72 hours, such as supervision requirements, enrolling the child in school or obtaining needed medical care or clothing[~~, within 72 hours of the child's admission~~].

(b) - (f) (No change.)

§749.1307. When must I complete an initial service plan?

You must complete the initial service plan within 45 [~~40~~] days after you admit the child.

§749.1309. What must a child's initial service plan include?

(a) (No change.)

(b) The child's initial service plan must be documented in the child's record and include those items that a preliminary plan must include (see §749.1301 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:
Figure: 40 TAC §749.1309(b)

§749.1312. Can the service planning team discuss and develop a child's service plan in separate meetings?

Yes, the service planning team may meet in one meeting, two or more meetings, or in separate meetings, provided that each service planning team member is informed of the discussions and comments regarding the child's service plan that were made at each meeting.

§749.1313. When must I inform the child's parents and foster parents of an initial service plan meeting?

(a) You must give the child's parents and foster parents at least two weeks advance notice of the review, or have documentation that the notice was given at least two weeks in advance of the review.

(b) (No change.)

§749.1317. What roles do professional service providers have in service planning?

The roles of professional service providers in service planning include:
Figure: 40 TAC §749.1317

§749.1321. With whom do I share the initial service plan?

(a) You must give a copy or summary of the initial service plan to the:

(1) Child, when appropriate. All children 14 years old or older must review and sign the initial service plan. If the child disagrees

with the service plan or refuses to sign the service plan, you must document this information;

(2) - (3) (No change.)

(b) - (c) (No change.)

§749.1323. When must I implement a service plan?

You must implement and follow an initial service plan as soon as all of the service planning team members have reviewed and signed the plan, but no later than 15 [~~10~~] days after the date of the scheduled service-planning meeting involving the parents, foster parents, and the child.

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DIVISION 2. SERVICE PLAN REVIEW AND UPDATES

40 TAC §§749.1331, 749.1335, 749.1336, 749.1339

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §40.042.

§749.1331. How often must I review and update a service plan?

Except for when the child's placement within your agency changes because of a change in the child's needs, you must review and update the service plan as follows:
Figure: 40 TAC §749.1331

§749.1335. How do I review and update a service plan?

To review and update a service plan, you must:

(1) - (7) (No change.)

[~~(8) Determine for children receiving treatment services for emotional disorders, pervasive developmental disorders, or primary medical needs whether to:~~]

[~~(A) Continue the placement;~~]

[~~(B) Continue the placement as child-care services;~~]

[~~(C) Transfer the child to a less restrictive setting; or~~]

[~~(D) Refer the child to an inpatient hospital;~~]

(8) [~~(9)~~] Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on:

(A) The frequency, patterns, and effectiveness of types of emergency behavior interventions;

(B) Strategies to reduce the need for emergency behavior interventions overall; and

(C) Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable;

(9) [~~(10)~~] Document in the child's record the review and update of the plan; and

(10) [~~(11)~~] Document the names of the persons participating in the review and update.

§749.1336. Can the child-placing agency continue to review and update a child's previous service plan without creating a new service plan?

Yes, a single service plan that continues throughout the time a child is in residential child care is acceptable, as long as you:

(1) Complete a preliminary service plan as required by §749.1301 of this title (relating to What are the requirements for a preliminary service plan?) each time a child is admitted into your care; and

(2) Continue to comply with the service plan review and update requirements in this Division of this Subchapter (relating to Service Plan Reviews and Updates).

§749.1339. How often must I re-evaluate the intellectual functioning of a child receiving treatment services for intellectual disabilities [~~mental retardation~~]?

(a) - (b) (No change.)

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DIVISION 3. DISCHARGE AND TRANSFER PLANNING

40 TAC §§749.1363, 749.1369, 749.1371

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1363. Who must plan a child's non-emergency discharge or transfer?

(a) - (c) (No change.)

(d) If a child in your care is not receiving treatment services, you must inform the child [~~him~~] of the [~~his~~] non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your licensed child-placing agency administrator or child placement management staff has clear justification for not giving the child [~~him~~] such notice. The licensed child-placing agency administrator or child placement management staff who determines the justification for the child not having the advance notice of the discharge or transfer, must put the justification in writing and sign and date it. The justification must be in the child's record.

(e) If a child in your care is receiving treatment services, you must inform the child [~~him~~] of the [~~his~~] non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your treatment director, three members of the child's service planning team, or the child's psychiatrist or psychologist has a justification for not giving the child [~~him~~] such notice. Whoever determines the justification for the child not having the advance notice of the discharge or transfer must put the justification in writing and sign and date it. The justification must be in the child's record.

§749.1369. How do I discharge or transfer a child who is an immediate danger to self [~~himself~~] or others?

The child's caregiver(s) or the child placement staff must accompany the child to the receiving operation, agency, or person unless the child's parent or law enforcement transports the child.

§749.1371. What must I document in the child's record at the time of a discharge or transfer?

At the time of a discharge or transfer, you must document the following:

(1) - (2) (No change.)

(3) For discharge, the name, address, telephone number and relationship of the person to whom you discharge the child, unless the child legally consents to a [~~his~~] discharge. If the child legally consents to a [~~his~~] discharge and does not want to involve the child's parent(s), you must document this in the child's record;

(4) - (7) (No change.)

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SUBCHAPTER J. FOSTER CARE SERVICES: MEDICAL AND DENTAL

DIVISION 1. MEDICAL AND DENTAL CARE

40 TAC §§749.1401, 749.1409, 749.1415, 749.1421, 749.1423, 749.1425, 749.1433

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1401. What general medical requirements must my agency meet?

(a) (No change.)

(b) The child's record must include a written record of each medical examination that consists of [~~specifying~~]:

(1) A copy of the results of the medical examination [~~The date of the examination~~];

[~~(2) The procedures completed;~~]

(2) [~~(3)~~] The follow-up treatment recommended and any appointments scheduled;

(3) [~~(4)~~] A notation of the [~~The~~] child's refusal to accept medical treatment, if applicable;

[~~(5) A copy of the results of the medical examination;~~]

(4) [~~(6)~~] If the medical examination is a result of an injury or illness [~~medical incident~~], the documentation of the date, time, and circumstances surrounding the injury or illness [~~incident, including the date and time of the incident~~]; and

(5) [~~(7)~~] Any other documentation provided by the healthcare professional who performed the examination.

(c) For a child in the [~~DFPS~~] conservatorship of the department, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.

(d) (No change.)

§749.1409. What general dental requirements must my agency meet?

(a) (No change.)

(b) The child's record must include a written record of each dental examination that consists of [~~specifying the~~]:

(1) A copy of the results of the dental examination [~~Date of the examination~~];

[~~(2) Procedures completed;~~]

(2) [~~(3)~~] Follow-up treatment recommended and any appointments scheduled; and

(3) [~~(4)~~] The child's refusal to accept dental treatment, if applicable.[~~; and~~]

[~~(5) A copy of the results of the dental examination.~~]

(c) For a child in the [~~DFPS~~] conservatorship of the department, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.

(d) (No change.)

§749.1415. What health precautions must I take if a person in care, employee, caregiver, someone else in one of my foster homes, or someone else in my agency has a communicable disease?

(a) - (b) (No change.)

(c) If a health-care professional diagnoses a person in your care with a communicable disease that is reportable to DSHS [~~Department of State Health Services (DSHS)~~], a health-care professional must authorize the person's participation in any routine activities [~~activity~~] at the foster home. The authorization must:

(1) - (2) (No change.)

(3) Include any specific instructions and precautions to be taken for the protection of others, if necessary.

(d) - (e) (No change.)

§749.1421. What immunizations must a child in my care have?

(a) Each child that you admit must meet and continue to meet applicable immunization requirements as specified by [~~§42.043 of the Human Resources Code and~~] the Department of State Health Services.

(b) You must maintain current immunizations records for each child in your care, including any immunization exemptions or exceptions. [~~For a child in DFPS conservatorship, documentation in the child's health passport is sufficient.~~]

(c) (No change.)

§749.1423. What [~~are the~~] exemptions or exceptions are there concerning [~~from~~] immunization requirements?

(a) A child may be exempt from [~~Exemptions for~~] immunization requirements for a medical reason and reason of conscience, including a religious belief. To claim an exemption, the person applying for the child's admission must meet criteria specified by:

(1) §42.043(d) and (d-1) [~~§42.043~~] of the Human Resources Code; or

(2) The Department of State Health Services rule [~~rules~~] in 25 TAC §97.62 (relating to Exclusions from Compliance).

(b) For some diseases, a child who previously had a disease and is accordingly naturally immune from it may qualify for an exception to the immunization requirements for the disease. To claim this exception, the person applying for the child's admission must meet the criteria specified by the Department of State Health Services rule in 25 TAC §97.65.

§749.1425. What documentation is acceptable for an immunization record?

(a) The documentation for an [~~An original or facsimile of the~~] immunization record must include the:

(1) Child's [~~The child's~~] name and birth date;

(2) Type of vaccine and [~~The~~] number of doses administered [~~and vaccine type~~];

(3) Month [~~The month~~], day, and year the child received each vaccination; and

(4) Name, address, and signature of the health-care professional that administered the vaccine. The [~~One of the~~] following are acceptable as a signature:

(A) A [~~signature or~~] rubber stamp signature or electronic signature from the health-care professional who administered the vaccine; or

(B) Another health-care professional's [~~A registered nurse's~~] documentation of the immunization that is provided [~~by a health-care professional~~], as long as the name and address of the health-care professional that administered the vaccine is [~~professional's name and qualifications are~~] documented.

(b) Appropriate documentation for [~~Documentation of~~] an immunization record on file at your agency may include an original or photocopy of [~~be~~]:

(1) The immunization [~~original~~] record;

[~~(2) A photocopy;~~]

(2) [~~(3)~~] An official immunization record generated from a state or local health authority, such as a registry;

(3) [~~(4)~~] A record received from school officials, including a record from another state; or

(4) [~~(5)~~] The child's health passport, for a child in the [~~DFPS~~] conservatorship of the department.

(c) The signature of the health-care professional that administered the vaccine is not required for subsection (b)(2) and (3).

§749.1433. How often must the physician review a child's primary medical needs?

(a) (No change.)

(b) The review must address:

(1) (No change.)

(2) Any new or changed orders regarding the items outlined in §749.1135 of this title (relating to What are the additional admission requirements when I admit a child for treatment services?).

(c) (No change.)

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DIVISION 2. ADMINISTRATION OF MEDICATION

40 TAC §749.1463, §749.1469

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1463. What are the [~~medication~~] requirements for administering prescription medication [~~must caregivers meet~~]?

(a) (No change.)

(b) For prescription medications, caregivers [~~Caregivers~~] must:

(1) (No change.)

(2) Store all medication in the original container unless the caregiver has [~~you have~~] an additional container with the same label and instructions;

(3) - (5) (No change.)

(6) Ensure a person trained in and authorized to administer [~~prescription~~] medication administers the medication to a child in care unless the child is on a self-medication program;

(7) Maintain any documentation provided by the health-care professional on the administration of current [~~prescription~~] medication;

(8) Not physically force a child to take [~~prescription~~] medication;

(9) Ensure that a child is not given any [~~prescription~~] medication or treatment except on written orders of a health-care professional;

(10) Not borrow or administer [~~prescription~~] medication to a child that is prescribed to another person; and

(11) Not administer [~~prescription~~] medication to more than one child from the same container. Only the child for whom the [~~prescription~~] medication was prescribed may use the medication.

§749.1469. What are the requirements for administering nonprescription medication and supplements [~~vitamins~~]?

(a) For non-prescription medications and supplements, you [~~You~~] must:

(1) Follow [~~follow~~] the label instructions for dosage;

(2) Inform the child's physician of the administration and dosage of any non-prescription medication or supplements to [~~and~~] ensure the nonprescription medication and/or supplements are [~~is~~] not contraindicated with any other medication prescribed to the child or the child's medical conditions.

(b) You may give nonprescription medication or supplements [~~vitamins~~] to more than one child from one container.

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DIVISION 3. SELF-ADMINISTRATION OF MEDICATION

40 TAC §749.1503

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.1503. Who must record the [~~a~~] medication dosage if the child is on a self-medication program?

When a child who is on a self-medication program takes a dosage of the medication, you must ensure there is a system for reviewing the child's medication each day and that the child either [~~may~~]:

(1) Records [~~Record~~] the daily dosage [~~if you have a system for reviewing the child's medication each day~~]; or

(2) Reports [~~Report~~] the medication to a caregiver, who must then do the actual daily recording.

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DIVISION 4. MEDICATION STORAGE AND DESTRUCTION

40 TAC §749.1521

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.1521. What medication storage and destruction requirements must a foster home meet?

A foster home must:

(1) - (2) (No change.)

[~~(3) Ensure the medication storage area has a separate container where medications "for external use only" are stored separately from other medications;~~]

(3) [~~(4)~~] Store medication covered by Schedule II of the Texas Controlled Substances Act under double lock in a separate container. For example, a double lock can include a lock on the cabinet or filing cabinet and the door to the closet where medications are stored;

(4) [~~(5)~~] Make provisions for storing medication that requires refrigeration;

(5) [~~(6)~~] Keep medication storage area(s) clean and orderly;

(6) [~~(7)~~] Remove discontinued medication immediately and store it in a separate locked area until it is destroyed within 30 days;

(7) [~~(8)~~] Remove medication on or before the expiration date and store it in a separate locked area until it is destroyed within 30 days;

(8) [~~(9)~~] Remove medication of a discharged or deceased child immediately and store it in a separate locked area until it is destroyed within 30 days; and

(9) [~~(10)~~] Provide prescription medication to the person to whom a child is discharged or transferred if the child is taking the medication at that time.

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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40 TAC §749.1523

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.042.

§749.1523. What are the requirements for discontinued or expired medication?

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. MEDICATION RECORDS

40 TAC §749.1541

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.1541. What records must caregivers maintain for each child receiving medication?

(a) Caregivers must maintain a cumulative medication record of all:

(1) (No change.)

(2) Nonprescription medications and supplements that are [~~medication, excluding vitamins,~~] dispensed to a child under five years old.

(b) The cumulative medication record must be updated within 24 hours of administering medication.

(c) [~~(b)~~] Caregivers must maintain the medication record, which [~~during the time that they provide services to the child. This record~~] must include [~~the~~]:

(1) Child's full name;

(2) Prescribing health-care professional's name, if applicable;

(3) Reason medication was prescribed, for prescription medication;

(4) Medication name, strength, and dosage;

(5) Date (day, month, and year) and the time the medication was administered;

(6) Name and signature of the person who administered the medication;

(7) Child's refusal to accept medication, if applicable; and

(8) Reasons for administering the medication, including the specific symptoms, condition, and/or injuries of the child that the caregiver is treating, only for:

(A) PRN psychotropic medication; and

(B) Nonprescription medications and supplements [~~(excluding vitamins)~~] for children under five years old.

(d) You must document in the medication record any non-prescription medication or supplement that is given to the child and how often the child receives the medication or supplement.

(e) [~~(c)~~] Caregivers must document [~~Identification of~~] any prohibited prescription medications (for example, medication allergies or contraindications) or prohibited [~~medication,~~] nonprescription medications and supplements [~~medication, and vitamins for each child must be maintained~~] in the medication record[~~, which must be incorporated into the child's record~~].

(f) [~~(d)~~] You must incorporate the [~~The~~] medication record [~~records of prescription and nonprescription medication dispensed to the child must be incorporated~~] into the child's record.

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DIVISION 7. SIDE EFFECTS AND ADVERSE REACTIONS TO MEDICATION

40 TAC §749.1581, §749.1583

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1581. What must a caregiver [~~caregivers~~] do if a child has an adverse reaction to a medication?

If a child has an adverse reaction (unexpected or dangerous reaction) to a medication, the caregiver must:

(1) Immediately report the reaction to a health-care professional and the child's parent;

(2) - (4) (No change.)

§749.1583. What must a caregiver do if a child experiences side effects from any medications?

(a) A side effect from any medication is an effect of medication in addition to the medication's intended effect, often an undesirable effect.

(b) If a child experiences side effects from any medication, the caregiver must:

(1) Document the observed and reported side effects;

(2) Immediately report any serious side effects to the child's physician and the child's parent; and

(3) Report any other side effect to the prescribing physician within 72 hours.

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SUBCHAPTER K. FOSTER CARE SERVICES: DAILY CARE, PROBLEM MANAGEMENT

DIVISION 1. ADDITIONAL REQUIREMENTS FOR INFANT CARE

40 TAC §§749.1803, 749.1813, 749.1815, 749.1819

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1803. What are the basic care requirements for an infant?

(a) - (c) (No change.)

(d) Items necessary for diaper changing must be kept out of the reach of children, but do not need to be in locked storage.

(e) [~~(d)~~] An infant's caregiver must never leave the infant unsupervised:

(1) A sleeping infant is considered supervised if the caregiver is within eyesight or hearing range of the infant and can intervene as needed, or if the caregiver uses a video camera or audio monitoring device to monitor the infant and is close enough to the infant to intervene as needed; and

(2) An awake infant is considered supervised if the caregiver is within eyesight of the infant and is close enough to the infant to intervene as needed. For short periods of time in the course of routine household activities, the infant may be out of the caregiver's eyesight, as long as the:

(A) Infant is within hearing range;

(B) Infant's environment is free of any safety hazards; and

(C) Caregiver is able to intervene immediately, as needed.

§749.1813. What types of equipment may a foster home not use with infants?

(a) A foster home may not use any of the following types of equipment with infants:

(1) - (2) (No change.)

(3) Accordion safety gates; [~~and~~]

(4) Toys that are not large [~~small~~] enough to prevent swallowing or choking; [~~swallow or choke a child.~~]

(5) [~~(b)~~] Bean [~~Children may not sleep on bean~~] bags, waterbeds, and [~~or~~] foam pads for use as sleeping equipment; and[~~.~~]

(6) [~~(c)~~] Soft or loose bedding, such as blankets, sleep positioning devices, stuffed toys, quilts, pillows, bumper pads (including mesh bumpers), and comforters, [~~may not be used~~] in a crib for an infant younger than 12 months of age.

(b) [~~(d)~~] An infant receiving treatment services for primary medical needs may have special items that assist [~~him~~] with safe sleep at the written recommendation of a health-care professional. You must keep the recommendation in the child's record.

§749.1815. What are the specific sleeping requirements for infants?

(a) Caregivers must place an infant not yet able to turn over on his own in a face-up sleeping position unless a health-care professional orders otherwise. You must keep any orders from a health-care professional in the child's record.

(b) An infant's [~~infant must not have his~~] head, face, or crib must not be covered at any time by an item such as a blanket, linen, or clothing.

(c) (No change.)

§749.1819. What are the specific requirements for feeding an infant?

(a) (No change.)

(b) Unless recommendations from the service team are contrary, caregivers must hold the infant while feeding [~~him~~] if the infant is:

(1) - (2) (No change.)

(c) - (d) (No change.)

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DIVISION 3. ADDITIONAL REQUIREMENTS FOR PREGNANT CHILDREN

40 TAC §749.1863

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.1863. Is the use of emergency behavior intervention of a pregnant child permitted in a foster home?

If your policies allow for the use of personal restraints and you have [~~on~~] a pregnant child in care:

(1) - (2) (No change.)

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DIVISION 4. EDUCATIONAL SERVICES

40 TAC §§749.1891, 749.1893, 749.1895

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1891. What responsibilities do I have for the education of a child in care?

(a) You must arrange an appropriate education for each child, including:

(1) Ensuring the child in care attends an educational facility or program that is approved or accredited by the Texas Education Agency, the Southern Association of Colleges and Schools, or the Texas Private School Accreditation Commission, unless [~~approved by~~] the child's service planning team approves the child attending another educational facility or program with documented justification. You must keep documentation of the planning team's justification and approval in the child's record;

(2) Ensuring a school-age child receives [~~has the training and~~] education and training in the least restrictive setting necessary to meet the child's needs and abilities;

(3) - (4) (No change.)

(b) (No change.)

§749.1893. What responsibilities do caregivers have for the educational needs of a child in their care?

Caregivers must:

(1) - (2) (No change.)

(3) Permit, encourage, and make reasonable efforts to involve the child in extracurricular activities as determined by a reasonable and prudent parent standard to the extent of the child's interests and abilities and in accordance with the child's service plan.

(4) - (5) (No change.)

(6) Request ARD (admission, review, and dismissal), IEP (individual education plan), and ITP (individual transitional planning) meetings if concerned with the child's educational program or if the child does not appear to be making progress; [~~and~~]

(7) Provide notice to the parent of the child of any scheduled ARD, IEP, or ITP meetings; and

(8) [~~(7)~~] Attend ARD, IEP, ITP meetings, other school staffings, and conferences to represent the child's educational best interests, including the child being evaluated for and provided with services needed for the child to benefit from educational services, and positive behavior supports designed to decrease the need for negative disciplinary techniques or interventions.

§749.1895. What are the specific requirements for the educational program of a child diagnosed with autism spectrum [~~a pervasive development~~] disorder?

You must ensure that the educational program for a child with an autism spectrum [~~a pervasive development~~] disorder:

(1) (No change.)

(2) Is appropriate to the child's [~~his~~] intellectual and social functioning.

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DIVISION 5. RECREATIONAL SERVICES

40 TAC §§749.1921, 749.1923, 749.1925

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1921. What responsibilities do foster parents have for providing a child with opportunities for recreational activities?

(a) - (c) (No change.)

(d) Caregivers must provide the following types of recreational activities based on each individual child's needs:
Figure: 40 TAC §749.1921(d)

§749.1923. What physical fitness activities must caregivers provide for a child receiving treatment services for primary medical needs or intellectual disability [~~mental retardation~~]?

(a) A child receiving treatment services for primary medical needs or intellectual disability [~~mental retardation~~] must have a minimum of one hour of physical stimulation each day.

(b) (No change.)

§749.1925. What type of daily schedule must caregivers provide for a child receiving treatment services for primary medical needs or intellectual disability [~~mental retardation~~]?

A child receiving treatment services for primary medical needs or intellectual disability [~~mental retardation~~] must have a schedule that is based on the normalization principle. In order to help the child obtain an existence as normal as possible, the daily schedule must:

(1) - (2) (No change.)

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DIVISION 6. DISCIPLINE AND PUNISHMENT

40 TAC §§749.1957, 749.1959, 749.1961

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1957. What other methods of punishment are prohibited?

In addition to corporal punishment, prohibited discipline techniques include, but are not limited to:

(1) - (7) (No change.)

(8) Humiliating, shaming, ridiculing, rejecting, screaming, or yelling at a child;

(9) - (15) (No change.)

§749.1959. To what extent may a caregiver restrict a child's activities as a behavior management tool?

(a) (No change.)

(b) Restrictions of activities, other than school or chores, which will be imposed on a child for more than 14 [~~30~~] days, must be reviewed with and approved by the child placement management staff or treatment director prior to or within 24 hours of imposing the restriction.

(c) - (e) (No change.)

§749.1961. May a person in care discipline or punish another person in care?

No. A person in care must not discipline or punish another person in care except when babysitting under §749.2599 of this title (relating to Can a child serve as a babysitter [~~caregiver~~]?).

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SUBCHAPTER L. FOSTER CARE SERVICES: EMERGENCY BEHAVIOR INTERVENTION

DIVISION 1. DEFINITIONS

40 TAC §749.2001

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2001. What do certain terms [~~words~~] mean in this subchapter?

These terms [~~words~~] have the following meaning in this subchapter:

[~~(1) Chemical restraint--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of medications that have a secondary effect of immobilizing or sedating a child, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons, is not chemical restraint and is not regulated as such under this chapter.~~]

[~~(2) De-escalation--See §749.43(15) of this title (relating to What do certain words and terms mean in this chapter?).~~]

[~~(3) Emergency behavior intervention--See §749.43(19) of this title.~~]

[~~(4) Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. The use of medications that have a secondary effect of modifying a child's behavior, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons (e.g. benadryl for an allergic reaction or medication to control seizures), is not emergency medication and is not regulated as such under this chapter.~~]

[~~(5) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury and it is immediately necessary to intervene to prevent:~~]

[~~(A) Imminent probable death or substantial bodily harm to the child because the child attempts or continually threatens to commit suicide or substantial bodily harm; or~~]

[~~(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.~~]

[~~(6) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.~~]

[~~(7) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.~~]

[~~(8) PRN--See §749.43(49) of this title.~~]

[~~(9) Prone restraint--Placing a child in a chest down restraint hold.~~]

[~~(10) Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other residents and the placement of the child alone in an area from which the resident is prevented from leaving by a physical barrier, force, or threat of force.~~]

[~~(11) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.~~]

[~~(12) Supine restraint--Placing a child in a chest up restraint hold.~~]

(1) [~~(13)~~] Transitional hold--The use of a temporary restraint technique that lasts no longer than one minute as part of the continuation of a longer personal or mechanical restraint.

(2) [~~(14)~~] Triggered review--A review of a specific child's placement, treatment plan, and orders or recommendations for intervention, because a certain number of interventions have been made within a specified period of time.

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DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §749.2151

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2151. What responsibilities does a caregiver have when implementing a type of emergency behavior intervention?

(a) - (e) (No change.)

(f) If the child does not appear to understand what the child [~~he~~] must do to be released from the emergency behavior intervention, the caregiver must attempt to re-explain it every 15 minutes until the child understands or is released from the intervention.

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DIVISION 5. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A PERSONAL RESTRAINT

40 TAC §749.2201, §749.2203

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.2201. Who must monitor a personal restraint?

During any personal restraint, a caregiver qualified in emergency behavior intervention must:

(1) Monitor [~~monitor~~] the:

(A) Personal restraint to make sure it is being performed appropriately; and

(B) Child's [~~child's~~] breathing and other signs of physical distress; and

(2) Take [~~take~~] appropriate action to ensure adequate respiration, circulation, and overall well-being.

§749.2203. What is the appropriate action for a caregiver to take to ensure the child's adequate respiration, circulation, and overall well-being?

Appropriate action includes responding prudently to a potentially life-threatening situation, for example, releasing a child when a child is unresponsive or indicates the child [~~he~~] cannot breathe and immediately seeking medical assistance from a health-care professional. The caregiver must take into account that a child may thrash about more violently as the child [~~he~~] struggles to breathe.

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DIVISION 6. COMBINATIONS OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §749.2231

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2231. May a caregiver successively use emergency behavior interventions on a child?

(a) - (b) (No change.)

(c) A caregiver must allow the child:

(1) Bathroom privileges as needed and at least once every two hours;

(2) - (5) (No change.)

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DIVISION 8. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §749.2305

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2305. When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?

(a) As soon as possible, but no later than 24 hours after the initiation of the intervention, the caregiver must document in the child's record the following information:

(1) - (8) (No change.)

(9) The names of any witnesses to the emergency behavior intervention, including child witnesses in the home;

(10) [~~(9)~~] All attempts to explain to the child what behaviors were necessary for release from the intervention;

(11) [~~(10)~~] The child's condition following the use of the medication or release from the intervention, including any injury the child sustained as a result of the intervention or any adverse effects caused by the use of the intervention. If the child received medical assistance or treatment, the caregiver must document the name of the medical provider; and

(12) [~~(11)~~] The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention.

(b) - (e) (No change.)

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SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §749.2403

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2403. What minimum age requirement must foster parents and caregivers meet?

Each caregiver in a home that you verify [~~on or after January 1, 2007,~~] must be at least 21 years old. [~~Each caregiver in a home that you verified prior to that date must be at least 18 years old.~~]

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 2. FOSTER HOME SCREENINGS

40 TAC §§749.2445, 749.2447, 749.2451, 749.2453

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.2445. What is a foster home screening?

(a) - (c) (No change.)

(d) Regarding §749.2447(7) of this title, you [~~You~~] must report to Licensing only the [~~all~~] information obtained about [~~under §749.2447(7) of this title regarding~~] the prospective foster family's domestic violence history, as applicable. You must report this information regardless of whether you verify the home.

§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: 40 TAC §749.2447

§749.2451. What must I document regarding interviews I conduct for a foster home screening?

(a) You must document all interviews of [~~and attempts to interview~~] persons you are required to interview for a foster home screening.

(b) - (c) (No change.)

§749.2453. When must I update the foster home screening?

(a) You must update a foster home screening, as follows:

(1) Under the circumstances described in §749.307(a) of this title (relating to What happens to the foster homes supervised by a branch office when the branch office closes?); [~~and~~]

(2) When there is a major life change in the foster family as described in §749.2805 of this title (relating to What is a "major life change in the foster family"?); and[~~.~~]

(3) When there is a change that affects a foster home's verification as described in §749.2803 of this title (relating to What changes affect a foster home's verification?).

(b) (No change.)

(c) You [~~A CPA~~] must complete a foster home screening update that is needed under the circumstances described in §749.307(a) of this title before issuing a new verification certificate.

(d) You [~~A CPA~~] must do the following when updating a foster home screening because of a major life change in the foster family:

(1) - (2) (No change.)

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DIVISION 3. VERIFICATION OF FOSTER HOMES

40 TAC §§749.2471, 749.2475, 749.2487, 749.2488, 749.2497

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.2471. What must I do to verify a foster home?

Verifying a foster home includes the following steps:

(1) - (4) (No change.)

[~~(5) If the home will provide treatment services, ensuring that the home complies with the policies developed according to §749.349 of this title (relating to What additional policies must I develop for foster parents that provide treatment services?);~~]

(5) [~~(6)~~] If the home will provide a transitional living program, ensuring the home complies with the policies developed according to §749.125 [~~§749.351~~] of this title (relating to What policies must I develop for foster parents who offer a transitional living program?);

(6) [~~(7)~~] Evaluating all areas required in this subchapter, and making recommendations 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) [~~(8)~~] If there are any indicators of potential risk to children based on the assessment and evaluation of an area required in this subchapter, documenting the indicators and how you addressed them with the prospective foster family prior to approval and verification of the home;

(8) [~~(9)~~] Obtaining from the child placement management staff review and approval of the home screening, and the recommended verification of the home; and

(9) [~~(10)~~] Issuing a verification certificate that specifies the:

(A) Name of the foster home;

(B) Foster home address and/or location;

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

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

(E) Ages and gender(s) of children for which the home is verified to provide foster care or respite child care;

(F) Types of services the foster 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.

§749.2475. 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[~~, or home study~~]?

(a) - (b) (No change.)

(c) For the purposes of this section, background information includes:

(1) - (5) (No change.)

(6) Copies of any current or previous plan to achieve compliance or other type of [~~annual~~] development plan [~~plans~~] for the past two years, if applicable; and

(7) Copies of any current or previous correction action or adverse action plans for the past two years, if applicable.

(d) (No change.)

§749.2487. What are the requirements for an agreement that I have with a foster home that I verify?

(a) You must sign a written agreement with each agency foster home at the time that you verify the home. You and the foster home must each have copies of the signed agreement. You must file a copy of the signed agreement in the agency home record.

(b) (No change.)

§749.2488. What statement must I provide to foster parents regarding foster parent and child-placing agency rights and responsibilities?

(a) - (d) (No change.)

(e) At the time you verify the home, you must also provide foster parents with a written copy of your policies relating to §749.121 of this title (relating to What policies must I develop concerning the rights and responsibilities of the child-placing agency and the foster parents?).

§749.2497. Are transfer/closing summaries required for foster homes?

Yes, you must have either a transfer summary or closing summary for each foster home that transfers to another child-placing agency [~~CPA~~] or closes.

(1) - (2) (No change.)

(3) A transfer and closing summary must include:

(A) - (B) (No change.)

(C) The length of time the foster parents have been fostering with you [~~the CPA~~];

(D) (No change.)

(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 [~~the CPA~~];

(F) (No change.)

(G) For a transfer summary, [~~whether there are~~] any pending investigations and/or unresolved deficiencies;

(H) For a closing summary, [~~whether there were~~] any unresolved deficiencies that had not been corrected and what those deficiencies were;

(I) Any [~~Whether there are any~~] indicators of risk to children at the time of transfer/closing and what those indicators are;

(J) Any plan to achieve compliance or other type of [~~Whether there was an annual~~] development plan that was in place within the previous 12 months [~~at the time~~] of the date of transfer/closing; [~~and~~]

(K) Any [~~Whether there was a~~] corrective action or adverse action plan that was in place at the time of transfer/closing; and[~~.~~]

(L) A statement concerning whether you would recommend the foster home for verification in the future, including whether you would recommend any limitations or restrictions on the verification, and the basis of your recommendation or lack thereof.

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DIVISION 6. SUPERVISION

40 TAC §749.2599

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2599. Can a child serve as a babysitter [~~caregiver~~]?

A child who is 16 years old or older, including a foster child, may serve as a babysitter for children under the age of 13 as long as:

(1) The child placement management staff approves the child to babysit and establishes[~~, establishing~~] limits with duration and frequency;

(2) (No change.)

(3) The child is certified in first aid and cardiopulmonary resuscitation (CPR) [~~CPR~~]; and

(4) (No change.)

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DIVISION 8. RESPITE CHILD-CARE SERVICES

40 TAC §749.2623, §749.2635

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.2623. What must occur before I place a child for respite child-care services?

Before placing the child in respite child-care services, you [~~You~~] must:

(1) Notify [~~notify~~] the child's parent; and [~~before placing the child in respite child-care services.~~]

(2) Inform the child of the plan for respite child-care services, including the intended time of stay.

§749.2635. May I place a child for babysitting, overnight care, or respite care services in a home that Licensing does not regulate?

Yes, you may place a child in a home that Licensing does not regulate for babysitting, overnight care, or respite care, if the provider:

(1) (No change.)

(2) Meets the policy requirements your agency developed according to §749.127 [~~§749.353~~] of this title (relating to What policies must I develop for babysitters, overnight care providers, and respite care providers?).

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DIVISION 9. AGENCY--FOSTER FAMILY RELATIONSHIPS

40 TAC §749.2655

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2655. When must a foster home notify you of changes that affect the foster home?

A foster home must notify you of any of the following changes as follows:
Figure: 40 TAC §749.2655

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SUBCHAPTER N. FOSTER HOMES: MANAGEMENT AND EVALUATION

40 TAC §§749.2803, 749.2805, 749.2815

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.2803. What changes affect [~~the conditions of~~] a foster home's verification?

(a) Changes that affect [~~the conditions of~~] a foster home's verification include a [~~change in the~~]:

(1) Marriage, divorce, separation, death, birth, or any other change in household composition [~~Name of the foster home~~];

(2) Change in the foster [~~Foster~~] home's address and/or location;

(3) Change in the foster [~~Foster~~] home's capacity, as determined by the capacity requirements in §749.2557 of this title (relating to May a foster agency home exceed its verified capacity?);

(4) Changes in the ages [~~Ages~~] and gender(s) of children for which the home is authorized to provide care; or

(5) Changes in the [~~The~~] types of services the foster home will provide.[~~; or~~]

[~~(6) The composition of the family or home.~~]

[~~(b) A verification certificate is only valid until:~~]

[~~(1) The occurrence of any changes that affect the conditions of a foster home's verification, including the home's address and/or location; or~~]

[~~(2) The foster home's limited verification expires.~~]

(b) [~~(c)~~] You must issue a new or temporary verification certificate to a foster home [~~prior~~] to:

(1) Change [~~Changing any conditions of~~] the home's verification, including the home's address or location;

(2) Extend [~~Extending~~] the expiration date of the home's time-limited verification; or

(3) Change [~~Changing~~] a foster home's verification from time-limited to non-expiring.

(c) A verification certificate becomes invalid at the point of:

(1) The occurrence of any changes that affect a foster home's verification, including the home's address and/or location; or

(2) The foster home's limited verification expires.

§749.2805. What is a "major life change in the foster family"?

A major life change in the foster family includes:

(1) (No change.)

(2) A serious health problem or significant change in work schedule that affects the ability of the foster parent to care for children; or

(3) (No change.)

§749.2815. How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?

(a) Child placement staff [~~You~~] must conduct [~~have~~] supervisory visits:

(1) - (3) (No change.)

(b) (No change.)

(c) At least once every quarter, your supervisory visit must evaluate and document the following:

(1) - (3) (No change.)

(4) Any challenging behaviors of the current children in the home, the level of stress the foster family is currently experiencing (including any significant change in finances), and any methods for responding to each child's challenging behavior and/or alleviating any significant stress the foster family is experiencing.

(d) You must document each visit in the home's record. The documentation must include the names of all household members present during the visit, specific issues identified and any rules evaluated, results of the evaluation, deficiencies found, plans for achieving compliance, plans for follow-up to ensure compliance was achieved, and any changes to the information in the foster home screening since the last supervisory visit, including the reasons for any change in the home's verification.

(e) (No change.)

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SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT

DIVISION 1. HEALTH AND SAFETY

40 TAC §749.2902

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.042.

§749.2902. What health safety measures are required at a foster home?

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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40 TAC §§749.2902 - 749.2905, 749.2909, 749.2911, 749.2913, 749.2917

The new section and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC §40.042.

§749.2902. What health and safety measures are required at a foster home?

(a) Foster homes must have either:

(1) A health inspection conducted from the local health authority; or

(2) A health and safety evaluation conducted by your child placement staff using our Environmental Health Checklist form for foster homes.

(b) You must document each health inspection or health and safety evaluation, including the name and telephone number of the person who conducted the inspection or evaluation.

(c) The foster home must correct any deficiencies documented during any inspection or evaluation and must comply with any conditions or restrictions specified by the inspector or evaluator.

§749.2903. What fire safety measures are required at a foster family home not serving children receiving treatment services for primary medical needs?

(a) Foster family homes not serving children receiving treatment services for primary medical needs must have either:

(1) A fire inspection conducted by a [~~certified fire inspector or a local or~~] state or local fire authority; or

(2) (No change.)

(b) (No change.)

(c) The foster home must correct any deficiencies [~~Deficiencies~~] documented during any inspection or evaluation and [~~must be corrected, and the foster home~~] must comply with any conditions or restrictions specified by the inspector or evaluator.

(d) If a foster family home changes verification to become either a foster family home serving children receiving treatment services for primary medical needs or a foster group home, then the foster home must meet the fire safety measures for §749.2904 of this title (relating to What fire safety measures are required at a foster family home serving children receiving treatment services for primary medical needs or a foster group home?) before changing the verification.

§749.2904. What fire safety measures are required at a foster family home serving children receiving treatment services for primary medical needs or a foster group home?

(a) Foster family homes serving children receiving treatment services for primary medical needs and foster group homes must have a fire inspection conducted by a [~~certified fire inspector or a local or~~] state or local fire authority. You must document efforts to obtain a fire inspection. If, after exploring and documenting efforts to obtain a fire inspection for a home, you cannot obtain a fire inspection, then a fire safety evaluation may be conducted by your child-placement staff using the State Fire Marshal's fire prevention checklist for foster homes. Documentation of efforts to obtain a fire inspection must include each date, the name of the person contacted, and the person's response to the request to complete an inspection.

(b) - (e) (No change.)

§749.2905. How often must fire and health inspections be conducted at a foster home?

(a) Unless otherwise stated in the report, a fire or health inspection report obtained from a local health authority or state or local fire authority[~~, including a certified fire inspector~~], is current for:

(1) - (2) (No change.)

(b) A fire safety or health and safety evaluation by [~~If you~~] use of a checklist [~~for a foster home's fire or health inspection, the checklist~~] is current for one year.

§749.2909. How many smoke detectors must a foster home have?

(a) (No change.)

(b) Depending on the size and layout of the home, additional smoke detectors may be required based on the manufacturer's or the state or local fire authority's [~~inspector's~~] instructions.

§749.2911. How must smoke detectors be installed and maintained at a foster home?

Smoke detectors must be installed and maintained according to the manufacturer's instructions, or in compliance with the state or local fire authority's [~~inspector's~~] instructions.

§749.2913. How many fire extinguishers must a foster home have?

(a) (No change.)

(b) The fire extinguisher(s) must [~~be~~]:

(1) Be serviced [~~Serviced~~] or replaced after each use; and

(2) Have a maintenance check once a year by a person qualified to inspect fire extinguishers [~~Checked for proper weight at least once a year~~].

§749.2917. What are the requirements for animals that are present at a foster home?

(a) Any animals on the premises of a home must be kept free of disease and must not create health problems or a health risk for children.

(b) Animals must be vaccinated and treated as recommended by a licensed veterinarian.

(c) The caregivers must have documentation at the home showing that dogs[~~,~~] and cats[~~, and ferrets~~] have been vaccinated for rabies as required by Texas Health and Safety Code, Chapter 826. [~~If the foster home chooses to have animals on the premises, it must ensure that the animals do not create health problems or a health risk for children.~~]

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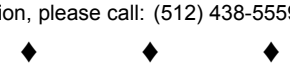

DIVISION 2. TOBACCO AND E-CIGARETTE USE

40 TAC §749.2931

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2931. What policies must I enforce regarding tobacco products and e-cigarettes?

(a) A child may not use or possess tobacco products, e-cigarettes, or any type of vaporizers.

(b) Caregivers and other adults may only smoke tobacco products, e-cigarettes, and vaporizers outside.

(c) No one may smoke tobacco products, e-cigarettes, or vaporizers in a motor vehicle while transporting children in care.

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DIVISION 3. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

40 TAC §749.2961

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§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) - (2) (No change.)

(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 [~~a qualified~~] 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) - (c) (No change.)

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DIVISION 4. SPACE AND EQUIPMENT

40 TAC §§749.3027, 749.3031, 749.3039

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.3027. May a child in care share a bedroom with an adult caregiver?

(a) A child may share a bedroom with an adult caregiver if:

(1) It is in [~~In~~] the best interest of the child;

(2) - (3) (No change.)

(b) - (c) (No change.)

(d) To facilitate continuous supervision of a child, the caregiver may move a child to a location where the caregiver can directly and continuously supervise a child until there is no longer an immediate danger to self [~~himself~~] or others. However, the caregiver must provide comfortable sleeping arrangements for the child.

§749.3031. What are the requirements for beds and bedding?

(a) Each foster child shall have their [~~his~~] own bed and mattress. This does not prevent a child receiving respite care or requiring closer supervision from sleeping on a couch, sleeping bag, etc. for fewer than seven days.

(b) (No change.)

(c) Mattresses must be off of the floor and have covers or protectors.

(d) (No change.)

§749.3039. What are the requirements for outdoor recreation [~~space and~~] equipment?

(a) - (d) (No change.)

(e) Trampolines may only be used at the foster home if:

(1) The number of children allowed on the trampoline at one time meets the manufacturer's instructions [~~Only one child is on the trampoline at a time~~];

[(2) Somersaults are not allowed on the trampoline;]

(2) [(3)] Shock-absorbing pads cover the springs, hooks, and frame;

(3) Ladders are removed from the trampoline when the trampoline is not in use; and

[(4) No ladder is used with the trampoline; and]

(4) [(5)] A caregiver provides supervision as follows:

(A) For children under 12 [15] years old, the caregiver must be immediately present, watching the child(ren) at all times, enforcing safety rules and manufacturer's instructions, and able to respond in an emergency; and

(B) For children 12 [15] years old and older, the caregiver must be on the premises, visually check on the child(ren) at frequent intervals, and able to respond in an emergency.

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. NUTRITION AND FOOD PREPARATION

40 TAC §749.3061, §749.3075

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.3061. What are the requirements for feeding children in care?

[(a) Caregivers must give children food of adequate quality and in sufficient quantity to supply the nutrients necessary for proper growth and development.]

(a) [(b)] Caregivers must feed an infant whenever the infant is hungry.

(b) [(c)] Caregivers must provide a toddler or school age child with three meals and at least one snack a day.

(c) [(d)] No more than 14 hours may pass between the last meal or snack of the day and the availability of the first meal the following day.

§749.3075. What are the feeding requirements [food service practices must caregivers use] for children receiving treatment services for primary medical needs or intellectual disabilities [mental retardation]?

(a) Caregivers must encourage self-help and development when feeding [Food service practices for] children receiving treatment services for primary medical needs or intellectual disabilities [mental retardation], including non-mobile children[, must encourage self-help and development].

(b) - (c) (No change.)

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 6. TRANSPORTATION

40 TAC §749.3103

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.3103. What are the requirements for transporting foster children?

The driver and all passengers must follow all federal, state, and local laws when driving, including laws on the use of a child passenger safety seat system [systems], seat belts, and liability insurance.

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 7. SWIMMING POOLS, BODIES OF WATER, SAFETY

40 TAC §§749.3133, 749.3135, 749.3137, 749.3139, 749.3151

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §40.042.

§749.3133. What are the requirements for a pool at a foster home?

(a) The caregivers must inform children about house rules for use of the pool and appropriate safety precautions. Adult supervision and monitoring of safety features must be adequate to protect children younger than 12 years of age and children of any age who are not competent swimmers from unsupervised access to the pool.

(b) (No change.)

(c) A fence or wall that is at least four feet high must enclose the pool area. The fence must be well constructed and be installed completely around the pool area. [~~A foster home that you verified before January 1, 2007, has one year from that date to comply with this requirement. Caregivers must continue to prevent children's unsupervised access to the pool.~~]

(d) Fence gates leading to the outdoor pool area must be self-closing and self-latching. Gates must be locked when the pool is not in use. Keys to open the gate must not be accessible to children under the age of 12 [~~16~~] years old, children of any age who are not competent swimmers, or any children receiving treatment services.

(e) - (n) (No change.)

(o) An aboveground pool must:

(1) Be inaccessible to children under the age of 12 [~~16~~] years old, children of any age who are not competent swimmers, or any children receiving treatment services when it is not in use; and

(2) (No change.)

(p) (No change.)

§749.3135. What general requirements must caregivers meet for children regarding a body of water?

(a) Caregivers must use prudent judgment and ensure children in your care who are younger than 12 years old, children of any age who are not competent swimmers, and children receiving treatment services are protected from unsupervised access to water such as a swimming pool, hot tub, fountain, pond, lake, creek, or other body of water.

(b) - (c) (No change.)

§749.3137. What are the child/adult ratios for swimming activities?

(a) The maximum number of children one adult can supervise during swimming activities is based on the age of the youngest child in the group and is specified in the following chart:
Figure: 40 TAC §749.3137(a)

(b) In addition to meeting the required swimming child/adult ratio listed in subsection (a) of this section, if four or more children are actually in the water [~~engaged in swimming activities~~], then there must be at least two adults supervising [~~to supervise~~] the children.

(c) (No change.)

(d) A lifeguard who is supervising the area where the children are swimming may be counted in the child/adult ratio; however, one caregiver must always be present and the lifeguard may not be the only person counted in the child/adult ratio.

(e) The ratios in subsection (a) of this section do not include children over the age of 12 years old who are competent [~~proficient~~] swimmers. However, you must still comply with the child/caregiver ratios required in §749.2563 of this title (relating to How do I determine child/caregiver ratio for a foster group home?)[~~, including compliance with subsection (c) of this section if children are on an unsupervised swimming activity~~].

§749.3139. May I include volunteers or relatives who do not meet minimum qualifications for caregivers in the swimming child/adult ratio?

To meet the swimming child/adult ratio, you may include adult volunteers and adult relatives who do not meet the minimum qualifications for caregivers, providing:

(1) (No change.)

(2) Persons in your care do not supervise swimming [~~water~~] activities; and

(3) (No change.)

§749.3151. Can foster parents approve a child to participate in swimming activities as an unsupervised childhood activity without complying with the rules of this division?

Yes, a foster parent using the "reasonable and prudent parent standard" as defined in §749.2605 of this title (relating to What is the "reasonable and prudent parent standard"?) may approve a child to participate in unsupervised childhood activities (activities away from the foster home and the foster parents) involving swimming that do not comply with the rules of this Division of this Subchapter (relating to Swimming Pools, Bodies of Water, Safety). However, depending upon the background of the child (for example the child's age, level of maturity and responsibility, and proficiency in swimming), such an approval may or may not require limitations like other adult supervision or the need for a life jacket when boating.

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 V. ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES THAT PROVIDE TRAFFICKING VICTIM SERVICES

DIVISION 4. TRAINING

40 TAC §749.4153

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.4153. Must I provide pre-service training to a caregiver or an employee who was previously a caregiver or employee for another operation?

(a) A child-placing agency does not have to provide additional general pre-service training or pre-service training regarding emergency behavior intervention to any caregiver or employee who is exempt from this training by §749.867 of this title (relating to Must I provide pre-service training to a caregiver or employee who was previously a caregiver or employee for a residential child-care operation [~~child-placing agency?~~]). In addition, a caregiver or employee (child-placing agency administrator, treatment director, child placement management staff, child placement staff, or full-time professional service provider) does not have to complete the five hours of pre-service training regarding complex trauma experienced by trafficking victims if the caregiver or employee:

(1) - (2) (No change.)

(b) (No change.)

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. ADMISSION AND SERVICE PLANNING

40 TAC §749.4259

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.4259. What mental health services are required for a child receiving trafficking victim services?

(a) A specialized professional service provider must:

(1) Provide individual counseling [~~therapy~~] to each child receiving trafficking victim services; and

(2) Assess the frequency and duration of the counseling [~~therapy~~].

(b) (No change.)

(c) If a child refuses counseling [~~therapy~~], you must document this refusal in the child's record.

(d) (No change.)

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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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.863, 749.931, 749.1311, 749.2563, and 749.2593; new §§749.868, 749.882, 749.943, 749.944, 749.2601, 749.2603, 749.2605, and 749.2607; and repeal of §749.2594, in Chapter 749, concerning Minimum Standards for Child-Placing Agencies. The purpose of the amendments, new rules and repeal are to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy and for clarity and consistency. In December of 2014, some changes to Chapter 749 related to normalcy became effective; these changes need to be updated.

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that were organized by CASA (Court Appointed Special Advocates). On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

A summary of the changes related to normalcy include: (1) creating an independent Normalcy Division in Chapter 749 to clarify and highlight the issues and make the rules related to normalcy easier to find; (2) clarifying that children must participate in childhood activities, including unsupervised childhood activities (activities that are away from and not supervised by the foster home) as much as possible; (3) defining "normalcy" and the "reasonable and prudent parent standard"; (4) listing items that

must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; (5) clarifying who will make decisions regarding whether a child may participate in a childhood activity; (6) clarifying that a child's participation in childhood activities must be discussed during service planning meetings; (7) requiring two hours of pre-service training regarding normalcy for foster parents and certain employees of CPAs; (8) requiring that two hours of normalcy training be included in the mandated annual training for all caregivers; and (9) providing a list of curriculum components that must be included in the general pre-service and annual normalcy training.

A new definition for "childhood activities" and a modified definition for "unsupervised childhood activities" have been added to the definitions in §749.43 of this title (relating to What do certain words and terms mean in this chapter?). Since there will be many other changes to definitions in §749.43 in response to the comprehensive review of Chapter 749, the definition changes are being proposed in the comprehensive review packet of Chapter 749 and will be published in the same issue of the *Texas Register.* However, for purposes of understanding these proposed changes the proposed §749.43 definitions are as follows: (1) childhood activities--activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §749.2605 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities; and (2) unsupervised childhood activities--childhood activities that a child in care participates in away from the foster home and the foster parents. Childhood activities that the foster parents conduct or supervise or a child-placing agency sponsors are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

In addition, some minor changes related to normalcy are being made to the Chapter 749 rules relating to service planning and children's rights. Since there are other more significant changes being made to the service planning and children's rights rules, those rules are also being proposed in a different set of rules that will also make changes to Chapter 749 and be published in the same issue of the *Texas Register.*

Finally, there are some additional rule review changes not related to normalcy that are being proposed in these rules, which consists of updating the language and numbering of tables for consistency and ease of understanding.

A summary of the changes follows:

The amendment to §749.863: (1) requires two additional hours of pre-service training regarding normalcy for foster parents, Child-Placing Agency (CPA) administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services; (2) updates/changes the language of "mental retardation" to "intellectual disabilities", and "pervasive development disorder" to "autism spectrum disorder"; and (3) deletes subsection (b) because this language is unnecessary. There is no need to exempt caregivers exclusively caring with primary medical needs from the training requirement because the provision contains no requirement for those caregivers. However, this language will be included in a Helpful Information box within the Minimum Standards.

New §749.868 provides an exemption to the requirement of two additional hours of pre-service training regarding normalcy for child-placing agency administrators, treatment directors, child placement staff, child placement management staff, or full-time professional service providers when the individuals have been trained on normalcy within the last 12 months.

New §749.882 lists the curriculum components that must be included in the pre-service training regarding normalcy.

The amendment to §749.931: (1) requires that the mandatory annual training for caregivers/foster parents, child placement staff, child placement management staff other than those exclusively doing adoptions, and executive director, treatment directors, and full-time professional service providers who do not hold a relevant professional license must include two hours of training specific to normalcy; (2) clarifies the language, combines some sections, and adds numbering to be more consistent throughout the rule and to make it easier to read; (3) updates/changes the language of "pervasive development disorder" to "autism spectrum disorder"; and (4) for ease of understanding deletes paragraph (8) by incorporating the language into other sections and adding §749.944.

New §749.943 requires: (1) annual training regarding normalcy to include the curriculum components that are required in §749.882; and (2) subsequent training to further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented.

New §749.944 lists the training components that must be included in the mandated annual training related to prevention, recognition, and reporting on child abuse and neglect. This rule is being added so paragraph (8) of the table at §749.931 can be deleted to simplify the table and for ease of understanding.

The amendment to §749.1311 clarifies that: (1) a child that is verbal and developmentally able to participate must be invited to participate in the development of the child's service plan; and (2) the service planning meeting must include discussions regarding the child's participation in childhood activities.

The amendment to §749.2563 clarifies the language of this rule and deletes an outdated cite.

The amendment to §749.2593: (1) clarifies that a caregiver must be aware of a child's special supervision needs; and provide, arrange, or confirm an appropriate method of transportation for an unsupervised childhood activity; and (2) moves and revamps the current subsection (d) and (e) to the new Division 7, Normalcy.

The language of the repeal of §749.2594 is being moved and revamped into new §749.2607.

New §749.2601 defines "normalcy."

New §749.2603 states that: (1) children must participate in childhood activities, including unsupervised childhood activities, as much as possible; and (2) service planning meetings must discuss normalcy for the child.

New §749.2605: (1) defines the "reasonable and prudent parent standard"; (2) lists the items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; and (3) provides a

presumption that a reasonable and prudent parent would include a child in care in foster family activities to the same extent as a child born to the foster family.

New §749.2607 states that: (1) the foster parents make the decisions regarding a child's participation in childhood activities; (2) when making this decision the foster parents must follow the reasonable and prudent parent standard; and (3) the service plan may not require prior approval of the parent before the designated person may consent to a child's participation in childhood activities.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for each of the first five years that the amendments, new sections, and repeal will be in effect, there will not be costs or revenues to state or local government as a result of enforcing or administering the sections.

Ms. Subia also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the amendments, new sections, and repeal will be that the safety of children in care and the quality of their care will be improved by integrating normalcy into the minimum standards. There is an anticipated adverse impact on businesses, including small and micro-businesses, which must comply with the proposed rule changes. CPAs will be impacted. The DFPS 2014 Annual Report and Data Book states that there are 217 CPAs operating in Texas. Of those CPAs, there are 11 CPS regional divisions that operate as certified CPAs. The 11 CPS CPAs will not be discussed in this section of the fiscal impact analysis, because they do not meet the legal definition of a large, small or micro business. There is no anticipated economic cost to persons who are required to comply with the proposed rule changes, other than the persons who have a financial stake in a CPA.

Licensing has identified four proposed rules in Chapter 749 as potentially having an adverse fiscal impact on CPAs. The rules are discussed herein.

The size of the CPA and the number of foster and adopted homes that each CPA has varies significantly. A few CPAs have hundreds of foster and adoptive homes; other CPAs have 20 to 50 foster and adoptive homes, while others have even fewer foster and adoptive homes. Given this variation, it is not possible to project the fiscal impact to each CPA; however, it is possible to project an average "unit cost" for certain types of activities that are newly required by the amendments, new sections, and repeal.

The fiscal impact to CPAs primarily results from additional staff time needed to (1) attend new pre-service training regarding normalcy; and (2) update and develop curriculum.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail herein, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some CPAs.

For CPAs, the staff time required to comply with the standards will impact child placement staff, child placement management staff, full-time professional service providers, treatment directors, and the child-placing agency administrators. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of CPA staff, as follows (actual salaries paid to staff by a CPA may be greater or less than the averages used for these projections):

(1) Child Placement Staff - The 2016 average salary for Foster and Adoptive Development (FAD) Workers (CPS Specialists I - V) was used to determine the salary costs for the child placement staff because the FAD Workers are the child placement staff for CPS. The Fiscal Year (FY) 2016 average salary for a FAD Worker is $43,768 per year or $21.04 per hour.

(2) Child Placement Management Staff, Full-Time Professional Service Providers, and Treatment Directors - The 2016 average salary for FAD Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the child placement management staff, full-time professional service providers, and treatment directors because the FAD Supervisor is the position that most often meets the minimum qualifications for and acts as the child placement management staff for CPS. It is assumed that the costs for full-time professional service providers and treatment directors would be similar to the child placement management staff. The FY 2016 average salary for a FAD Supervisor is $52,071 per year or $25.03 per hour.

(3) CPA Administrator - The 2016 average salary for CPS Regional Directors was used to determine the salary costs for the CPA administrator because the CPS Regional Directors act as the CPA administrator for each CPS region. The FY 2016 average salary for a CPS Regional Director is $93,862 per year or $45.13 per hour.

Fiscal Impact for Proposed §749.863: Revisions to §749.863 add pre-service training requirements regarding normalcy for two sets of populations: foster parents; and CPA administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services. This fiscal impact statement is divided into two sections, which explain the fiscal impact for each population:

(1) The proposed addition to this rule requires two additional hours of pre-service training regarding normalcy for foster parents. There are 206 private CPAs and 120 of those CPAs contract with CPS to provide foster care services. For the CPAs that contract with CPS, CCL is assuming this new requirement will not result in any new costs. Most, if not all, of the CPAs that contract with CPS already require additional hours of pre-service training to verify a foster home. In addition, H.B. 781 that was passed by the 84th Texas Legislative (2015) session now requires all CPAs that contract with CPS to provide 35 hours of pre-service training to their foster parents. The additional two hours of pre-service training for normalcy can be incorporated into the 35 hours of pre-service training that is now required by H.B. 781 via Parent Resources for Information, Development and Education (PRIDE) training or some other similar training module. Of the remaining 86 CPAs, approximately 50 CPAs provide adoption only services. Generally, the adoption only CPAs do not verify foster homes or verify very few foster homes. The remaining 36 CPAs that provide foster care services are generally small CPAs that do not verify many foster homes. However, for these CPAs, there will be some training instruction costs for the foster parents. The average cost of group training offered by local resource and referral agencies is $20 per hour. As such, the cost of instruction for pre-service training regarding normalcy would be $40 per foster parent trained. Since foster parents are not paid employees, there are no hourly wage costs for foster parents to attend a training class. In some instances CPAs will pay for these training costs for the foster parents; in other in-

stances foster parents must incur their own costs for these trainings.

(2) The proposed addition to this rule requires two new hours of pre-service training regarding normalcy for CPA administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services. The training must be completed before the person can be a designated person that makes decisions regarding a child's participation in childhood activities, or within 90 days of beginning job duties, whichever occurs earlier. There are two costs associated with the additional two hours of general pre-service training regarding normalcy for CPA employees: the hourly wages paid to the training participants while attending a class and the training instruction cost. The average cost of group training offered by local resource and referral agencies is $20 per hour. Licensing assumed that training for these staff is 25% more expensive than training caregivers given that the level of expertise of trainers is usually higher. As such, the cost of instruction for pre-service training regarding normalcy would be $25 per hour per employee trained. The training will only apply to new staff. But the cost to train these staff for two hours is estimated as follows: (1) Child Care Administrator - $140.26 {(hourly wage of $45.13 x 2 hours of training) + ($25.00 x 2 hours of instruction costs)}; (2) Child Placement Management Staff, Full-Time Professional Service Providers, and Treatment Directors - $100.06 {(hourly wage of $25.03 x 2 hours of training) + ($25.00 x 2 hours of instruction costs)}; and (3) Child Placement Staff - $92.08 {(hourly wage of $21.04 x 2 hours of training) + ($25.00 x 2 hours of instruction costs)}.

Fiscal Impact for Proposed §749.882: This new rule specifies the curriculum components that must be included in the pre-service training regarding normalcy for foster parents, the child care administrator, profession level service providers, treatment director and case managers. The costs for sending these persons to training was discussed in "Fiscal Impact for Proposed §749.863" herein. However, if a CPA determines they want to provide this training in-house, then the instruction costs noted herein ($40 per foster parent and $50 per each employee for the two hours of training) would no longer be applicable, but the normalcy training curriculum would need to be developed. The training for normalcy must be two hours. CCL is estimating 30 to 50 hours to develop one hour of training. It is anticipated that a child placement management staff or some employee similarly situated will spend an average of 60 hours (30 hours x 2 training hours) to 100 hours (50 hours x 2 training hours) to develop the curriculum. Therefore, the one-time cost to update the curriculum regarding normalcy will be between approximately $1,501.80 {$25.03 (the hourly wage of a child placement management staff) x 60 hours} and $2,503.00 {$25.03 (the hourly wage of a child placement management staff) x 100 hours} per CPA.

Fiscal Impact for Proposed §749.931 and §749.943: Revisions to §749.931 require that the currently mandated annual training for caregivers and employees of CPAs must now include training regarding normalcy. Revisions to §749.943 list the curriculum components that must be included in the required annual normalcy training. There is no increase in the number of annual training hours required; there is only the requirement that training must include two hours of training regarding normalcy. Since there is only a change in the content of the training, there is no fiscal impact in the delivery of the training because the CPA already pays for or delivers the annual training for the same number of training hours. If the CPA is currently paying for outside annual training, then there are no additional costs for the CPA. However, there is a small fiscal impact when a CPA actually delivers the training and must now modify the normalcy curriculum that was developed for the pre-service training, see "Fiscal Impact for Proposed §749.882" herein. It is anticipated that a child placement management staff or some employee similarly situated will spend 20 hours to modify the pre-service normalcy curriculum into an annual training. Therefore, the one-time cost to modify the curriculum regarding normalcy will be $500.60 {$25.03 (the hourly wage of a child placement management staff) x 20 hours} per CPA.

Regulatory Flexibility Analysis - The amendments, new sections and repeal apply to the approximately 206 private CPAs. Of those, only 20 potentially fall within the statutory definition of a small or micro-business, because only 20 of the CPAs are for-profit business. Of these 20 CPAs, it is estimated that almost all of them are small businesses, and probably half are micro-businesses.

The projected economic impact on small and micro-businesses was addressed for CPAs in the foregoing section of the preamble. As noted herein, with the widely varying number of children cared for by CPAs, the fiscal impact of these rules to particular CPAs will vary, with the total dollar impact likely to be greater for CPAs that serve a larger number of children and less for CPAs that serve a smaller number of children.

DFPS did not consider any alternatives to the amendments, new sections or repeal being proposed that require additional training for normalcy to ameliorate the impact on CPAs who are small or micro-businesses, because the very purpose of this legislative requirement and these rule changes is to ensure the health and safety of children and to improve their quality of care - regardless of the size of the CPA. However, DFPS did consider different training times for normalcy, but decided a shorter training time frame was not adequate, and a longer time frame was excessive.

Ms. Subia has determined that the proposed amendments, new sections and repeal do 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@DFPS.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-543, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

40 TAC §749.863, §749.868

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and

Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

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

(a) Caregivers and certain employees must complete the following training hours before the noted timeframe:
Figure: 40 TAC §749.863(a)

[~~(b) Caregivers exclusively caring for children receiving treatment services for primary medical needs are exempt from pre-service emergency behavior intervention training requirements.~~]

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

§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?

(a) A child-placing agency administrator, treatment director, child placement staff, child placement management staff, or full-time professional service provider is exempt from completing the pre-service training regarding normalcy if the person:

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

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

(3) Can document that the training has been received.

(b) You must document the exemption factors in the appropriate 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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Trevor Woodruff
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For further information, please call: (512) 438-5559

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DIVISION 4. GENERAL PRE-SERVICE TRAINING

40 TAC §749.882

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

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

The pre-service training regarding normalcy must include the following 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.

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 6. ANNUAL TRAINING

40 TAC §§749.931, 749.943, 749.944

The amendment and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new sections implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

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

(a) Caregivers and employees must complete the following training hours:
Figure: 40 TAC §749.931(a)

(b) (No change.)

§749.943. What curriculum components must be included in the annual normalcy training?

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

(b) Subsequent annual training regarding normalcy should further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented.

§749.944. What curriculum components must be included in the annual training related to prevention, recognition, and reporting on child abuse and neglect?

The training related to prevention, recognition, and reporting on child abuse and neglect must include the following components:

(1) The factors indicating a child is at risk for abuse or neglect;

(2) The warning signs indicating a child may be a victim of abuse or neglect;

(3) The procedures for reporting child abuse or neglect; and

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

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 I. FOSTER CARE SERVICES: SERVICE PLANNING, DISCHARGE

DIVISION 1. SERVICE PLANS

40 TAC §749.1311

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.1311. Who must be involved in developing an initial service plan?

(a) (No change.)

(b) The child, if verbal and developmentally able to participate [~~as appropriate~~], the parents, and the foster parents must be invited to the service planning meeting and should participate and provide input into the development of the service plan, including discussions regarding the child's participation in childhood 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.

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SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS

DIVISION 5. CAPACITY AND CHILD/CAREGIVER RATIO

40 TAC §749.2563

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.2563. How do I determine child/caregiver ratio for a foster group home?

(a) - (b) (No change.)

(c) [~~A child may be away from the foster home and caregivers in order to participate in an approved unsupervised activity as outlined in §749.2593(d) of this title (relating to What responsibilities does a caregiver have when supervising a child?).~~] A child does not count in the child/caregiver ratio while participating in an approved unsupervised childhood activity.

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 6. SUPERVISION

40 TAC §749.2593

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.2593. What responsibilities does a caregiver have when supervising a child?

(a) - (b) (No change.)

(c) Caregivers counted in the child/caregiver ratio must:

(1) Be aware of the children's habits, interests, and any special needs, including any special supervision needs;

(2) - (6) (No change.)

[~~(d) Children in care must participate in normal childhood activities, including unsupervised activities, as much as possible. Service planning meetings, and any decision making regarding the child's need for supervision, must include discussions and consideration of normalcy for the child. Moreover, the child's service plan must specify the general parameters within which the foster parent is empowered to make decisions regarding childhood activities. The child may participate in unsupervised activities approved by the foster parent in accordance with subsection (e) of this section, and §749.2594 of this title (relating to Who should make the decision regarding a foster child's participation in childhood activities?).~~]

[~~(e) Foster parents should use a "reasonable and prudent parent" standard to decide whether a child may participate in an unsupervised activity:~~]

[~~(1) In making this decision a "reasonable and prudent parent" standard includes the assessment of the:~~]

[~~(A) Child's age;~~]

[~~(B) Child's abilities;~~]

[~~(C) Child's physical, mental, emotional, and social needs;~~]

[~~(D) Whether the activity is a normal childhood activity;~~]

[~~(E) Desires of the child;~~]

[~~(F) Surrounding circumstances, hazards, and risks of the activity;~~]

[~~(G) Other adults or children involved in the activity;~~]

[~~(H) Outside supervision of the activity, if available and appropriate; and~~]

[~~(I) Supervision instructions in the child's service plan.~~]

(d) [~~(2)~~] When a child participates in an unsupervised childhood activity, the caregiver must:

(1) [~~(A)~~] Know where the child is scheduled to be;

(2) [~~(B)~~] Give the child a specific time to return to the foster home or the caregiver's location;

(3) Provide, arrange, or confirm an appropriate method of transportation to and from the activity;

(4) [~~(C)~~] Give the child a way to contact the caregiver in an emergency; and

(5) [~~(D)~~] Be available to respond if the child contacts the caregiver and needs immediate assistance.

(e) [~~(f)~~] Caregivers that supervise a child receiving treatment services must maintain progress notes for the child, at a frequency determined by the service planning team. Caregivers must sign and date each progress note at the time the progress note is completed. Progress notes must be available for Licensing staff to review.

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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40 TAC §749.2594

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.2594. Who should make the decision regarding a foster child's participation in childhood 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.

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DIVISION 7. NORMALCY

40 TAC §§749.2601, 749.2603, 749.2605, 749.2607

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.2601. What is "normalcy"?

Normalcy is the ability of a child in care to live as normal a life as possible, including:

(1) Engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard; and

(2) Having normal interaction and experiences within a foster family and participating in foster family activities.

§749.2603. Are children in care required to participate in childhood activities?

(a) Children in care must participate in childhood activities, including unsupervised childhood activities, as much as possible.

(b) Service planning meetings, and any decision making regarding the child's need for supervision, must include discussions on how normalcy for the child can be achieved, and discussions, if applicable, regarding a child's refusal to participate in childhood activities. The child's service plan must specify whether there are any restrictions on the child's participation in these activities and whether the activities may extend into sleeping hours.

§749.2605. What is the "reasonable and prudent parent standard"?

(a) The reasonable and prudent parent standard is the standard of care that a parent of reasonable judgment, skill, and caution would use to maintain the health, safety, and best interest of the child and encourage the emotional and developmental growth of the child. This standard applies to decisions about allowing a child to participate in normal childhood activities.

(b) When using the reasonable and prudent parent standard, a foster parent must take into consideration the following when deciding whether a child may participate in normal childhood activities:

(1) The child's age and level of maturity;

(2) The child's cognitive, social, emotional, and physical development level;

(3) The child's behavioral history and ability to participate in a proposed activity;

(4) The child's overall abilities;

(5) Whether the activity is a normal childhood activity;

(6) The child's desires;

(7) The surrounding circumstances, hazards, and risks of the activity;

(8) Outside supervision of the activity, if available and appropriate;

(9) The supervision instructions in the child's service plan; and

(10) The importance of providing the child with the most normal family-like living experience possible.

(c) There is a presumption that a reasonable and prudent parent would include the child in normal interactions and experiences within the foster family and allow the child to participate in foster family activities, to the same extent as a similarly situated child born to the family.

§749.2607. Who makes the decision regarding a foster child's participation in childhood activities?

(a) Except as otherwise provided in subsection (c) of this section, a foster parent makes decisions regarding a child's participation in childhood activities.

(b) When making decisions regarding a foster child's participation in childhood activities, the foster parent must follow the reasonable and prudent parent standard.

(c) The service plan may not require the prior approval of the parent before the foster parent may consent to a foster child's participation in childhood activities. However, if the parent provides notice in advance that the child is prohibited from participating in a specific activity, the foster parent must follow the parent's decision.

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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Trevor Woodruff
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CHAPTER 750. MINIMUM STANDARDS FOR INDEPENDENT FOSTER HOMES

SUBCHAPTER M. CAPACITY AND CHILD/CAREGIVER RATIO; SUPERVISION; RESPITE CHILD-CARE SERVICES; AND FOSTER FAMILY RELATIONSHIPS

40 TAC §§750.1004, 750.1005, 750.1007

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §750.1004; and amendments to §750.1005 and §750.1007, in Chapter 750, concerning Minimum Standards for Independent Foster Homes (IFGH). The purpose of the new rule and amendments is to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy and for clarity and consistency.

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that were organized by Texas CASA (Court Appointed Special Advocates); On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

An independent foster group home (IFGH) is an operation (not related to a child-placing agency) that provides care for seven to 12 children up to the age of 18 years. As of the date of publication of these rules, there are only two IFGHs operating in Texas. Neither one contracts with the DFPS or provides services to children in the managing conservatorship of DFPS. Although the rules impacting IFGHs are located in Chapter 750, there are numerous standards in Chapter 749 of this title (relating to Minimum Standards for Child-Placing Agencies), that are adopted by reference in Chapter 750.

A summary of the changes related to normalcy that are being proposed in Chapter 749 and will be published in the same issue of the *Texas Register* include: (1) clarifying that children must participate in childhood activities, including unsupervised childhood activities (activities that are away from and not supervised by the foster home); (2) defining "normalcy" and the "reasonable and prudent parent standard"; (3) listing items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; (4) clarifying who will make decisions regarding whether a child may participate in a childhood activity; (5) clarifying that a child's participation in childhood activities must be discussed during service planning meetings; (6) requiring two hours of pre-service training regarding normalcy for foster parents; (7) requiring that two hours of normalcy training be included in the mandated annual training for all caregivers; and (8) providing a list of curriculum components that must be included in the general pre-service and annual normalcy training.

New §750.1004 clarifies that IFGHs must comply with the new Normalcy Division in Chapter 749.

Section §750.1005 is an amendment to update a cite.

Section §750.1007 is an amendment to update a cite.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the new section and amendments will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section and amendments.

Ms. Subia also has determined that for each year of the first five years the new section and amendments are in effect, the public benefit anticipated as a result of enforcing the new section and amendments will be that the safety of children in care and the quality of their care will be improved by integrating normalcy into the minimum standards. While some of these rule changes will impact IFGHs, Licensing has identified only four of the proposed rules that are being proposed in the same issue of the *Texas Register* that have the potential of a fiscal impact upon IFGHs: §749.863 of this title (relating to What are the pre-service hourly training requirements for caregivers and employees?), §749.882 of this title (relating to What curriculum components must be included in the pre-service training regarding normalcy?), §749.931 of this title (relating to What are the annual training requirements for caregivers and employees?), and §749.943 of this title (relating to What curriculum components must be included in the annual normalcy training?). These rules impact IFGHs because of §750.401(1) of this title (relating to What are the requirements for training and professional development?), which provides that the staff of an IFGH must be trained in accordance with the minimum standards for training in Subchapter F of Chapter 749 of this title (relating to Training and Professional Development), which includes §§749.863, 749.882, 749.931, and 749.943. However, even though there is a potential for a fiscal impact, because IFGHs do not have the staff noted in these rules and because IFGHs do not develop curriculum for training, CCL does not anticipate any fiscal impact. Therefore, there will be no effect on small or micro-businesses because the proposed changes do not impose new requirements on any businesses that require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed changes in the rules.

Ms. Subia has determined that the proposed new section and amendments do 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-543, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner

regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§750.1004. What are the requirements for normalcy?

You must comply with Division 7, Subchapter M of Chapter 749 of this title (relating to Normalcy).

§750.1005. What are the requirements for respite child-care services?

(a) You must comply with Division 8 [7], Subchapter M of Chapter 749 of this title (relating to Respite Child-Care Services), with the exception of §749.2627 of this title (relating to What must occur before one of my foster homes accepts a child for respite services?).

(b) (No change.)

§750.1007. What are the requirements for foster family relationships?

You must comply with:

(1) Division 9 [8], Subchapter M of Chapter 749 of this title (relating to Agency-Foster Family Relationship), with the exception of §749.2655 of this title (relating to When must a foster home notify you of changes that affect the foster home?); and

(2) (No change.)

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

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 27. TOLL PROJECTS

SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS

43 TAC §§27.83 - 27.85

The Texas Department of Transportation (department) proposes amendments to §27.83, Contracts to Operate Department Toll Projects, new §27.84, No-Cost Contracts for Services to Support the Operation of Department Toll Projects, and new §27.85, Service Charge for Payment Transactions, concerning Operation of Department Toll Projects.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

Transportation Code, §228.052(a) authorizes the department to enter into an agreement with one or more persons to provide, on terms approved by the department, personnel, equipment, systems, facilities, and services necessary to operate a toll project or system. Transportation Code, §228.052(b) provides that a person that enters into an agreement with the department to provide services for a customer to pay an amount on an electronic toll collection customer account at a location other than a department office may collect from the customer a service charge in addition to the amount paid on the account. Transportation Code, §228.052(c) provides that the Texas Transportation Commission (commission) by rule shall set the maximum amount of the service charge, which may not exceed $3 for a payment transaction.

The commission adopted §27.83 in 2006. The rule describes the process for soliciting proposals to operate a department toll project or system and provides for selection of the private entity whose proposal offers the apparent best value to the department. The department has determined that opportunities exist for private entities to provide certain services in support of toll operations at no cost to the department.

Amendments to §27.83, Contracts to Operate Department Toll Projects, clarify that the requirements of that section do not apply to no-cost contracts.

New §27.84, No-Cost Contracts for Services to Support the Operation of Department Toll Projects, prescribes the requirements for soliciting proposals for services to support the operation of a department toll project or system that will be provided by a private entity at no cost to the department. The new section identifies the types of services that may be solicited by the department, including: (1) establishing fleet account programs to manage the payment of tolls; (2) providing account maintenance services, including accepting payments, updating customer account information, and selling and registering tags; and (3) any other activities that the department considers necessary to enhance customer service and promote the efficient and effective operation of its toll projects and systems. The new section also addresses the solicitation process, evaluation and selection procedures, and execution of the agreement.

New §27.85, Service Charge for Payment Transactions, sets the maximum amount of the service charge that may be collected from a customer for a payment transaction conducted at a location other than a department office, and describes the circumstances under which the service charge may be assessed. The new section provides that a person may collect a service charge, not to exceed $2.00, for accepting a payment due on an invoice or violation notice, accepting a payment to establish, or replenishing the minimum balance on a tag or accepting a payment for the sale of a tag. A separate service charge may be collected for each payment transaction. The service charge may not be assessed unless the underlying agreement with the department specifically authorizes such a charge.

The department contacted multiple retailers regarding bill payment services currently available to their customers. Service charges range between $.75 and $3.50, depending on the retailer and the type and amount of the payment. The department has determined that $2.00 is a reasonable charge for an individual payment transaction.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the amendments and new sections as proposed are in effect, there will be no fiscal impli-

cations for state or local governments as a result of enforcing or administering the amendments and new sections.

Mr. Richard Nelson, Director, Toll Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

PUBLIC BENEFIT AND COST

Mr. Nelson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be enhanced customer service and the more efficient and effective operation of department toll projects and systems. There are no anticipated economic costs for persons required to comply with the sections as proposed. Although customers may be assessed a service charge for a payment transaction conducted at a location other than a department office, customers are not required to use those services to manage electronic toll collection accounts. Other payment options are available that are not subject to the assessment of a service charge. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §27.83, and new §27.84 and §27.85 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Toll Project Rules." The deadline for receipt of comments is 5:00 p.m. on July 11, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.052, which requires the commission by rule to set the maximum amount that a person may collect as a service charge under that section.

CROSS REFERENCE TO STATUTE

Transportation Code, §228.052.

§27.83. Contracts to Operate Department Toll Projects.

(a) Purpose. Transportation Code, §228.052 authorizes the department to enter into an agreement with one or more persons to provide, on terms approved by the department, personnel, equipment, systems, facilities, and services necessary to operate a toll project or system. This section prescribes requirements for soliciting proposals to operate a department toll project or system, <u>except as provided by §27.84 of this subchapter</u>.

(b) Procurement process. A contract that provides an operational concession to the private entity shall be procured using the two-step procurement process set out in subsections (c) - (i) of this section. Any other contract to operate a department toll project may be procured using a one-step process as prescribed by subsections (e) - (i) of this section.

(c) Request for qualifications. The department will set forth the basic criteria for professional experience, technical competence, and other information the department considers relevant or necessary in a request for qualifications, and will publish it, at a minimum, in the Texas Register and in one or more newspapers of general circulation in this state. The department may elect to furnish fundamental details or technical studies and reports relating to the toll project in the request for qualifications.

(d) Request for qualifications - evaluation. The department, after evaluating the submissions received in response to a request for qualifications, will identify those entities that will be considered qualified to submit detailed proposals for the toll project. In evaluating the submissions, the department will consider qualities that the department considers relevant to the project, which may include the private entity's financial condition, management stability, technical capability, experience, staffing, and organizational structure. The request for qualifications will include the criteria used to evaluate the submissions and the relative weight given to the criteria. The department will advise each entity providing a submission whether or not it is on the "short-list" of qualified entities.

(e) Request for proposals. The department will issue a request for proposals consisting of the submission of detailed documentation regarding the project. The request for proposals may require the submission of additional information relating to:

(1) the proposer's qualifications and demonstrated technical competence;

(2) the feasibility of operating the toll project as proposed;

(3) the proposer's ability to meet schedules;

(4) a detailed financial plan, if applicable, including costing methodology, cost proposals, and project financing approach; or

(5) any other information the department considers relevant or necessary.

(f) Detailed proposal evaluation criteria. The proposals will be evaluated by the department based on those evaluation criteria the department deems appropriate for the toll project, which may include the reasonableness of any financial plan submitted by a proposer, the reasonableness of the project schedule, reasonableness of assumptions (including those related to legal liability, law enforcement, and operation and maintenance of the project), forecasts, financial exposure and benefit to the department, compatibility with other planned or existing transportation facilities, likelihood of obtaining necessary approvals and other support, cost and pricing, toll rates and projected usage, scheduling, environmental impact, manpower availability, use of technology, governmental liaison, and project coordination, with attention to efficiency, quality of finished product and such other criteria, including conformity with department policies, guidelines and standards, as may be deemed appropriate by the department to maximize the overall performance of the toll project and the resulting benefits to the state. Specific evaluation criteria and requests for pertinent information will be set forth in the request for proposals.

(g) Apparent best value proposal. Based on the evaluation and the evaluation criteria described under subsection (f) of this section and set forth in the request for proposals, the department will rank all proposals that are complete, responsive to the request for proposals, and in conformance with the requirements of this section, and may select the private entity whose proposal offers the apparent best value to the department.

(h) Selection of entity. The department will submit a recommendation to the commission regarding approval of the proposal deter-

mined to provide the apparent best value to the department. The commission may approve or disapprove the recommendation, and if approved, will award the agreement to the apparent best value proposer. Award may be subject to the successful completion of negotiations, any necessary federal action, execution by the executive director of the agreement, and satisfaction of other conditions that are identified in the request for proposals or by the commission. The proposers will be notified in writing of the department's rankings. The department shall also make the rankings available to the public.

(i) Negotiations with selected entity. If authorized by the commission, the department will attempt to negotiate an agreement with the apparent best value proposer to operate the project. If an agreement satisfactory to the department cannot be negotiated with that proposer, or if, in the course of negotiations, it appears that the proposal will not provide the department with the overall best value, the department will formally end negotiations with that proposer and, in its sole discretion, either:

(1) reject all proposals;

(2) modify the request for proposals and begin again the submission of proposals; or

(3) proceed to the next most highly ranked proposal and attempt to negotiate an agreement with that entity in accordance with this subsection.

§27.84. No-Cost Contracts for Services to Support the Operation of Department Toll Projects.

(a) Purpose. Transportation Code, §228.052 authorizes the department to enter into an agreement with one or more persons to provide, on terms approved by the department, personnel, equipment, systems, facilities, and services necessary to operate a toll project or system. This section prescribes the requirements for soliciting proposals for services to support the operation of a department toll project or system that will be provided by a private entity at no cost to the department.

(b) Types of services. The department may enter into agreements with private entities for services to support toll operations, including:

(1) establishing fleet account programs to manage the payment of tolls;

(2) providing account maintenance services, including accepting payments, updating customer account information, and selling and registering tags; and

(3) any other activities that the department considers necessary to enhance customer service and promote the efficient and effective operation of its toll projects and systems.

(c) Solicitation process. The department will publish a notice regarding opportunities to provide the services described in subsection (b) of this section on the department's internet website. The notice will include information regarding the proposed scope of work, technical specifications, professional experience requirements, proposal submission requirements, and specific evaluation criteria that will be used during the selection process. The notice will specify the duration of the solicitation, which may be an indefinite or extended period of time as determined by the department.

(d) Evaluation and selection procedures. The department will evaluate the proposals based on the criteria specified in the notice and identify those entities that are qualified to perform the specified services. The department will advise each entity, in writing, whether it has been selected. If a proposal is rejected, the department will provide to the entity the reason for the rejection.

(e) Agreement. Following selection, the entity must execute an agreement to provide the services, in a form specified by the department.

§27.85. Service Charge for Payment Transactions.

(a) Purpose. Transportation Code, §228.052 provides that a person that enters into an agreement with the department to provide services for a customer to pay an amount on an electronic toll collection customer account at a location other than a department office may collect from the customer a service charge in addition to the amount paid on the account. This section sets the maximum amount of the service charge and the circumstances under which the service charge may be assessed.

(b) Amount of service charge. A person may collect from the customer a service charge, not to exceed $2.00, for:

(1) accepting a payment due on an invoice or notice of nonpayment;

(2) accepting a payment to establish or replenish the minimum balance on a tag; or

(3) accepting a payment for the sale of a tag.

(c) Service charge authorized for each transaction. A person may collect a separate service charge for each payment transaction conducted by a customer.

(d) Specific authorization required. A person may not assess the service charge described in subsection (b) of this section unless the agreement with the department specifically authorizes such a charge.

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 May 26, 2016.

TRD-201602701
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 10, 2016
For further information, please call: (512) 463-8630

Morgan Marks - Third Grade

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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER I. STATE DIRECTORY OF NEW HIRES

1 TAC §55.302

The Office of the Attorney General, Child Support Division, adopts this amendment to the Texas Administrative Code §55.302(4), regarding the State Directory of New Hires pursuant to the Texas Family Code §§231.003, 234.101(1) and 234.104. The amendment is adopted without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9403).

The adopted amendment to the Texas Administrative Code will provide guidance to employers who are deciding whether a particular individual falls under the definition of employee as defined by Texas Family Code §234.101.

This amendment clarifies the definition of independent contractor by limiting the term to those whose income would be reported by employers on Form 1099-MISC.

No comments were received regarding adoption of the amendment.

The adopted amendment is authorized under Texas Family Code §231.002(a)(2), which provides the Office of the Attorney General with the authority to adopt rules for the provision of child support services and by Texas Family Code §231.003, which authorizes the Title IV-D agency to promulgate by rule any forms and procedures necessary to comply fully with the intent of this chapter. The adopted amendment is also authorized under Texas Family Code §234.104, which provides the Office of the Attorney General with the authority to establish procedures for reporting employee information and for operating a state directory of new hires meeting the requirements of federal law.

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 May 24, 2016.

TRD-201602531

Amanda Crawford
General Counsel
Office of the Attorney General
Effective date: June 13, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 936-7940

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

DIVISION 5. ACTIONS IN PREPARATION FOR EXTENSION OF THE DSRIP PROGRAM

1 TAC §§354.1641, 354.1643, 354.1645, 354.1647, 354.1649

The Texas Health and Human Services Commission (HHSC) adopts new Division 5, concerning Actions in Preparation for Extension of the DSRIP Program, including new §354.1641, concerning Definitions; §354.1643, concerning Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI); §354.1645, concerning Electing to Continue a DSRIP Project in the Waiver Extension Period; §354.1647, concerning Requests for Adjustments to Certain DSRIP Projects; and §354.1649, concerning Certain Requirements for the Planned Transition Year and their Exceptions. The new rules are adopted with changes to the proposed text published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2268) and will be republished.

BACKGROUND AND JUSTIFICATION

New Division 5 describes the actions that performing providers ("performers") in the Delivery System Reform Incentive Payment (DSRIP) program must take to prepare for the transition year.

In April 2016, HHSC proposed a 15-month extension of the Texas Healthcare Transformation and Quality Improvement Program, a Section 1115 Waiver, to the Centers for Medicare & Medicaid Services (CMS). The current 1115 Waiver expires on September 30, 2016. As part of the extension proposal, HHSC proposed to extend the DSRIP program. DSRIP is a program for hospitals and certain other performers to propose and implement transformative projects that increase access to care and improve quality of care. CMS approved this extension request in May 2016.

To prepare for expected changes in the structure of DSRIP, HHSC proposed to CMS a transition year to coincide with the first demonstration year (DY) of the extension period (or sixth DY overall). DSRIP performers must take certain steps to prepare for the transition year. These adopted new rules describe the steps expected of performers.

HHSC received many comments and made changes to the rules based on those comments. In addition, HHSC made several clarifications. First, although the term "performing provider" is widely used by HHSC and stakeholders, the DSRIP rules use the term "performer." In the adopted rules, HHSC changed "performing provider" to "performer" to conform to the rest of the DSRIP rules. Second, HHSC clarified two definitions. Third, HHSC revised §354.1645(a) to clarify that a project deemed ineligible to continue may either elect to create a new DSRIP project in the seventh DY or take some sort of next step in the logical progression of its operation. Fourth, HHSC added a withdrawal window between the second payment period for the seventh DY and the first reporting period for the eighth DY. If a performer withdraws a DSRIP project during this withdrawal window, HHSC will not recoup any prior extension period DSRIP payments associated with the DSRIP project due to withdrawal. Fifth, HHSC removed the requirement for performing providers to submit the Medicaid IDs for Medicaid-enrolled individuals served by the DSRIP project.

HHSC is currently negotiating with CMS on the policies surrounding the transition year. HHSC will update these rules, as necessary, in accordance with CMS guidance.

COMMENTS

The 30-day comment period ended April 25, 2016. During this period, HHSC received comments regarding the proposed new rules from several commenters, including the Texas Council of Community Centers, Tenet Healthcare Corporation, Midland County Hospital District, Rice Medical Center, the Hospital Corporation of America, Memorial Hermann, Central Health, CHRISTUS Health, Baptist Hospitals of Southeast Texas, and Harris Health System. A summary of comments and HHSC's responses follows.

Comment: Several commenters requested that HHSC revise proposed §354.1643 to state that performers may adopt flexible approaches approved by HHSC to document that an individual is low-income (i.e., the individual is below 200 percent of the federal poverty level). The commenters further requested that these detailed requirements be specified in the Program Funding and Mechanics (PFM) protocol, and that they be deemed acceptable under a compliance review.

Response: HHSC is developing the requirements for documenting that an individual is low-income, and will include those requirements in the final PFM protocol language. However, the section at issue describes the standards for which individuals qualify as either Medicaid or low-income or uninsured, not the documentation necessary to properly make such a determination. No changes were made in response to this comment.

Comment: One commenter asked if §354.1645(c) should be interpreted to mean that if a performer withdraws a project during the transition year (between October 1, 2016, and September 30, 2017), then the performer is no longer eligible to use those project funds for a replacement project in DY7. In which case, as long as the performer withdraws the project at any time prior to October 1, 2016, they would be eligible to use those project funds for a replacement project in DY7.

Response: HHSC revised §354.1645(c) to clarify that if a performer indicates to HHSC, by a date to be determined by HHSC, that it chooses to discontinue the DSRIP project in the transition year (i.e., that it does not wish to continue the project into the transition year), the performer may not propose any new DSRIP projects for the entirety of the extension period with funds associated with the discontinued DSRIP project.

Comment: Several commenters opposed the language in §354.1645(e), which provides for the recoupment of DY6 funds from performers that indicated they would continue or replace a DSRIP project, but later decide not to continue or replace the project. The commenters argue that performers will have to decide whether to continue a DSRIP project without knowing what the project requirements will be in the future, and therefore should not be penalized if, once the requirements are finalized, they find they cannot continue the project.

Response: HHSC agrees with the concerns raised by the commenters. HHSC revised §354.1645 to provide for a withdrawal window between the second payment period for DY7 and the first reporting period for DY8. If a performer withdraws a DSRIP project during this withdrawal window, HHSC will not recoup any prior extension period DSRIP payments associated with the project due to withdrawal. However, DSRIP payments may be recouped if projects are withdrawn outside of that window. In addition, as is currently the practice, DSRIP payments may be recouped for reasons other than withdrawal.

Comment: Several commenters recommended that an exception be made to §354.1645(e), which provides for the recoupment of DY6 funds from performers that indicated they would continue or replace a project, but later decide not to continue or replace the project. They requested that an exception be made in cases where a private hospital intends to continue a project into the extension period, but is unable to continue because the affiliated governmental entity refuses to provide the non-federal share of a DSRIP payment for the project after DY6.

Response: A performer would not be required to withdraw or terminate a DSRIP project due to lack of non-federal share, therefore an exception is not needed. No changes were made in response to this comment.

Comment: One commenter asked if performers would have an opportunity to adjust their total Quantifiable Patient Impact (QPI) milestone goals in the transition year.

Response: HHSC understands this concern and will discuss with CMS the potential for a limited number of projects to adjust their total QPI milestone goal if they have a strong justification for doing so. No changes were made in response to this comment.

Comment: One commenter recommended that HHSC "develop a process that allows all providers the opportunity to make adjustments to Medicaid and Low-income or Uninsured (MLIU) goals in the transition period, based on historical project data." The commenter states that the original MLIU goal estimates were made without access to data about the patient population the project ultimately served; therefore, performers should have the opportunity to establish new MLIU goals based on more recent utilization data.

Response: HHSC believes the rule already provides sufficient opportunity for performers with strong justification to request an adjustment to a DSRIP project's transition year MLIU QPI goal. No changes were made in response to this comment.

Comment: Two commenters requested that HHSC provide an opportunity for DSRIP projects to combine beginning in DY7.

Response: HHSC will consider allowing projects under a certain value to combine beginning in DY7 and amending the appropriate rule(s) as needed at a later date. No changes were made in response to this comment.

Comment: Several commenters agreed with the language in proposed §354.1647 to allow some performers to adjust their DY6 MLIU QPI goals, as long as the performer will not be penalized for making such a request, such as by reducing their DY6 value. The commenters also indicated that in evaluating such requests, HHSC should give "credit" to a performer whose total QPI achievement was higher than their total QPI goal, and whose MLIU percentage achievement was lower than the MLIU percentage goal, if the performer would have met the MLIU percentage goal had their total QPI achievement been equal to the total QPI goal. In addition, the commenters indicated that HHSC should consider how the DSRIP project's MLIU percentage compares to MLIU percentages for similar DSRIP projects across the state in evaluating these requests.

Response: Performers will be required to submit a form in Summer 2016 that includes the information for each of their projects in DY6. Performers will be able to request an adjustment to a project's DY6 MLIU QPI goal through this form. If a performer requests an adjusted goal that puts a DSRIP project's value per MLIU individual/encounter at a much higher value than that of other projects, the performer may accept a lower project value or enter an updated goal in the form that results in a value per MLIU individual/encounter that is similar to other projects. No changes were made in response to this comment.

Comment: With respect to §354.1649(a)(1), several commenters expressed concern that it would be onerous to identify each patient's MLIU status with a checkbox. They requested that HHSC allow flexible approaches to satisfy MLIU individual level reporting requirements that are not overly burdensome on providers.

Response: The method by which performing providers would need to identify MLIU individuals is not proposed as part of this rule. HHSC will continue to work with stakeholders to find the most appropriate method by which to identify MLIU individuals for the extension period. No changes were made in response to this comment.

Comment: Several commenters opposed the requirement in §354.1649(a)(2) for performing providers to submit the Medicaid IDs for Medicaid-enrolled individuals served by the DSRIP project because it would pose a significant administrative burden. The commenters argue that in some cases, Medicaid IDs may not be easily available to providers or included in their medical record data. Submitting Medicaid ID data to HHSC could require additional system changes for certain providers. Some Medicaid MCOs assign their members a number that is different than the patient's Medicaid ID. In these cases, the provider may not have Medicaid IDs for each patient served by the DSRIP project because the MCO did not provide or require the Medicaid ID for payment.

Response: HHSC agrees with the concerns raised by the commenters. HHSC revised §354.1649 to remove the Medicaid ID reporting requirement.

Comment: Several commenters requested that §355.8203(h)(2)(B) continue to apply in the transition year. This rule states that "If a governmental entity does not transfer the maximum amount referenced in paragraph (1) of this subsection on behalf of each performer owned by or affiliated with that governmental entity, each performer owned by or affiliated with that governmental entity will receive a portion of the value associated with that milestone or quality measure (as specified in the RHP plan) that is proportionate to the total value of all milestones that are completed and eligible for payment for that period by all performers owned by or affiliated with that governmental entity." The intent of this provision is to encourage broad-based public and private entity participation in DSRIP.

Response: Section 355.8203(h)(2)(B) is not a subject of these adopted rules. However, HHSC currently intends for this provision to continue to apply in the transition year. No changes were made in response to this comment.

Comment: Several commenters requested that HHSC continue "the broad hospital participation targets as required by Attachment J of the current Program Funding and Mechanics Protocol and continue the current IGT requirements in a manner that continues to promote private hospital participation in DSRIP."

Response: HHSC assumes that the commenters are requesting to continue the policy outlined in paragraph 30(c)(v)(3) of the PFM protocol. This policy is not addressed in this first transition year rule packet, but HHSC understands this concern, and will take it under consideration in the development of further extension period policies. No changes were made in response to this comment.

Comment: Two commenters recommended that HHSC revise the rule to allocate leftover transition year funds first to new performers that are not currently participating in DSRIP for DSRIP projects in the extension period.

Response: HHSC disagrees with the comments. The purpose of the extension period is to extend the amount of time that current DSRIP projects have to assess their effectiveness in improving healthcare quality and reducing costs. HHSC is in the process of negotiating with CMS on the potential uses of leftover funds and will continue to work with stakeholders to further the goals of the 1115 Waiver. No changes were made in response to this comment.

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§354.1641. Definitions.

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

(1) Extension period--The period of time, as approved by the Centers for Medicare & Medicaid Services (CMS), for which the waiver is extended beyond the initial demonstration period.

(2) Federal poverty level--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(3) Initial demonstration period--The first five demonstration years (DYs) of the waiver, or December 12, 2011, through September 30, 2016.

(4) Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI)--The number of MLIU individuals served or encounters provided to MLIU individuals during an applicable DY that are attributable to the DSRIP project.

(5) Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI) Goal--The number of MLIU individuals that a performer intends to serve, or the number of MLIU encounters that a performer intends to provide, during an applicable DY that are attributable to the DSRIP project.

(6) Transition year--As it relates to DSRIP, the first DY of the extension period.

§354.1643. Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI).

(a) To qualify as a Medicaid individual for purposes of MLIU QPI, the individual must be enrolled in Medicaid at the time of at least one DSRIP project encounter during the applicable demonstration year (DY).

(b) To qualify as a low-income or uninsured individual for purposes of MLIU QPI, the individual must either be below 200 percent of the federal poverty level or must not have health insurance at the time of at least one DSRIP project encounter during the applicable DY.

(c) If an individual was enrolled in Medicaid at the time of one DSRIP project encounter during the applicable DY, and was low-income or uninsured at the time of a separate DSRIP project encounter during the applicable DY, that individual is classified as a Medicaid individual for purposes of MLIU QPI.

§354.1645. Electing to Continue a DSRIP Project in the Waiver Extension Period.

(a) If HHSC determines that a DSRIP project is ineligible to continue in its current form, that DSRIP project may not participate in the transition year. A performer affected by such a determination will have the opportunity to use the funds associated with the DSRIP project beginning in DY7.

(b) For each DSRIP project that HHSC determines is eligible to continue, the performer must indicate, by a date to be determined by HHSC, whether it chooses to:

(1) discontinue the DSRIP project in the transition year; or

(2) continue the DSRIP project in the transition year.

(c) If a performer indicates to HHSC, by a date to be determined by HHSC, that it chooses to discontinue the DSRIP project in the transition year, the performer may not propose any new DSRIP projects for the entirety of the extension period with funds associated with the discontinued DSRIP project.

(d) If a performer indicates to HHSC, by a date to be determined by HHSC, that it chooses to continue the DSRIP project in the transition year, the performer must indicate, by a date to be determined by HHSC, whether it chooses to:

(1) continue the DSRIP project for the remainder of the extension period; or

(2) replace the DSRIP project with a new DSRIP project to commence at the beginning of the second DY of the extension period.

(e) If a DSRIP project is withdrawn prior to the second payment period for DY7, HHSC will recoup all prior extension period DSRIP payments associated with the DSRIP project.

(f) If a DSRIP project is withdrawn after the second payment period for DY7, but before the first reporting period for DY8, no prior extension period DSRIP payments associated with the DSRIP project will be recouped due to withdrawal.

(g) If a DSRIP project is withdrawn after the first reporting period for DY8, any DSRIP payments made after that period will be recouped.

§354.1647. Requests for Adjustments to Certain DSRIP Projects.

(a) Certain DSRIP projects are eligible for an adjustment to the DSRIP project's transition year MLIU QPI goal. These DSRIP projects include:

(1) a DSRIP project that HHSC identifies as underperforming on MLIU in the initial demonstration period;

(2) a DSRIP project that is reporting on individuals or encounters that meet the MLIU definition for the initial demonstration period, but will not meet the MLIU definition for the extension period; and

(3) any other DSRIP project that HHSC determines has a strong justification for an adjustment.

(b) Performers of a DSRIP project as described in subsection (a) of this section may, by a date to be determined by HHSC, request an adjustment to the DSRIP project's transition year MLIU QPI goal.

(c) Performers with a total value less than $250,000 in demonstration year (DY) 5 may increase their total value to up to $250,000 for each subsequent DY across Categories 1-4. Categories 1-4 are each increased proportionately if a performer chooses this option. Performers eligible for such an option must make this choice by a date to be determined by HHSC.

§354.1649. Certain Requirements for the Planned Transition Year and their Exceptions.

(a) To be eligible for the MLIU QPI milestone payment, beginning in the transition year, performers must report for each DSRIP project the MLIU individuals served or encounters provided at the individual or encounter level as opposed to the percentage of total QPI.

(b) There are limited exceptions to this requirement. Performers may request an exception to this requirement by a date to be determined by HHSC. DSRIP projects eligible for an exception include:

(1) a DSRIP project for which the performer did not assess the DSRIP project participants' health insurance coverage or financial status prior to September 30, 2015, and instead used a proxy to estimate the MLIU population served in their October DY4 QPI Reporting Template, and:

(A) utilizes an intervention site that is a school, non-medical social service office (i.e., shelter), or community health fair;

(B) is in Project Area 1.6 (Enhance Urgent Medical Advice), 2.6 (Implement Evidence-based Health Promotion), or 2.7 (Implement Evidence-based Disease Prevention Programs); or

(C) the performer is a Local Health Department that does not bill Medicaid for the types of services provided through the DSRIP project; or

(2) any other DSRIP project that HHSC determines has a strong justification for an exception.

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 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 41. FEVER TICKS

4 TAC §41.1, §41.8

The Texas Animal Health Commission (commission) adopts amendments to §41.1, concerning Definition of Terms, and a new §41.8, concerning Dipping, Treatment, and Vaccination of Animals, with changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1767). The text of the rules will be republished.

Elsewhere in this issue of the *Texas Register,* the commission contemporaneously adopts the repeal of the existing §41.8, concerning Dipping and Treatment of Livestock.

The purpose of the amendments to §41.1 is to add a fever tick vaccine definition. The purpose of new §41.8 is to add a fever tick vaccine requirement for beef cattle located in a control purpose quarantine area, temporary preventative quarantine area or tick eradication quarantine area, and other beef cattle or premises epidemiologically determined by the commission to be at an increased risk for fever ticks. New §41.8 will also clarify and better organize the different requirements for dipping, treatment, and vaccination. The title of §41.8 is being changed to accurately capture that the requirements apply to animals capable of hosting or transporting ticks capable of carrying Babesia and includes vaccination requirements.

The purpose of the Texas Cattle Fever Tick Eradication Program (CFTEP) is to eradicate fever ticks through the management of a permanent quarantine zone, as well as through temporary quarantine areas, created to address the presence of ticks outside the permanent zone.

The USDA Cattle Fever Tick Eradication Program, USDA Agriculture Research Service, and the commission have developed a vaccine for the purpose of acting as a preventative to be used against fever ticks. Collaboratively, they worked with a major pharmaceutical company for five years to get the vaccine through the approval process by USDA Center for Veterinary Biologics (CVB) approval process with the intent for the fever tick vaccine to be integrated into the eradication program.

The fever tick vaccine was developed and manufactured by a major pharmaceutical company with extensive experience in livestock products. The vaccine contains a recombinant protein derived from the epithelial lining of the fever tick gut. The vaccine has been developed using recombinant DNA technology and has no live, modified live, nor killed bacterial or viral components. It is derived from epithelial lining of the fever tick gut. Cattle vaccinated with this antigen produce an antibody response at high levels in blood. Fever ticks which feed on immunized cattle consume high levels of the antibody in blood meal. The antigen-antibody response occurs in the stomach of the tick and effectively destroys the gut lining of the tick, reducing the tick's capabilities to produce offspring and potentially killing the tick.

The fever tick vaccine requires two priming doses 28 days apart. The maximum protection requires boosters every 6 months. This is administered by intramuscular injection in the neck region of cattle. The vaccine is approved for use in beef cattle two months or age and older. There is insufficient safety data for use of the vaccine in dairy cattle and, as such, the vaccine is not authorized for use in dairy cattle at this time. The USDA CVB requires a slaughter withholding period of 60 days following administration of the vaccine and that is provided for in the proposal.

There are numerous benefits of the fever tick vaccination, with the most significant benefit being the potential to eradicate ticks from infested premises. The vaccine provides long-term protection against re-infestation; after the initial inoculations cattle only need, at most, two inoculations per year and premises are protected continuously because cattle are fever tick immune. In this regard, the vaccine substantially prevents re-establishment of ticks when new incursions occur from stray livestock and wildlife from Mexico in US premises stocked with immunized cattle. The vaccine is simple to administer and works synergistically with treatment to promote more efficient elimination of fever ticks on premises with less dependency on chemical and systemic acaracides.

It is also noted that although the vaccine is over 95% effective against Rhipicephalus (Boophilus) annulatus, it is only 70% effective against Rhipicephalus (Boophilus) microplus but, the booster effect over a 2-3 year period is predicted to improve the control of ticks in the pastures by suppressing the overall tick population following reduced fertility of the ticks. Additional research is being carried out to improve the efficacy of this vaccine against Rhipicephalus (Boophilus) microplus, and results of which will be forthcoming.

The commission received one comment letter from Texas and Southwestern Cattle Raisers Association (TSCRA). TSCRA raised a number of issues related to the inspection and treatment practices for cattle located within an area restricted for cattle fever ticks. The commission provides a response to the various questions and issues raised in the letter. The primary purpose and focus of new §41.8 was to add a fever tick vaccine requirement for beef cattle. Section 41.8 was also reorganized to allow the vaccine requirement to be better integrated into the section with the established treatment options, but no changes were proposed to the established treatment and inspections. The commission appreciates the comment and opportunity to explain the program.

TSCRA stated that the 100% requirement to gather, treat, and inspect livestock is unattainable and, therefore, impossible for operators to comply with the currently proposed rule. The commenter requests that the commission include flexibility in the gathering frequency and treatment regime required for livestock based on fever tick prevalence of the premises, pasture size, labor available, livestock temperament, time since last gathered, and other unique gathering challenges of the quarantined property. The CFTEP is the oldest eradication program in the state and the 100% treatment schedule for infested premises has historically been the requirement. For premises known to be infested with cattle fever ticks this requirement has been the most effective method of eradicating ticks from the premises

with the fewest treatments and in the shortest period of time. The commission does allow for some flexibility in compliance with the 100% gather and treatment provision when supported by sound pest control and eradication principles and when authorized by the CFTEP Director and State Veterinarian. When circumstances warrant such deviations from policy, the special provisions are documented in the herd plan prescribed for the particular property. Also, it should be noted that the approved methods of treatment do provide some flexibility in gathering frequency in that the Coumaphos treatment option provides for treatment at 7-14 day intervals with an additional 3 days beyond 14 days when circumstances beyond control of the owner prevail. In addition, the Doramectin treatment option provides for gathering at 25-28 day intervals.

The basic biology of the tick relative to its life cycle on the host animal requires that treatments occur prior to completion of its life cycle on the host. The time period from when the ticks first attach to the host, feed on the host, molt on the host from larvae to nymph to adult, successfully breed and engorge with blood from the host so that the eggs carried by the female tick are developed to the point that the female tick drops off to the ground to deposit eggs for the next generation of ticks to begin is generally accepted to be from 18-21 days in duration. In addition, the basic pharmacology of the treatment products relative to the duration of effect also plays an important role in the establishment of treatment frequencies. For example, although Coumaphos (CoRal®) applied topically has significant knock-down effect, it is not a systemic product and does not have significant residual properties. Considering that fever ticks may complete their life cycle on cattle in 18-21 days, it is required that treatments occur at an interval shorter than that in order to prevent perpetuation of a new generation of ticks.

Prior to 2008, Coumaphos was the only product approved for use in the program. In response to an increasing proportion of cattlemen who could not comply with its schedule for treatments and remain profitable, the TAHC and CFTEP worked closely with the Agricultural Research Services (ARS) in investigating other products which had longer residual effect and a less frequent treatment schedule but retained similar levels of efficacy. As a result, we began using Doramectin routinely in 2008. Doramectin (Dectomax®) is a systemic product and does provide significantly greater residual effect which allows this product to be effective in breaking the life cycle of the tick attached to the host when administered at 25-28 day intervals. We believe it has decreased the number of treatments to achieve eradication by 50% over the duration of a quarantine period, and at the same time increased the proportion of cattlemen who are able to leave cattle on systematic treatment as opposed to destocking.

We continue to investigate other products as well, to find additional options with comparable efficacy, greater residual effect, and less frequent treatments to achieve eradication. Several such products include an ivermectin medicated molasses supplement, 10% moxidectin injectable (Cydectin Onyx), and eprinomectin injectable (Longrange®). As these products are proven out through laboratory and field trials they will be integrated into the program if they meet accepted efficacy standards. The tick vaccine has been through this rigorous process, and for the first time in the history of the program it offers a method to prevent establishment of a fever tick infestation on properties in many cases rather than responding with treatment after the infestation has become established.

TSCRA also asked if an infested premises can be subdivided into prevalence levels that require a more practical and less frequent number of gatherings at lower prevalence levels. The commission believes that once an infestation has been detected on a premises, failure to recognize the life cycle of the tick along with accepted pest management principles by administration of treatments prior to completion of the life cycle on the host will only allow the infestation to continue to increase; and at the same time provide treatment exposure to ticks at less than therapeutic levels of the product which over time will generate profound resistance of the tick population to the product. In a control rather than an eradication approach with sub therapeutic use of topical and systemic products it can result in tick populations which are now resistant to topical and systemic products known worldwide and this is a concern for us.

TSCRA requested that for premises classified as either adjacent or check that we allow producers to present their livestock for treatment and inspection according to a schedule that is more practical for monitoring livestock herds for cattle fever tick presence. It is important to note that this schedule is done through policy rather than rules to specify gathering schedules for check premises. As such, current policy calls for inspections to occur at 90 day intervals. Treatments at the time of inspection are not required. However, we encourage producers to consider preventative treatments when they believe it is economical for them to do so. Should the dynamics of the spread of ticks in the area indicate that the risk to adjacent and check premises is marginalized, we do consider less frequent gathering to monitor the herds, where appropriate, and document those exceptions to policy in the herd plan agreement for such properties.

TSCRA urged the TAHC to classify the treatment of livestock as an official treatment according to Chapter 41 of the Texas Administrative Code if 100% of gathered livestock are treated. TSCRA defines gathered livestock as livestock gathered for treatment and/or inspection if number of head presented is a reasonable percentage of livestock on a premises given pasture size, labor available, livestock temperament, time since last gathering, and other unique gathering challenges of the quarantined property. The commission would note that the gathering requirement for premises where fever ticks have been detected, and classified as infested premises, requires all cattle to be gathered, inspected, and treated, in order to effect eradication of the infestation. This requirement is based on widely accepted pest management principles and has been shown by field experience to be highly effective. We also know that animals which are not gathered and treated will continue to play a role in perpetuating the infestation on the property. There is currently no scientifically accepted model that describes the predicted outcome with the variables identified in the comments above, that allows us to set a standard to effect eradication with a defined proportion of cattle treated.

However, we do understand the challenges faced by producers particularly with respect to gathering herds on large south Texas pastures. As such, by policy, we have structured herds plans to accommodate slightly less than 100% gatherings throughout the duration of a quarantine period when we believe that the risk of perpetuating or spreading tick infestations to premises in the immediate area is minimal. For adjacent and check premises, we do not require all cattle to be gathered for inspection to determine if an infestation has occurred. By policy, we require a sufficient number of cattle to detect a 1% infestation rate (with 95% confidence levels). For example, in a herd with an inventory of approximately 300 animals, we require inspection of at

least 190 members of the herd in order to comply with our efforts to monitor the herd for cattle fever ticks.

TSCRA also asked that if an animal is not originally presented during the first official treatment then it should not reset the date for determining when the animal is determined to be clean of ticks. This is something that the commission will discuss with the CFTEP program to determine how this is best evaluated and options rule.

TSCRA asks if the rule can be amended to allow cattle to be held at a non-contiguous quarantine area other than the premises of origin until the withdrawal period has passed for the injectable Doramectin and/or injectable tick vaccination and the cattle can be safely transported. Cattle have been allowed to move to other quarantined premises operated by the producer, but the CFTEP has been cautious about movement to premises where movement is not restricted since we have no method to assure compliance and no penalty if they moved prematurely. It is also important to note animals need to restricted during the withholding period for certain treatment options because it is required by other entities.

Lastly, TSCRA asks for clarity regarding which government agency is responsible for enforcing compliance and eventually releasing a premises from quarantine. The statutory authority for the CFTEP is located in Chapter 167 of the Texas Agriculture Code. The commission promulgates rules for the program, which are located in Chapter 41 of the Texas Administrative Code. The CFTEP is staffed by the USDA and they manage the day-to-day activities in the permanent quarantine zone. The commission supports their activities as requested. For areas outside of the permanent quarantine zone, the commission has employees work with the CFTEP employees to support the work and uses a Unified Incident Command system.

STATUTORY AUTHORITY

The amendments and new rule are adopted under the following statutory authority as found in Chapters 161 and 167 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.005 entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.007 entitled "Exposure or Infection Considered Continuing", if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission.

Pursuant to §161.048 entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054 entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.057 entitled "Classification of Areas", the commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The commission may prescribe different control measures and procedures for areas with different classifications.

Pursuant to §161.061 entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Pursuant to §161.081 entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §167.003 entitled "General Powers and Duties of the Commission", the commission shall eradicate all ticks capable of carrying Babesia in this state and shall protect all land, premises, and livestock in this state from those ticks and exposure to those ticks. In carrying out this chapter, the commission may adopt necessary rule.

Pursuant to §167.004 entitled "Classification of Animals or Premises as Infested, Exposed or Free from Exposure", the commission by rule shall define what animals and premises are to be classified as exposed to ticks. The commission shall classify as exposed to ticks livestock that have been on land or in an enclosure that the commission determines to be tick infested or exposed to ticks or to have been tick infested or exposed to ticks before or after the removal of the livestock, unless the commission determines that the infestation or exposure occurred after the livestock were removed and that the livestock did not become infested or exposed before removal.

§41.1. Definition of Terms.

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

(1) Adjacent premise--A premise that borders an exposed or infested premise, including premises separated by roads, double fences, or fordable streams. A premise that would normally be classified as adjacent may be exempted from adjacent premise requirements by a State or Federal epidemiologist if the premise is separated from the exposed or infested premise by double fencing, sufficient to prevent the spread of ticks, with one of the fences being game-proof.

(2) Animal--Any domestic, free-range, or wild animal capable of hosting or transporting ticks capable of carrying Babesia, including livestock; zebras, bison, and giraffes; and deer, elk, and other cervid species.

(3) Certificate--A document authorizing movement of livestock issued by an authorized representative of the commission after the livestock have been treated in a manner prescribed by the commission for the area and premise from which they originate.

(4) Check premise--A premise located in a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area that is not classified as an infested, exposed, or adjacent premise.

(5) Control purpose quarantine area--A premise or property designated by the commission for a systematic inspection of livestock and premises and control of the movement of livestock in order to investigate and control a suspected exposure of animals to ticks outside the tick eradication quarantine area. The boundaries of the area will be determined by evaluation of the barriers to the potential spread of ticks.

(6) Designated Fever Tick Epidemiologist (DFTE)--A State or Federal epidemiologist designated to make decisions concerning the use and interpretation of exposure to fever ticks and to manage the Fever Tick program. The DFTE must be selected jointly by the Executive Director of the commission and the USDA-APHIS, VS representative for Texas. The DFTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of herds, assist in development of individual herd plans, and coordinate fever tick surveillance and eradication programs within his or her geographic area of responsibility. The DFTE has authority to make independent decisions concerning the management of herds and use of property and limiting the impact of wildlife when those decisions are supported by sound fever tick eradication principles.

(7) Dipping or treating--If the commission requires livestock to be dipped, the livestock shall be submerged in a vat. A spray-dip machine may be used in areas where a vat is not reasonably available. Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized, certain zoo or domestic animals. Livestock unable to go through a dipping vat because of size or physical condition may be hand sprayed. The treatment must be paint marked so that it can be identified for at least 17 days. If the commission determines that free-ranging wildlife and exotic animals, which are capable of hosting fever ticks, require treatment, they shall be treated by methods and for the duration of time approved by the commission.

(8) Exposed livestock--Any of the following factors shall constitute livestock as being exposed:

(A) Livestock that have entered an infested or exposed premise and have not been dipped and removed from the infested or exposed premise within 14 days after entry.

(B) Livestock that have occupied an exposed premise and have not completed treatment required for movement from an exposed premise.

(C) Livestock that have entered Texas from Mexico without a certificate from the United States Department of Agriculture.

(9) Exposed premise--A premise shall be considered exposed if systematic treatment has not been completed and if either of the following conditions apply:

(A) Ticks have been found on livestock that have been on the premise for less than 14 days.

(B) A premise that has received exposed livestock, or equipment or material capable of carrying ticks from an infested or exposed premise.

(10) Fever Tick Vaccine--A biological treatment administered by injection to an animal that stimulates a potent immune response against fever tick proteins, which prevents the infestation of ticks capable of carrying Babesia.

(11) Free area--An area designated by the commission as being free of ticks or exposure to ticks. The extent of the area will be determined by the appropriate barriers to the potential spread of ticks.

(12) Game proof fence--A fence that has a minimum height of eight feet, consisting of wire mesh of sufficiently small size to prevent or impede the movement of domestic or exotic wildlife over, under, or through the fenced area.

(13) Individual herd plan--A written disease management plan that is developed by the herd or land owner(s) and/or their representative(s), and a State or Federal DFTE to eradicate fever ticks or potential exposure to fever ticks from an affected herd or property. The herd plan will include appropriate treatment frequencies, treatments to be employed, and any additional fever tick management or herd management practices, including vaccination, deemed necessary to eradicate fever ticks from the herd or on an infected or exposed premise in an efficient and effective manner. The plan must be approved by the Executive Director of the commission and the USDA-APHIS, VS representative for Texas, and have the concurrence of the DFTE.

(14) Infested livestock--Livestock shall be considered infested if eradication treatment for movement from an infested premise has not been completed and if either of the following conditions apply:

(A) Ticks have been found on livestock.

(B) Livestock which occupy a premise where ticks have been found on livestock that have been on the premise more than 14 days.

(15) Infested premise--A premise where ticks have been found on livestock that have been on the premise for more than 14 days, and systematic treatment has not been completed.

(16) Livestock--Any domestic animal or any free ranging animals found on a premise or captured wild animal that is capable of hosting or transporting ticks capable of carrying babesia (the causative agent of cattle tick fever), including, but not limited to, cattle, horses, mules, jacks, jennets, zebras, buffalo, giraffe, and deer.

(17) Permit--A document issued by an authorized representative of the commission allowing specified movement of livestock.

(18) Premise--An area which can be defined by boundaries of recognizable physical barriers that prevent livestock from crossing the boundaries under ordinary circumstances; or an area that livestock do not ordinarily inhabit that the commission defines by recognizable features.

(19) Premise inspection--A routine inspection by an authorized representative of the commission of premise boundaries and the livestock within for the purpose of documenting exposure of the premise.

(20) Premise under vacation--A premise from which all livestock have been removed as prescribed by the commission.

(21) Range inspection of livestock--An inspection of livestock to see the animal close enough to detect ticks on the animal.

(22) Scratch inspection of livestock--An inspection of livestock by an authorized representative of the commission in an approved

facility that allows the inspector to touch and see all parts of the livestock.

(23) Temporary preventative quarantine area--An area designated by the commission for systematic inspection and treatment of livestock and premises, and control of movement of livestock, in order to detect and eradicate infestation and exposure from infested or exposed premises outside the tick eradication quarantine area. The extent of the area will be determined by evaluating the barriers to the potential spread of ticks. This is also designated as a "Blanket Disease Quarantine."

(24) The commission--The Texas Animal Health Commission.

(25) Tick--Any tick capable of transmitting bovine Babesiosis (cattle tick fever or bovine piroplasmosis).

(26) Tick eradication quarantine area--An area designated by the commission for systematic inspection and treatment of livestock and premises, and control of movement of livestock, in order to detect and eradicate infestation from infested or exposed premises. The extent of the area will be determined by evaluating the barriers to the potential spread of ticks. This is the permanent quarantine area which is designated in §§41.14 - 41.22 of this chapter (relating to Quarantine Line; Defining and Establishing Tick Eradication Areas), and in the United States Department of Agriculture Code of Federal Regulations Part 72.5, parallel to the Rio Grande River, commonly known as the buffer zone or systematic area.

(27) Treatment--A procedure or management practice used on an animal to prevent the infestation of, control or eradicate ticks capable of carrying Babesia.

§41.8. Dipping, Treatment, and Vaccination of Animals.

(a) General Requirements:

(1) All scratch inspections, dipping, treatment, and vaccination prescribed in this section must be done under the supervision of a representative authorized by the commission.

(2) All scratch inspections, dipping, treatment, or vaccination must be done under instructions issued by the commission. All requirements will be in written form directed to the owner or caretaker. An inspector for the commission will deliver the instructions in person along with a copy of these regulations. All premise boundaries will be listed in the instructions.

(3) The owner or caretaker of livestock on infested and exposed premises must comply with the TAHC approved Quarantine Schedule as follows:

(A) The starting date for infested premises for Table I (Pasture Treatment or Vacation Schedule, South of Highway 90) and Table II (Pasture Treatment or Vacation Schedule, North of Highway 90), is the date of the first clean dipping of 100% of the livestock.

(B) The starting date for exposed premises for Table I and Table II is when 100% of the livestock on the premise have been dipped.

(C) Copies of Table I (Pasture Treatment or Vacation Schedule, South of Highway 90) and Table II (Pasture Treatment or Vacation Schedule, North of Highway 90) may be obtained from the Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711-2966.

Figure: 4 TAC §41.8(a)(3)(C)

(4) The owner or caretakers must gather and present all livestock for scratch inspection, dipping, treatment, or vaccination required by the commission. The owner or caretaker is responsible for all costs associated with and labor necessary for presenting the owner or caretaker's cattle for scratch inspection, dipping, treatment, or vaccination at the location prescribed by the commission.

(b) Requirements for Dipping, Treatment, or Vaccination:

(1) Dipping Requirements:

(A) The owner or caretaker of livestock on infested or exposed must present the livestock to be scratch inspected and dipped with subsequent dipping every seven to 14 days until the livestock are moved from the premise in accordance with these regulations, except as provided in subsection (a)(3) of this section.

(B) The 14-day interval may be extended due to circumstances beyond the control of the owner upon approval by an authorized representative of the commission. In no event will the extension be more than three days. If the extension is granted, no certificate for movement will be issued after the 14th day, and the next dip must be on the original 14-day schedule.

(C) The scratch inspection and first dip must be within 14 days from the date infestation or exposure is discovered unless otherwise approved by the commission.

(D) A dip is not official unless 100% of the livestock within the premise affected are dipped on schedule.

(E) The commission will authorize for use in dipping only those dips that have been approved by the Animal and Plant Health Inspection Service of the United States Department of Agriculture and the Texas Animal Health Commission for use in official dipping to rid animals of the tick.

(F) The concentration of the dipping chemical used must be maintained in the percentage specified for official use by means of the approved vat management techniques established for the use of the agent; or, if applicable, by an officially approved vat side test or field test of the commission.

(G) If the commission requires livestock to be dipped, the livestock shall be submerged in a vat. A spray-dip machine may be used in areas where a vat is not reasonably available.

(H) Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized by a commission representative, certain zoo or domestic animals.

(I) Livestock unable to go through a dipping vat because of size or physical condition, as determined by a commission representative, may be hand sprayed.

(J) The dip treatment must be paint marked on the animals so that it can be identified as treated for at least 17 days after the treatment.

(2) Authorized Treatment Requirements:

(A) Following the first clean dipping of 100% of the livestock, the cattle may be treated with injectable doramectin in lieu of systematic dipping. The owner or caretaker of cattle on an infested or exposed premise must present the livestock to be scratch inspected and treated with injectable doramectin every 25-28 days until the livestock are moved from the premises in accordance with these regulations, except as provided in subsection (a)(3) of this section.

(B) Treatment of doramectin shall by administered by subcutaneous injection by a representative of the commission.

(C) The owner or caretaker must comply with the slaughter withholding period (35 days) of doramectin by holding cattle at the premise of origin until the withdrawal period is completed.

(D) A treatment is not official unless 100% of the livestock within the premise affected are treated on schedule.

(E) Free-ranging wildlife or exotic livestock that are found on infested or exposed premises, and which are capable of hosting fever ticks will be treated by methods approved by the commission and for the length of time specified by the commission.

(i) Ivermectin medicated corn may be administered to free-ranging wildlife or exotic livestock by a representative of the commission following the close of the hunting season, provided that treatment is terminated at least 60 days prior to the beginning of the next hunting season to comply with the required withdrawal period.

(ii) Permethrin impregnated roller devices may be used for topical treatment of free-ranging wildlife or exotic livestock during periods when ivermectin medicated corn is not administered. The commission may specify the use of other pesticides for treatment of wildlife or exotic livestock when deemed necessary to control and eradicate fever ticks.

(3) Vaccination Requirements:

(A) The fever tick vaccine shall be administered by employees or authorized agents of the USDA/APHIS/Veterinary Services or the commission.

(B) The owner or caretaker must comply with the 60 day slaughter withholding period, or other slaughter withholding timeframe as specified by the label. The owner or caretaker must hold vaccinated cattle at the premise of origin until the withdrawal period is completed.

(C) In addition to any dipping or treatment required by this section, beef cattle two months of age or older located within the tick eradication quarantine area shall be vaccinated with the fever tick vaccine at intervals prescribed by the commission. The vaccine must be administered when cattle are gathered and presented for annual inspection as required by §41.9 of this chapter (relating to Vacation and Inspection of a Premise) and at other times specified by the commission.

(D) In addition to any dipping or treatment required by this section, the commission may require fever tick vaccination of beef cattle two months of age and older located within the temporary preventative quarantine area, control purpose quarantine area or other beef cattle or premises epidemiologically determined by the commission to be at an increased risk for fever ticks. The cattle shall be vaccinated at intervals prescribed by the commission.

(c) Herd Plan and Protest. Each premise within a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area will be classified by the commission as an infested, exposed, adjacent, or check premise and is required to execute a herd management plan and remain under restrictions until no evidence of fever ticks is disclosed or a complete epidemiologic investigation fails to disclose evidence of exposure to fever ticks, with the concurrence of the DFTE. A person may protest an initial test or a herd plan for each premise classified as increased risk for fever ticks.

(1) To protest, the responsible person must request a meeting, in writing, with the Executive Director of the commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(B) the meeting or meetings shall be held in Austin; and

(C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(2) Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the Chairman of the commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(3) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

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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Gene Snelson
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Texas Animal Health Commission
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For further information, please call: (512) 719-0722

4 TAC §41.8

The Texas Animal Health Commission (commission) adopts the repeal of §41.8, concerning Dipping and Treatment of Livestock, without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1771). The text of the rule will not be republished.

Elsewhere in this issue of the *Texas Register,* the commission adopts new §41.8, concerning Dipping, Treatment, and Vaccination of Animals, which replaces the repealed section in its entirety.

No comments were received regarding adoption of the repeal.

STATUTORY AUTHORITY

The repeal is authorized by the Texas Agriculture Code §161.046, which provides the commission with authority to adopt rules relating to the protection of livestock, exotic livestock, domestic fowl or exotic fowl, as well as Texas Government Code §2001.039, which authorizes a state agency to repeal a 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 May 26, 2016.

TRD-201602682

Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: June 15, 2016
Proposal publication date: March 11, 2016
For further information, please call: (512) 719-0722

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.20

The Texas State Securities Board adopts new §115.20, concerning Texas crowdfunding portal registration and activities of small business development entities, without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1192).

New §115.20 implements Section 44 of the Texas Securities Act, which was added by House Bill 1629 passed during the last legislative session. The bill permits an authorized small business development entity to register and operate a Texas crowdfunding portal ("Section 44 portal").

Section 44 portals are generally subject to the same conditions and requirements as other Texas crowdfunding portals with a few exceptions. As a registered Texas crowdfunding portal, an authorized small business development entity can facilitate the capital raising efforts of local small business issuers who want to utilize the Texas intrastate crowdfunding exemption.

An authorized small business development entity desiring to act as a Texas crowdfunding portal pursuant to Section 44 will be able to use a simplified registration process. To register as a Texas crowdfunding portal, an authorized small business development entity files new Form 133.20, which is being concurrently adopted.

A comment letter was received from texascrowdfundboard.com. The letter questioned what portal an issuer would use if it is located in an area where no authorized small business development entity has registered as a Texas crowdfunding portal pursuant to §115.20. The Staff responded that the issuer would need to use a portal registered under existing §115.19 as that rule does not have a similar restrictive geographic service area requirement relating to issuers other than the issuer must be a Texas entity. A Texas crowdfunding portal registered under §115.20 is not permitted to list offerings from issuers outside its service area because to do so would be in violation of Section 44 of the Texas Securities Act. The Board agreed with Staff and adopted the rule as published.

The new rule is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-44. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 44 provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities.

The new rule affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-44.

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 May 25, 2016.

TRD-201602625
John Morgan
Securities Commissioner
State Securities Board
Effective date: June 14, 2016
Proposal publication date: February 19, 2016
For further information, please call: (512) 305-8301

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CHAPTER 123. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF OPEN-END INVESTMENT COMPANIES

7 TAC §123.3

The Texas State Securities Board adopts an amendment to §123.3, concerning conditional exemption for money market funds, without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1195).

The amendment aligns the Texas rule for money market funds to the federal definition of money market fund in SEC Rule 2a-7 under the Investment Company Act of 1940. The federal rule was updated as part of the SEC's money market fund reforms enacted in July 2014 in Release IC-31166.

Money market funds meeting SEC Rule 2a-7 may continue to take advantage of the fee relief provided by the Texas rule.

A comment letter was received from the Investment Company Institute in support of the proposal. The letter noted that the revision is important to ensure that money market funds that are not in compliance with the SEC's rules cannot rely on Texas's conditional exemption. The Board agreed and adopted the rule as published.

The amendment is adopted under Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-5, 581 7, and 581-35.

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 May 25, 2016.

TRD-201602628
John Morgan
Securities Commissioner
State Securities Board
Effective date: June 14, 2016
Proposal publication date: February 19, 2016
For further information, please call: (512) 305-8301

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CHAPTER 133. FORMS

7 TAC §133.20

The Texas State Securities Board adopts new §133.20, which adopts by reference a form concerning Texas crowdfunding portal registration by an authorized small business development entity, without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1195). The form would be used by an authorized small business development entity to apply for and amend its registration as a Texas crowdfunding portal under new §115.20, which is being concurrently adopted.

As a registered Texas crowdfunding portal, an authorized small business development entity can facilitate the capital raising efforts of local small business issuers who want to utilize the Texas intrastate crowdfunding exemption.

Authorized small business development entities can use a simplified form to register and amend their registration as Texas crowdfunding portals.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-44. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 44 provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities.

The new rule affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-44.

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 May 25, 2016.

TRD-201602643
John Morgan
Securities Commissioner
State Securities Board
Effective date: June 14, 2016
Proposal publication date: February 19, 2016
For further information, please call: (512) 305-8301

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.25

The Texas State Securities Board adopts an amendment to §139.25, concerning intrastate crowdfunding exemption, without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1196).

Subsection (l) of the intrastate crowdfunding exemption is being amended to implement new Section 44 of the Texas Securities Act.

The amendment to §139.25 and new §115.20, which is being concurrently adopted, permit certain small business development entities registered as Texas crowdfunding portals to have a financial interest in an issuer listed on its Internet website.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-5.T, 581-12.C, 581-28-1, and 581-44. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 44 provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities.

The adopted amendment affects Texas Civil Statutes, Articles 581-7, 581-12, 581-13, 581-14, 581-15, 581-18, and 581-44.

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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TRD-201602647
John Morgan
Securities Commissioner
State Securities Board
Effective date: June 14, 2016
Proposal publication date: February 19, 2016
For further information, please call: (512) 305-8301

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 35. ENFORCEMENT

SUBCHAPTER A. TRANSPORTATION OF LIQUOR

16 TAC §35.5

The Texas Alcoholic Beverage Commission adopts amendments to §35.5, relating to Private Carrier Permit Requirements, without

changes to the proposal as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2558).

Section 35.5 addresses insurance requirements for holders of Private Carrier Permits under Chapter 42 of the Alcoholic Beverage Code. The amendments require that private carriers maintain a $500,000 liability insurance policy to cover bodily injury and property damage.

Subsection (a) exempts from coverage vehicles below a certain weight, which is consistent with Texas Department of Motor Vehicles regulation of other types of carriers. Subsection (c) requires the permit holder to file an affidavit that it is in compliance with the requirements for insurance coverage in this section.

Section 35.5 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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 May 26, 2016.

TRD-201602665
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: June 15, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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CHAPTER 41. AUDITING
SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.21

The Texas Alcoholic Beverage Commission adopts amendments to §41.21, relating to Industrial Permits and Local Industrial Manufacturer's Permits, without changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2559).

Section 41.21 addresses reporting requirements for holders of Industrial Permits under Chapter 38 of the Alcoholic Beverage Code. The title of the section is changed to reflect that the amendments include reporting requirements for holders of Local Industrial Alcohol Manufacturer's Permits under Chapter 47 of the Alcoholic Beverage Code, as well as record-keeping requirements for both types of permit holders. The amendments require that the monthly report shall be on a form prescribed by the executive director. Subsection (b)(3) clarifies that the required reports must account for all types of alcohol except denatured alcohol.

Subsection (c) provides that holders of Industrial Permits and of local Industrial Alcohol Manufacturer's Permits shall maintain records of daily operations and make such records available to the commission upon request.

Section 41.21 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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 May 25, 2016.

TRD-201602594
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: June 14, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.25

The Texas Alcoholic Beverage Commission adopts amendments to §41.25, relating to Records and Invoice Requirements, without changes to the proposal as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2561).

Section 41.25 requires alcoholic beverage invoices to have the exact trade names of issuing and receiving permittees or licensees; requires permittees or licensees owning more than one business operating under separate permits or licenses, or a single business operating at two or more locations, to keep separate records for each business or place of business; requires permittees and licensees who are also engaged in any other kind of business to keep separate records for the alcoholic beverage business; requires permittees and licensees to keep records for two years, and make them available for inspection by the commission during reasonable office hours; and provides that making a false entry or alteration in records is a violation of the section.

The amendments change the title of the section to reflect its scope. Subsection (d) clarifies that the two-year record retention requirement applies unless the Alcoholic Beverage Code or some other rule provides otherwise.

Section 41.25 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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 May 26, 2016.

TRD-201602666
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: June 15, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.27

The Texas Alcoholic Beverage Commission adopts amendments to §41.27, relating to Wine Processing, without changes to the proposal as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2562).

Section 41.27 addresses wine processing requirements for holders of Wine Bottler's Permits under Chapter 18 of the Alcoholic Beverage Code and Winery Permits under Chapter 16 of the Alcoholic Beverage Code. The amendments delete provisions applicable to claiming tax credits because that subject is addressed elsewhere in the commission's rules. Subsection (a) addresses what wine each of these permit holders may bottle. Subsections (b) and (c) address the minimum size of containers from which bottling may occur and which may be possessed by these permittees on their premises. The title of the section has been changed to more accurately reflect its content.

Section 41.27 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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 May 26, 2016.

TRD-201602667
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: June 15, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.29

The Texas Alcoholic Beverage Commission adopts the repeal of §41.29, relating to Bonded Warehouse Breakage, without changes to the proposal as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2562).

Section 41.29 addresses the requirement that bonded warehouses must store liquor in full and unbroken case lots, as well as well as procedures to be followed in the event of actual breakage of stored liquor. The commission reviewed the section pursuant to Government Code §2001.039 and determined that the need for a rule addressing these issues continues to exist but that the issues are more appropriately addressed elsewhere. Therefore, the commission repeals this section and addresses the issues in its proposed amendments to §41.39, relating to Warehouse Report.

No comments were received.

The repeal is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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 May 25, 2016.

TRD-201602599
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.31

The Texas Alcoholic Beverage Commission adopts amendments to §41.31, relating to Excise Tax, without changes to the proposal as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2563).

Section 41.31 addresses the excise taxes due from manufacturers, wholesalers and distributors on the first sale of all alcoholic beverages, including the due date for the taxes and the appropriate references to the Alcoholic Beverage Code. The amendments allow payments to be made by electronic funds transfers, checks and money orders, and provide that payments be made to the Texas Alcoholic Beverage Commission. The title of the section has been changed to more accurately reflect its content.

Section 41.31 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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 May 26, 2016.

TRD-201602668

Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: June 15, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.37

The Texas Alcoholic Beverage Commission adopts the repeal of §41.37, relating to Industrial Alcohol Report, without changes to the proposal as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2564).

Section 41.37 addresses the monthly reporting requirement for holders of Industrial Permits under Chapter 38 of the Alcoholic Beverage Code. The commission reviewed the section pursuant to Government Code §2001.039 and determined that the need for a rule addressing this reporting requirement continues to exist but that it is more appropriately addressed elsewhere.

Therefore, the commission repeals this section and addresses the reporting requirement for holders of Industrial Permits in amendments to §41.21, relating to Industrial Permits, that are being adopted simultaneously.

No comments were received.

The repeal is adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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 May 25, 2016.

TRD-201602584
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: June 14, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.38

The Texas Alcoholic Beverage Commission adopts amendments to §41.38, relating to Carrier Report, without changes to the proposal as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2564).

Section 41.38 addresses the reporting requirements for holders of Carrier Permits under Chapter 41 of the Alcoholic Beverage Code. The amendments eliminate the requirement that car number and initials be given on the monthly report. The amendments also change the reference from "the administrator" to "the executive director" consistent with Alcoholic Beverage Code §5.11(b) and commission practice.

Section 41.38 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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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TRD-201602675
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: June 15, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.39

The Texas Alcoholic Beverage Commission adopts amendments to §41.39, relating to Bonded Warehouse Report, without changes to the proposal as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2565).

Section 41.39 addresses reporting requirements for holders of Bonded Warehouse Permits under Chapter 46 of the Alcoholic Beverage Code. The title of the section has been changed to more accurately reflect which warehouses are affected by the rule. As amended, reports are required monthly. The amendments also require that bonded warehouses must store liquor in full and unbroken case lots, and address the procedures to be followed in the event of actual breakage of stored liquor.

Subsection (b)(4) adds a new requirement that the holder of a Bonded Warehouse Permit affirm on the monthly report that the permittee is in compliance with Alcoholic Beverage Code §46.03, which requires the holder of a Bonded Warehouse Permit to derive at least 50 percent of its gross revenue in a bona fide manner during each three month period from the storage of goods or merchandise other than liquor.

Section 41.39 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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 May 25, 2016.

TRD-201602606

Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: June 14, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.43

The Texas Alcoholic Beverage Commission adopts amendments to §41.43, relating to Required Signature, without changes to the proposal as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2566).

As amended, §41.43 requires that certain reports filed with the commission be signed and affirmed to be true and correct by the permittee or licensee or a duly authorized representative. The title of the section has been changed to more accurately reflect the text of the section.

Section 41.43 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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 May 26, 2016.

TRD-201602676
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: June 15, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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16 TAC §41.44

The Texas Alcoholic Beverage Commission adopts amendments to §41.44, relating to Report Retention, without changes to the proposal as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2567).

As amended, §41.44 requires that copies of certain reports that are required to be filed with the commission be retained by the permittee or licensee for two years. The title of the section has been changed to more accurately reflect the text of the section.

Section 41.44 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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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TRD-201602677
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: June 15, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 206-3489

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §§283.4, 283.7, 283.8, 283.11

The Texas State Board of Pharmacy adopts amendments to §283.4, concerning Internship Requirements, §283.7 concerning Examination Requirements, §283.8 concerning Reciprocity Requirements, and §283.11 concerning Examination Retake Requirements. The amendments are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1789).

The amendments to §§283.4, 283.7, and 283.8 eliminate the provisions allowing individuals who are unable to obtain a social security number to provide an individual taxpayer identification number in lieu of a social security number because a social security number is required in order to process criminal background checks. The amendments to §283.11 implement provisions of S.B. 460 passed during the 84th Texas Legislative session allowing applicants who apply for a Texas pharmacist license who fail to achieve the minimum passing grade to retake the NAPLEX and MPJE examinations four additional times for a total of five times.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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 May 23, 2016.

TRD-201602513
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: June 12, 2016
Proposal publication date: March 11, 2016
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.5, §291.14

The Texas State Board of Pharmacy adopts amendments to §291.5, concerning Closing a Pharmacy, and §291.14, concerning Pharmacy License Renewal. The amendments are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1795).

The amendments to §291.5 clarify the requirements for closing a pharmacy and eliminate the requirements for a pharmacy to transfer records to a pharmacy within a reasonable distance. The amendments to §291.14 implement provisions of S.B. 460 passed during the 84th Texas Legislative session which change the expiration date for a pharmacy license that has expired from one year to 91 days and allow the board to not renew the license of a pharmacy if the board determines that the pharmacy is not located or no longer exists at the pharmacy's address of record.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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 May 23, 2016.

TRD-201602511
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: June 12, 2016
Proposal publication date: March 11, 2016
For further information, please call: (512) 305-8028

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy adopts amendments to §291.34 concerning Records. The amendments are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1796).

The amendments to §291.34 clarify that prescriptions must be transferred within four business hours; clarify the requirements regarding identification records for individuals involved in dispensing; and implement provisions of HB 751 regarding interchangeable biological products.

The Board received the following comments: CVSHealth commented that the timing requirement is arbitrary and suggested that the transferring of prescriptions be a delegable task performed by pharmacy technicians. CVSHealth also suggested that the Board broaden the ability to transfer an image of a prescription via electronic means. DaVita Rx provided comments opposing the requirement for prescriptions to be transferred within four business hours. Gloria Cox, R.Ph., submitted a comment not supporting the four hour transfer rule. The Board disagrees with the comments in that the requirement protects patients and requires the timely transfer of prescription information. In addition, federal Drug Enforcement Administration (DEA) regulations require prescriptions for controlled substances be transferred between pharmacists; the regulations do not allow prescriptions to be transferred by pharmacy technicians. In addition, the Board received comments supporting the four hour transfer requirement from the Texas Association of Independent Pharmacy Owners, Damita Wyatt, Vanese Berry, R.Ph., Marcia Smith-Anderson, and Brenda Richardson.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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 May 23, 2016.

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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: June 12, 2016
Proposal publication date: March 11, 2016
For further information, please call: (512) 305-8026

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy adopts amendments to §291.133 concerning Pharmacies Compounding Sterile Preparations. The amendments are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1799).

The adopted amendments remove references to training requirements that are no longer necessary; update the requirements for sterility testing and temperature and humidity to be consistent with USP 797; clarify the requirements regarding blood labeling to specify that blood labeling occurs in a buffer area; and clarify recordkeeping requirements.

The Board received a comment from CardinalHealth supporting the proposed changes, specifically regarding blood labeling procedures.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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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Gay Dodson, R. Ph.
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Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.3, §297.10

The Texas State Board of Pharmacy adopts amendments to §297.3, concerning Registration Requirements, and §297.10, concerning Registration for Military Service Members, Military Veterans, and Military Spouses. The amendments are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1819).

The amendments eliminate the provisions allowing individuals who are unable to obtain a social security number to provide an individual taxpayer identification number in lieu of a social security number because a social security number is required in order to process criminal background checks.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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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Gay Dodson, R.Ph.
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For further information, please call: (512) 305-8028

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER D. LICENSE RENEWALS

22 TAC §571.59

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §571.59, concerning Expired Veterinary Licenses. The amendments are adopted without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2082) and will not be republished.

The Board adopts these amendments to reflect the correct title of Board rule §571.17.

No comments were received regarding the adoption of the amendments to the rule.

The amendments to §571.59 are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on May 25, 2016.

TRD-201602652
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: June 14, 2016
Proposal publication date: March 18, 2016
For further information, please call: (512) 305-7563

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22 TAC §571.60

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §571.60, concerning Expired Licenses for Licensed Veterinary Technicians and Equine Dental Providers. The amendments are adopted without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2083) and will not be republished.

The Board adopts these amendments in accordance with Senate Bill 1307 (84th Legislature, 2015) to allow military spouses, military veterans, and military service members, as defined by Chapter 55, §55.001, of the Texas Occupations Code, to receive a license even if they have failed to renew their license for a period of one year or more and if they meet the requirements of §571.17 for expedited licensure. The amendments are also adopted to ensure that references to licensed veterinary technicians and equine dental providers appear in the same order in the rule title and throughout the rule.

No comments were received regarding the adoption of the amendments to the rule.

The amendments to §571.60 are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on May 25, 2016.

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Loris Jones
Executive Assistant
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For further information, please call: (512) 305-7563

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.20

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §577.20, concerning Employee Education and Training. The amendments are adopted without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2084) and will not be republished.

The Board adopts these amendments in accordance with House Bill 3337 (84th Legislature, 2015) to impose certain requirements and limitations on training and education for agency employees.

No comments were received regarding the adoption of the amendments to the rule.

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles, or codes are affected by the adoption.

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

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Loris Jones
Executive Assistant
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For further information, please call: (512) 305-7563

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§335.1, 335.4, 335.10 - 335.12, 335.17 - 335.19, 335.21, 335.112, 335.152, 335.504, and 335.602; and new §§335.26, 335.27, 335.32, and 335.701 - 335.706.

The amendments to §§335.1, 335.17 - 335.19, and 335.21 are adopted *with changes* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9566). The amendments to §§335.4, 335.10 - 335.12, 335.112, 335.152, 335.504, 335.602; and new §§335.26, 335.27, 335.32, and 335.701 - 335.706 are adopted *without changes* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program. State authorization is a rulemaking process through which the EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of the EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by the EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations regularly to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990; July 23, 1990; October 21, 1991; December 4, 1992; June 27, 1994; November 26, 1997; October 18, 1999; September 11, 2000; June 14, 2005 (parts of Clusters III - X); March 5, 2009 (parts of Clusters XI - XV); May 7, 2012 (parts of Clusters IX and XV - XVIII);

November 3, 2014 (parts of Clusters XIX - XXI); and December 21, 2015 (parts of Clusters XXI - XXIII).

The commission adopts in this rulemaking certain parts of RCRA Rule Clusters XXIII (Checklists 231 and 232) and XXIV (Checklist 233) that implement revisions to the federal hazardous waste program which the EPA made between February 7, 2014, and January 13, 2015. Both mandatory and optional federal rule changes in these clusters are adopted. Adoption of Checklists 231, 232, and part of Checklist 233 of the federal rule changes is mandatory to maintain RCRA authorization. Although not necessary to maintain authorization, the EPA recommends that optional federal regulatory changes be incorporated into the state rules. Establishing equivalency with federal regulations will enable Texas to operate all aspects of the federal hazardous waste program in lieu of the EPA.

The commission further adopts the amended definition of "Solid waste" to promulgate a new exclusion from regulation as a solid waste for certain steel slag which was added by House Bill (HB) 2598, 84th Texas Legislature, 2015 and codified in Texas Health and Safety Code (THSC), §361.040. All adopted rule changes are discussed further in the Section by Section Discussion portion of this preamble.

Section by Section Discussion

In addition to the adopted amendments associated with this rulemaking, various stylistic, non-substantive changes have been made to update rule language to current *Texas Register* style and format requirements. These changes are non-substantive and generally not specifically discussed in this preamble.

Definition of Solid Waste Rule

The commission adopts amended §335.1 to incorporate rule changes to the definition of "Solid waste" made by the EPA in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). Three exclusions from the definition of solid waste are adopted for incorporation into §335.1. These exclusions are: the generator controlled exclusion, the verified recycler exclusion, and the remanufacturing exclusion. All of the exclusions apply to hazardous secondary materials (e.g., listed by-products, listed sludges, and spent materials) when the materials are recycled by being reclaimed.

The generator controlled exclusion excludes hazardous secondary materials from the definition of "Solid waste" if they are generated and legitimately reclaimed within the United States (U.S.) and its territories. Generators that wish to take advantage of this exclusion must satisfy specific criteria. These criteria include: 1) notification to the executive director of the reclamation of the hazardous secondary materials; 2) development of an effective emergency preparedness and response plan to ensure that the hazardous secondary materials are properly contained in order to prevent releases to the environment, and if releases should occur, implementation of the emergency preparedness and response plan to respond to and deal with the release; 3) specific criteria for evaluating the legitimacy of the reclamation process; 4) recordkeeping requirements for the generator of the hazardous secondary materials; and 5) that the hazardous secondary materials not be speculatively accumulated.

The verified recycler exclusion excludes hazardous secondary materials from the definition of "Solid waste" if they are transferred from the generators located in Texas to verified reclamation facilities located in the U.S. and its territories. Owners and operators of verified reclamation facilities that wish to take advantage of this exclusion must satisfy specific criteria. These criteria include: 1) notification to the executive director of the reclamation of the hazardous secondary materials; 2) development of an effective emergency preparedness and response plan to ensure that the hazardous secondary materials are properly contained in order to prevent releases to the environment, and if releases should occur, implementation of the emergency preparedness and response plan to respond to and deal with the release; 3) specific criteria for evaluating the legitimacy of the reclamation process; 4) recordkeeping requirements for the generator of the hazardous secondary materials; 5) that the hazardous secondary materials not be speculatively accumulated; 6) that the facility that reclaims the hazardous secondary materials have either a RCRA permit or a solid waste variance; and 7) that the verified reclamation facility and intermediate facilities that manage the hazardous secondary materials prior to arrival at the verified reclamation facility establish and maintain financial assurance prior to acceptance of hazardous secondary materials.

The remanufacturing exclusion excludes specified spent solvents from the definition of "Solid waste" when the spent solvents are generated in Texas and regenerated in the U.S. and its territories. Generators that wish to take advantage of this exclusion must satisfy specific criteria. These criteria include: 1) that the spent solvent(s) being regenerated be one or more of the solvents specified in the exclusion; 2) notification to the executive director of the reclamation of the hazardous secondary materials; 3) that the generators of the spent solvents, the facilities to which the spent solvents are sent to be remanufactured, and the uses to which the solvents that result from the remanufacturing process are those specified in the exclusion; 4) recordkeeping requirements for the generator and remanufacturer of the spent solvents; 5) that tanks and containers in which the spent solvents are held meet specific technical standards; 6) that all equipment, vents, and tanks involved in the remanufacturing of the spent solvents are managed in accordance with requirements specified in the exclusion; and 7) that the spent solvents not be speculatively accumulated.

Incorporation of the exclusions into Chapter 335 requires: 1) adding definitions; 2) updating and renumbering existing definitions; 3) expanding the scope of variances from classification as a solid waste; 4) incorporating specific criteria to evaluate the legitimacy of the reclamation activities; 5) updating the criteria and standards for submittal and evaluation of applications for variances from classification as a solid waste; and 6) adding criteria, standards, and notification requirements for submittal and evaluation of requests for non-waste determinations.

These changes will be consistent with the EPA's new standards and criteria for variances from classification as a solid waste and non-waste determinations by updating references to exclusions from the definition of a "Solid waste" to include changes to the federal regulations that became effective on January 13, 2015, and by adding specific standards for the management of hazardous secondary materials.

Promulgation of THSC, §361.040 (HB 2598)

The commission further adopts promulgating a new exclusion from regulation as a solid waste for certain steel slag that was added by HB 2598, and codified in THSC, §361.040. THSC, §361.040 prevents the commission from regulating steel slag as a solid waste if the steel slag has not been discarded and is either an intended output of or the result of the use of an electric arc furnace to make steel, is introduced into the stream of com-

merce, and is managed as an item of commercial value, which may include a controlled use in a manner constituting disposal.

Electronic Manifest Rule

In the February 7, 2014, issue of the *Federal Register* (79 FR 7518), the EPA established new requirements authorizing the use of electronic manifests (or e-Manifests) as a means to track off-site shipments of hazardous waste from a generator's site to the site of the receipt and disposition of the hazardous waste. The commission adopts rule changes to conform to the EPA's rules, thereby allowing persons the ability to participate in the EPA's e-Manifest system, including Class 1 waste. These adopted amendments are part of an effort by the EPA to transition the nation to electronic manifests for hazardous waste shipment and therefore will establish the legal equivalence of EPA Forms 8700-22 (Manifest), 8700-22A (Continuation Sheet) and the electronic format (e-Manifest) as defined in 40 Code of Federal Regulations (CFR) §260.10 (Definitions). See the Section by Section Discussion of §335.10 for additional information.

Cathode Ray Tube Rule

In the June 26, 2014, issue of the *Federal Register* (79 FR 36220), the EPA revised requirements for export provisions of the Cathode Ray Tube (CRT) rule that was promulgated on July 28, 2006. Specifically, the commission adopts rule changes that will revise certain provisions for the export of CRTs for reuse and recycling in order to ensure safe management of these materials.

§335.1, Definitions

The commission adopts renumbering definitions in §335.1 to add ten definitions. The added definitions are: "Cathode ray tube (CRT) exporter," "Contained," "Electronic manifest or e-Manifest," "Electronic manifest system or e-Manifest system," "Hazardous secondary material," "Hazardous secondary materials generator," "Intermediate facility," "Land-based unit," "Remanufacturing," and "User of the electronic manifest system."

The commission adopts amended §335.1 to add the definition of "Cathode ray tube (CRT) exporter" as §335.1(20) and renumbers subsequent definitions accordingly. Specifically, this amendment conforms to federal regulations promulgated in the June 26, 2014, issue of the *Federal Register* (79 FR 36220) by adding the definition of "Cathode ray tube (CRT) exporter" that is consistent with the definition of "CRT exporter" in 40 CFR §260.10.

The commission adopts amended §335.1 to add the definition of "Contained" as §335.1(33) and renumbers subsequent definitions accordingly. This addition pertains to new management and storage requirements for certain hazardous waste recycling activities when qualifying for exclusions from the new, federal definition of solid waste for hazardous secondary materials. Specifically, this amendment conforms to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Contained" that is consistent with the definition of "Contained" in 40 CFR §260.10.

The commission adopts amended §335.1 to add the definition of "Electronic manifest or e-Manifest" as §335.1(50) and renumbers subsequent definitions accordingly. This change is part of an effort by the EPA to transition the nation to electronic manifests for hazardous waste shipment and will establish that the electronic format (e-Manifest) is legally equivalent with the paper EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet). Specifically, this amendment conforms to federal regulations promulgated in the February 7, 2014, issue of the *Federal Register* (79 FR 7518) by adding the definition of "Electronic manifest or e-Manifest" that is consistent with the definition of "Electronic manifest (or e-Manifest)" in 40 CFR §260.10. See the Section by Section Discussion of §335.10 for additional information.

The commission adopts amended §335.1 to add the definition of "Electronic manifest system or e-Manifest system" as §335.1(51) and renumbers subsequent definitions accordingly. Specifically, this amendment conforms to federal regulations promulgated in the February 7, 2014, issue of the *Federal Register* (79 FR 7518) by adding the definition of "Electronic manifest system or e-Manifest system" consistent with the definition of "Electronic Manifest System (or e-Manifest System)" in 40 CFR §260.10. See the Section by Section Discussion of §335.10 for additional information.

The commission adopts amended §335.1(61), the definition of "Facility," to expand the scope of the current definition to include management of hazardous secondary material. Specifically, this amendment conforms to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by revising the current definition of "Facility" to be consistent with the definition of "Facility" in 40 CFR §260.10.

The commission adopts amended §335.1 to add the definition of "Hazardous secondary material" as §335.1(70) and renumbers subsequent definitions accordingly. Specifically, this amendment conforms to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Hazardous secondary material" that is consistent with the definition of "Hazardous secondary material" in 40 CFR §260.10.

The commission adopts amended §335.1 to add the definition of "Hazardous secondary material generator" as §335.1(71) and renumbers subsequent definitions accordingly. Specifically, this amendment conforms to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Hazardous secondary material generator" that is consistent with the definition of "Hazardous secondary material generator" in 40 CFR §260.10.

The commission adopts amended §335.1 to add the definition of "Intermediate facility" as §335.1(89) and renumbers subsequent definitions accordingly. Specifically, this amendment conforms to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Intermediate facility" that is consistent with the definition of "Intermediate facility" in 40 CFR §260.10.

The commission adopts amended §335.1 to add the definition of "Land-based unit" as §335.1(92) and renumbers subsequent definitions accordingly. Specifically, this amendment conforms to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Land-based unit" when used to refer to reclamation of hazardous secondary materials that is consistent with the EPA definition of "Land-based unit" in 40 CFR §260.10. It is not the intent of the commission for this definition to include spills or releases from units that include, but are not limited to, tanks, containers, and miscellaneous units that result in corrective action.

The commission adopts amended §335.1(101) to add electronic manifest to the definition of "Manifest." Specifically, this amendment conforms to federal regulations published in the February

7, 2014, issue of the *Federal Register* (79 FR 7518) by adding electronic manifest to be consistent with the definition of "Manifest" in 40 CFR §260.10. See the Section by Section Discussion of §335.10 for additional information.

The commission adopts amended §335.1 to add the definition of "Remanufacturing" as §335.1(134) and renumbers subsequent definitions accordingly. Specifically, this amendment conforms to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Remanufacturing" that is consistent with the definition of "Remanufacturing" in 40 CFR §260.10.

The commission adopts amended §335.1(146) to revise the definition of "Solid waste" to be consistent with state and federal law. This change adds requirements and opportunities for certain hazardous waste recycling activities including creating a classification as hazardous secondary materials for certain hazardous waste that will be recycled and exclusions from the definition of "Solid waste" for certain activities including the generator controlled exclusion, the verified recycler exclusion, and the remanufacturing exclusion. Additionally, this amendment adds references to the sections of this chapter that relate to solid waste that is being recycled. Specifically, this amendment conforms to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by changing the scope of the current definition of "Solid waste" to be consistent with the definition of "Solid waste" in 40 CFR §261.2.

The commission further amends the definition of "Solid waste," by adopting a new exclusion from regulation as a solid waste for certain recycled steel slag as subparagraph (M). This change excludes steel slag, when recycled in accordance with certain criteria from regulation as a solid waste. Specifically, this amendment promulgates a new exclusion from regulation as a solid waste for recycled steel slag as codified in THSC, §361.040 (HB 2598).

The commission adopts amended §335.1 to expand the scope of the definition of "Transfer facility," renumbered as §335.1(161), to include management of hazardous secondary material. Specifically, this amendment conforms to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by revising the current definition of "Transfer facility" to be consistent with the definition of "Transfer facility" in 40 CFR §260.10.

The commission adopts amended §335.1 to add the definition for "User of the electronic manifest system" as §335.1(180) and renumbers subsequent definitions accordingly. Specifically, this amendment conforms to federal regulations as promulgated in the February 7, 2014, issue of the *Federal Register* (79 FR 7518) by adding the definition of "User of the electronic manifest system" consistent with the definition of "User of the electronic manifest system" in 40 CFR §260.10. See the Section by Section Discussion of §335.10 for additional information.

§335.10, Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

In the February 7, 2014, issue of the *Federal Register* (79 FR 7518), the EPA established new requirements authorizing the use of electronic manifests (or e-Manifests) as a means to track off-site shipments of hazardous waste from a generator's site to the site of the receipt and disposition of the hazardous waste. The commission adopts these changes to conform its rules to the EPA's, thereby allowing persons the ability to participate in the EPA's e-Manifest system, including Class 1 waste.

The Hazardous Waste Electronic Manifest Establishment Act, Public Law 112-195 directed the EPA to implement a national electronic manifest system and to impose reasonable user service fees as a means to fund the development and operation of the e-Manifest system. The EPA announced explicitly that electronic manifest documents obtained from the Agency's national e-Manifest system and completed in accordance with applicable regulations are the legal equivalent of the paper manifest forms (EPA Forms 8700-22 and 8700-22A) currently authorized for use in tracking hazardous waste shipments. Upon completion of the e-Manifest system, the electronic manifest documents authorized by this final regulation will be available to manifest users as an alternative to the paper manifest forms to comply with federal and state requirements for the use of the hazardous waste manifest.

As of this rule adoption, the EPA has not implemented the electronic manifest system. The EPA has delayed the compliance date for its regulations until the e-Manifest system is ready for operation and after the announcement of the schedule of fees for manifest related services. The EPA will publish a further document subsequent to this rule's effective date to announce the user fee schedule for manifest related activities. This document will also announce the date that compliance with the federal e-Manifest regulation will be required and when the EPA will be ready to receive electronic manifests through the national e-Manifest system. Please see the EPA's website at *http://www3.epa.gov/epawaste/hazard/transportation/manifest/e-man.htm* for further information regarding implementation of the electronic manifest system including equipment requirements, compliance dates, etc.

The EPA has authorized the use of its electronic manifest system to allow states to use the system for shipments of waste required to have a manifest under state law. The commission adopts giving persons the flexibility to use the EPA's electronic manifest system or paper manifests for shipments of Texas Class 1 waste.

The commission adopts amended §335.10 to allow the use of either EPA ID numbers or Solid Waste Registration numbers when completing a manifest for Class 1 waste. The commission adopts amended §335.10 by incorporating by reference the Electronic Manifest System published in the February 7, 2014, issue of the *Federal Register* (79 FR 7518). This change will add references to 40 CFR §§262.20, 262.24, and 262.25. Incorporation of these federal requirements provide generators of hazardous and industrial waste the option of using the electronic manifest system or the paper manifest and establish that the electronic manifest is legally equivalent to the paper manifest. The commission adopts amended §335.10(a) to remove §335.10(a)(3) and (4) because the EPA is implementing the e-Manifest system instead of TCEQ.

§335.11, Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste

The commission adopts amended §335.11 to incorporate by reference the Electronic Manifest System as published in the February 7, 2014, issue of the *Federal Register* (79 FR 7518). This change will incorporate the requirements of 40 CFR §263.22 and §263.25.

§335.12, Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities

The commission adopts amended §335.12 to incorporate by reference the Electronic Manifest System as published in the Feb-

ruary 7, 2014, issue of the *Federal Register* (79 FR 7518). This change will incorporate federal requirements establishing that the electronic manifest is legally equivalent to the paper manifest.

§335.17, Special Definitions for Recyclable Materials and Non-hazardous Recyclable Materials

The commission adopts amended §335.17 to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). Specifically, this amendment adds language clarifying the scope of the definition of when a material is reclaimed for the purposes of the generator controlled exclusion and the verified recycler exclusion regarding certain types of smelting, melting, and refining furnaces. In addition, the amendment establishes a requirement to label materials that will be recycled with the first date of accumulation for the purpose of demonstrating compliance with the legitimate recycling criteria prohibiting speculative accumulation. Further, the amendment adds references to the sections of this chapter that relate to solid waste that is being recycled. The adoption is consistent with the reclamation requirements and definition of when a material is accumulated speculatively under 40 CFR §261.1.

§335.18, Non-Waste Determinations and Variances from Classification as a Solid Waste

The commission adopts amended §335.18 to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). This amendment adds new opportunities for material that will be recycled to exit regulation as solid wastes if approved by the executive director on a case-by-case basis: variances from classification as solid waste for hazardous secondary materials that are reclaimed in a continuous process, variances from classification as solid waste for hazardous secondary materials that are managed in accordance with the new generator controlled exclusion and the new verified recycler exclusion, and a non-waste determination. Additionally, this amendment adds references to the sections of this chapter that relate to solid waste that is being recycled. Specifically, this amendment adds non-waste determinations to the title of the section and adds language regarding the new requirements for non-waste determinations and variances from classification as a solid waste that is consistent with the non-waste determination and variance requirements of 40 CFR §260.30.

§335.19, Standards and Criteria for Variances from Classification as a Solid Waste

The commission adopts amended §335.19 to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). This amendment adds requirements for the new variance opportunities for hazardous secondary materials to the existing requirements for variances from classification as a solid waste. The amendment adds specified legitimacy criteria for determining whether resulting material from partial reclamation is commodity-like. Additionally, the amendment adds specified criteria for determining whether to issue a variance for hazardous secondary materials that will be transferred to a verified reclamation facility. These criteria include: demonstration of legitimate recycling; providing financial assurance; the facility not having been subject to formal enforcement action in the past three years and not having been classified as a significant non-complier under RCRA, Subtitle C, with an opportunity to provide credible evidence to demonstrate that any such violations have and will be addressed; that the facility has adequate equipment and training, and personnel for proper management of the hazardous secondary material; compliance with emergency preparedness and response requirements; authorization or credible evidence that management of any residuals generated will be protective of human health and the environment; and the facility must address the potential risk to surrounding populations including cumulative risks from other sources. Additionally, this amendment adds references to the sections of this chapter that relate to solid waste that is being recycled. Specifically, this amendment adds non-waste determinations to the title of the section and adds language regarding the requirements for variances and non-waste determinations that is consistent with the variances and non-waste determination requirements of 40 CFR §260.31.

§335.21, Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations

The commission adopts amended §335.21 to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). This change adds requirements to the existing procedures for the executive director's case-by-case review of variances from classification as a solid waste, and applications to classify particular enclosed flame combustion devices as a boiler and adds a new opportunity for an owner or operator to submit an application for a non-waste determination to the executive director. In response to comments the commission is adding paragraph (2) to §335.21 that instructs the owner or operator to submit an application for a non-waste determination to the executive director. The new procedures address the new criteria under §335.19 and §335.32, and require an owner or operator to notify the executive director when a change in circumstances affects how hazardous secondary material satisfy the relevant criteria upon which a variance or non-waste determination is based and require the executive director to determine whether the criteria are still met or if the owner or operator must reapply for the non-waste determination or variance. Additionally, the new procedures impose a fixed term of no more than ten years on a variance or non-waste determination, require an owner or operator to re-apply six months prior to expiration of the fixed term, and impose additional notification requirements for hazardous secondary material management activities under a variance or non-waste determination. The commission adopts amended §335.21 to clarify that the executive director's ability to hold a public hearing upon request or at his discretion under existing §335.21 means that the executive director may hold a TCEQ public meeting because TCEQ's public meeting process meets or exceeds the minimum requirements of a public hearing under 40 CFR §25.5 and §260.33. Specifically, this amendment adds non-waste determinations to the title of the section and adds language that is consistent with the federal variance and non-waste determination requirements of 40 CFR §260.33.

§335.26, Notification Requirements for Hazardous Secondary Materials

The commission adopts new §335.26 to conform to federal regulations published in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). Specifically, this new section incorporates by reference the notification requirements of 40 CFR §260.42 for hazardous secondary materials that are reclaimed under the verified recycler exclusion and clarify that notification required by this section must be made to the TCEQ executive director instead of the EPA Regional Administrator.

§335.27, Legitimate Recycling of Hazardous Secondary Materials

The commission adopts new §335.27 to conform to federal regulations published in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). Specifically, this new section incorporates by reference 40 CFR §260.43 requirements for legitimate recycling of hazardous secondary materials that are reclaimed and clarify that notification required under this section must be made to the TCEQ executive director instead of the EPA Regional Administrator.

§335.32, Standards and Criteria for Non-Waste Determinations

The commission adopts new §335.32 to conform to federal regulations published in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). Specifically, this new section incorporates by reference the standards and criteria for non-waste determinations that is consistent with the requirements of 40 CFR §260.34.

§335.112, Standards

The commission adopts amended §335.112(a)(4), Subpart E - Manifest System, Recordkeeping and Reporting, to conform to federal regulations published in the February 7, 2014, issue of the *Federal Register* (79 FR 7518). This amendment adopts by reference the electronic manifest system requirements for owners and operators of interim standard hazardous waste treatment, storage, or disposal facilities.

§335.152, Standards

The commission adopts amended §335.152(a)(4), Subpart E - Manifest System, Recordkeeping and Reporting, to conform to federal regulations promulgated in the February 7, 2014, issue of the *Federal Register* (79 FR 7518). This amendment adopts by reference the electronic manifest system requirements for owners and operators of permitted hazardous waste treatment, storage, or disposal facilities.

§335.504, Hazardous Waste Determination

The commission adopts amended §335.504 to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). This amendment adds the new exclusions from the definition of solid waste to the existing considerations when making a hazardous waste determination. See the Section by Section Discussion of §335.1 for additional information.

§335.602, Standards

The commission adopts amended §335.602(c) to correct a reference to "Subchapter P of this chapter." The correct citation is "Chapter 37, Subchapter P of this title."

Subchapter V: Standards for Reclamation of Hazardous Secondary Materials

The commission adopts new Subchapter V to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). This subchapter is adopted to establish minimum standards and requirements for generators and owners and operators of recycling facilities seeking to conduct hazardous waste recycling activities under the exclusions from the definition of solid waste for hazardous secondary materials reclaimed under the generator controlled exclusion, the verified recycler exclusion and the remanufacturing exclusion under 40 CFR §261.4(a)(23), (24), and (27) (Exclusions). Specifically, this rulemaking adopts five new sections in Chapter 335, Subchapter V: §335.701 (Purpose and Applicability); §335.702 (Standards); §335.703 (Financial Assurance Requirements); §335.704; (Cost Estimate); §335.705 (Removal and Decontamination Plan for Release); and §335.706 (Release of the Owner or Operator from the Requirements of this Subchapter).

§335.701, Purpose and Applicability

The commission adopts new §335.701 to provide the purpose and applicability of new Subchapter V. This new section establishes that the purpose of the new subchapter is to provide the minimum standards for management of hazardous secondary materials. The new subchapter establishes applicable standards for persons managing hazardous secondary materials under the new exclusions from the definition of solid waste for hazardous secondary materials. Specifically, this new section conforms to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adopting management standards and applicability consistent with the requirements of 40 CFR §261.4(a)(23), (24), and (27).

§335.702, Standards

The commission adopts new §335.702 to set standards and criteria for management of hazardous secondary material. This new section establishes requirements for management of hazardous secondary materials under the exclusions from the definition of solid waste for hazardous secondary materials including use and management of containers, tank systems, emergency preparedness and response, and air emissions standards for process vents, equipment leaks, and tanks and containers consistent with federal requirements. Specifically, this new section conforms to federal regulations promulgated January 13, 2015, issue of the *Federal Register* (80 FR 1694) by incorporating by reference, with clarifications, 40 CFR Part 261, Subparts I, J, M, and AA - CC.

§335.703, Financial Assurance Requirements

The commission adopts new §335.703 to establish financial assurance requirements for owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 CFR §261.4(a)(24), and excludes states and the federal government from the financial assurance requirements. This new section requires owners and operators of reclamation facilities and intermediate facilities to establish and maintain financial assurance for removal and decontamination and corrective action, and liability coverage for sudden and nonsudden accidental occurrences. Specifically, this new section conforms to federal regulations promulgated in the October 30, 2008, issue of the *Federal Register* (73 FR 64764) by adopting federal requirements by reference and by incorporating TCEQ financial assurance requirements and financial instruments under 30 TAC Chapter 37. The Chapter 37 requirements and financial instruments would be revised to be consistent with the financial assurance requirements of 40 CFR Part 261, Subpart H and §261.143.

§335.704, Cost Estimate

The commission adopts new §335.704 to establish financial assurance cost estimate requirements for owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 CFR §261.4(a)(24). This new section establishes requirements for cost estimates. Specifically, this section conforms to federal regulations promulgated in the October 30, 2008, issue of the *Federal Register* (73 FR 64764) by adopting requirements for cost estimates by incorporating requirements of Chapter 37, with revisions to the Chapter

37 requirements, consistent with the financial assurance requirements of 40 CFR Part 261, Subpart H and §261.143.

§335.705, Removal and Decontamination Plan for Release

The commission adopts new §335.705 to establish requirements for owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 CFR §261.4(a)(24) who wish to discontinue hazardous secondary material activities and initiate the process of being released from financial assurance obligations. This new section establishes a process for submittal, review and approval, by the executive director, of a plan for removal of hazardous secondary material residues and decontamination in a manner that is protective of human health and the environment. This process includes public notice and opportunities for the public to request a public meeting and for an owner or operator and the public to file a motion to overturn the executive director's determination. Specifically, this new section conforms to federal regulations promulgated in the October 30, 2008, issue of the *Federal Register* (73 FR 64764) by adopting requirements consistent with 40 CFR §261.143(h).

§335.706, Release of the Owner or Operator from the Requirements of this Subchapter

The commission adopts new §335.706 to establish requirements for owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 CFR §261.4(a)(24) to be released from financial assurance obligations. This new section establishes requirements for release from financial assurance obligations following fulfillment of the requirements of adopted §335.705. Specifically, this section conforms to federal regulations promulgated in the October 30, 2008, issue of the *Federal Register* (73 FR 64764) by adopting requirements consistent with 40 CFR §261.143(i).

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because the adopted rules do not meet the definition of a "Major environmental rule" as defined in the act and do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

"Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are not major environmental rules because they are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state since the adopted rules promulgate existing requirements that are already imposed under state statute and 42 United States Code (USC), §6926(g).

Further, even if the adopted rules met the definition of a major environmental rule, this rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). 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. The rulemaking does not exceed a standard set by federal law because the commission adopts this rulemaking to implement revisions to the federal hazardous waste program. The commission's rules must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program. Although this rulemaking adopts some requirements that are more stringent than existing state laws, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program. Additionally, to the extent that the rulemaking implements the state law requirements of HB 2598, it is not a requirement that is more stringent than existing state law. Moreover, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the rulemaking to maintain authorization of the state hazardous waste program. Finally, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under specific state law. The commission adopts this rulemaking under the authority of the Texas Water Code, §5.103 and the THSC, §§361.017, 361.024, and 361.040.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to: 1) maintain consistency with the requirements of the federal solid and hazardous waste regulations and with the RCRA; and 2) implement state law, THSC, §361.040, added by HB 2598. The adopted rulemaking substantially advances these stated purposes by adopting rules that: 1) are equivalent to the federal regulations; 2) incorporate the federal regulations; and 3) implement the requirements of HB 2598.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the portions of the rulemaking adopting rules that meet the minimum standards of the federal hazardous waste program because Texas Government Code, §2007.003(b)(4) exempts an action reasonably taken, by a state agency, to fulfill an obligation mandated by federal law from the requirements of Texas Government Code, Chapter 2007. Under 42 USC, §6926(e), the state must adopt rules that meet the minimum standards of the federal hazardous waste program administered by the EPA in order to maintain authorization to administer the program. Therefore, the portions of the rulemaking adopting rules that meet the minimum standards of the federal hazardous waste program are exempt from the requirements of Texas Government Code, Chapter 2007 because the rules are required by federal law.

Finally, to the extent that portions of the adopted rulemaking are not exempt under Texas Government Code, §2007.003(b)(4) or it implements state law, promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in real property because the adopted rulemaking does not burden (constitutionally); 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 regulations. In other words, the adopted rules do not constitute a takings under the Texas Government Code, Chapter 2007 because they would either implement requirements already imposed on the regulated community under 42 USC, §6926(g) or that are less stringent than existing rules.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is to protect, preserve, restore and enhance the diversity, quality, quantity, functions and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 *et seq.* Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the rulemaking would update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules would not violate any applicable provisions of the CMP's stated goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission received no comments on the CMP.

Public Comment

The commission held a public hearing on January 22, 2016. The comment period closed on January 29, 2016. The commission received comments from the Texas Chemical Council (TCC), the Texas Industry Project (TIP), and the Vanadium Producers and Reclaimers Association (VPRA).

All of the commenters were in support of and suggested changes to the proposed rules. Response to Comments

Support of the Rulemaking

Comment

The VPRA commented that its group consists of producers and recyclers of Vanadium in the U.S., and that it focuses on matters of importance to the industry such as trade, health and safety and environmental issues. The VPRA was formed in 2003 and it has a particular interest in the environmental aspects related to the spent petroleum catalyst recycling industry; in particular the recycling of hydrotreating (K171) and hydrorefining (K172) catalyst material. The TIP commented that its membership is composed of 65 companies in the chemical, refining, oil and gas, electronics, forest products, terminal, electric utility, transportation, and national defense industries with operations in Texas. TIP commented in support of the proposed revisions to the definition of "Solid waste." The TCC commented that it is a statewide trade association representing over 70 chemical manufacturers operating approximately 200 Texas facilities. The Texas chemical industry has more than $75 billion in physical assets in the state, and pays over $1 billion annually in state and local taxes and over $20 billion in federal income taxes. TCC's members provide approximately 70,000 direct jobs and over 400,000 indirect jobs in Texas. TCC commented that its members have cited an average of 60 to upwards of multiple thousands of individual recycle streams per site with hundreds of millions of pounds of material recycled annually. TCC commented that adoption of the definition of "Solid waste" will have a profound impact on the way Texas chemical manufacturing plants operate and manage solid and hazardous wastes and that continued economic viability at these facilities requires an in depth understanding of the impact of the rules and implementation of the rules by regulated entities and TCEQ staff.

Response

The commission acknowledges the comments and has made no changes in response to these comments.

Existing Variances

Comment

The VPRA encouraged the commission to revisit the variances from classification as a solid waste issued under §335.19 to ensure consistency with the new federal program and particularly the legitimate recycling criteria.

Response

The commission intends to establish a procedure to address existing variances. The commission has made no changes in response to this comment.

Requests for Regulatory Guidance

Comment

TIP requested that the commission establish regulatory guidance to address the effect of §335.27 on solid waste exclusions, solid waste determinations, variances currently in effect, and the duration of existing variances and solid waste determinations as applied to generators and verified recyclers. The TIP also requested that the commission establish regulatory guidance to address prior variances and solid waste determinations, when facilities are operating under any existing variances, when solid waste determinations qualify as a verified recycler, and when and whether a verified recycler must determine and document that 40 CFR §260.43(a)(1) - (4) is met. TIP requested that TCEQ develop regulatory guidance to assist generators and recyclers in determining whether an activity qualifies as legitimate recycling and what documentation is required. The TCC requested that the commission provide guidance on speculative accumulation requirements for the regulated community and the commission. The TIP requested that the commission establish regulatory guidance to address solid waste determinations as applied to generators and verified recyclers and to address when solid waste determinations qualify as a verified recycler. The TIP requested that the commission establish regulatory guidance to address what documentation is required to support

a determination that the product of the recycling process is comparable to a legitimate product or intermediate. The TIP requested that the commission establish guidance to address 40 CFR §260.41 requirements including what constitutes "an analogous product or intermediate," "widely recognized commodity standards and specifications," or "returned to the original process or processes from which [the HSMs] were generated to be reused." The TIP requested that the commission establish guidance providing examples of recycling scenarios that would meet 40 CFR §260.43(a)(4), other than closed loop recycling, where hazardous secondary materials are returned to the original process or processes from which they are generated.

The TIP commented that 40 CFR §260.43(a)(4) requires recyclers to demonstrate that the product of the recycling process and not the recycled materials, does not contain levels of hazardous constituents that pose a significant human health or environmental risk and requested the commission establish guidance addressing the requirements of 40 CFR §260.43(a)(4).

Response

The commission agrees that implementation of these new federal regulations present challenges to the regulated community and recognizes the commenters' concerns and need for additional regulatory guidance due to the diverse nature of industry in Texas. However, the commission respectfully declines to establish regulatory guidance in this adoption preamble because there is limited federal regulatory guidance. The commission intends to establish a procedure to address existing variances. The commission is adopting a new formal opportunity to apply to the executive director for a non-waste determination in circumstances where hazardous secondary materials cannot meet the conditions of the exclusion under 40 CFR §261.2 or §261.4. In response to comment, the commission is clarifying this new non-waste determination opportunity by adding paragraph (2) to §335.21 instructing an owner or operator to submit an application for a non-waste determination to the executive director and renumbering the subsequent paragraphs accordingly. Also, in response to comment, the commission is making non-substantive changes to §335.1 and §§335.17 - 335.19, to add references to sections of Chapter 335 that relate to solid waste that is being recycled.

Legitimacy Factors

Comment

The TCC commented that if a chemical product made from a hazardous secondary material has an analogous product made from raw materials and does not exhibit a hazardous characteristic that the analogous product does not exhibit and the concentration of hazardous constituents are comparable to those in analogous products, that 40 CFR §260.43(a)(4)(i) is met.

Response

The commission notes that while the comment is similar to the plain language of 40 CFR §260.43(a)(4)(i)(A) and (B), which the commission is adopting at §335.27, it does not include specific language of 40 CFR §260.43(a)(4)(i)(B), "[t]he concentration of any hazardous constituents found in appendix VIII of part 261 of this chapter." With this clarification, the commission agrees with this comment. The commission has made no changes in response to this comment.

Comment

TCC commented that TCEQ should clarify in the Chapter 335 preamble that the federal legitimacy requirement for the analogous product comparison in 40 CFR §260.43(a)(4)(i) includes common products or intermediates found in wide-spread markets, which may be secondary markets; such markets typically are well-known, recognized, established, mature, and large. Additionally, the TCC commented that one company does not know whether another company produces an analogous product or intermediate made from virgin materials and requested that TCEQ clarify what constitutes a valid comparison to satisfy the 40 CFR §260.43(a)(4)(ii)(B) criterion.

Response

The commission's rules must be at least as stringent as the federal requirements promulgated by the EPA and the commission relies on the plain language of the federal rules when implementing the EPA's definition of solid waste. Because limited federal regulatory guidance is available, the commission respectfully declines to comment on the EPA's intent or include specific examples in this adoption preamble. The commission has made no changes in response to this comment.

Comment

The TCC provided four scenarios it believes are valid methods to perform comparisons for the purposes under 40 CFR §260.43(a)(4)(ii)(B): the hazardous secondary material that is being recycled directly (i.e., without reclamation) versus the virgin raw material or ingredient that the hazardous secondary material is replacing; the hazardous secondary material after reclamation that is being recycled versus the virgin raw material or ingredient that the reclaimed hazardous secondary material is replacing; the product/intermediate that results from recycling the hazardous secondary material versus the product/intermediate that results from using the virgin raw material or ingredient that the hazardous secondary material is replacing; and the product/intermediate that results from recycling the hazardous secondary material versus a substitute product/intermediate that is made without the hazardous secondary material by a different company or by the same company at a different site or through a different process.

Response

The commission's rules must be at least as stringent as the federal requirements promulgated by the EPA. When implementing the EPA's definition of solid waste, the commission relies on the plain language of the federal rules. The commission respectfully declines to establish regulatory guidance in this adoption preamble because there is limited federal regulatory guidance. The commission has made no changes in response to this comment.

Comment

The TCC provided the following examples of common chemical industry practices of recycling hazardous secondary material to make commodity grade chemicals: 1) to a single facility manufacturer of Product A uses Product A on-site to make Product B and generates a characteristic by-product hazardous secondary material. The hazardous secondary material is reclaimed (via pipe or container) to make Product A which is subsequently used to make Product B; 2a) Manufacturer of Product A sends Product A off-site to another of its plant sites which uses Product A as an ingredient in its manufacturing process and generates a hazardous secondary material which is sent back to the original manufacturing site to be recycled and reused; 2b) the same as Example 2a except the off-site subsequent plant site is a sub-

sidiary company of the original manufacturer; 3) Manufacturer of Product A sells Product A to a customer. The customer generates same hazardous secondary material as described in Examples 1 and 2 and sends the hazardous secondary material back to the manufacturer of Product A to be recycled. This arrangement is covered by an exclusivity contract and is an established long-standing process.

Response

The commission acknowledges that the described scenarios have the potential of being conducted in a manner that is compliant with the new hazardous secondary material requirements. The commission has made no changes in response to this comment.

Comment

The TCC commented that, in the EPA document "2015 Definition of Solid Waste Final Rule Frequent Questions March 31, 2015," the EPA stated that 40 CFR §260.43(a)(1) - (4) applies to the pre-2008 exclusions, but that documentation of legitimacy is not required for the pre-2008 exclusions unless the recycling is legitimate but does not meet 40 CFR §260.43(a)(4) and that in such a case, documentation, certification, and notice are required. Additionally, the TCC commented that EPA guidance states that no analytical testing and no further demonstration of legitimacy is required to satisfy 40 CFR §260.43(a)(4), when hazardous secondary materials: 1) are returned to the original process or processes from which they were generated, such as in concentrating metals in minerals processing; and 2) when recycled product meets widely-recognized commodity specifications and there is no analogous product made from raw materials, such as scrap metal being reclaimed into metal commodities. TCC further commented that in these instances customer specifications would be sufficient for specialty products such as specialty batch chemicals or specialty metal alloys. Finally, the TCC commented that EPA guidance states that no analytical testing and no further demonstration of legitimacy is required to satisfy 40 CFR §260.43(a)(4), when the recycled product has an analogous product made from virgin materials, but meets widely-recognized commodity specifications which address the hazardous constituents such as spent solvents being reclaimed into solvent products.

Response

The commission agrees that no additional documentation is being required by this rule adoption for pre-2008 exclusions meeting 40 CFR §260.43(a)(4)(i) and (ii). The plain language found at 40 CFR §260.43(a)(4), which the commission is adopting at §335.27, provides an opportunity for a facility to demonstrate that a recycling activity that does not appear to meet the legitimacy factor is legitimate by meeting the documentation, certification, and notification requirements. The existing rules require the recycling of solid waste to be legitimate in accordance with §335.1(140)(I) and 40 CFR §261.2(f). Further, under §335.27, owners and operators that generate, store, process, or recycle hazardous secondary material are expected to document and be able to demonstrate the legitimacy of their recycling activities to the commission including that the recycling activities satisfy 40 CFR §260.43(a)(4). The commission has made no changes in response to this comment.

Comment

The TCC commented that except where the recycling is legitimate but does not meet 40 CFR §260.43(a)(4), that the pre-2008 exclusions are not subject to the notification requirements of 40 CFR §260.42.

Response

The commission agrees that the plain language of 40 CFR §260.42, which the commission is adopting at §335.26, only imposes notification requirements on facilities managing hazardous secondary materials under 40 CFR §260.30 and §261.4(a)(23), (24), and (27). No additional documentation is being required by this rule adoption for pre-2008 exclusions meeting 40 CFR §260.43(a)(4)(i) and (ii). The commission has made no changes in response to this comment.

Transfers within the U.S. or its Territories

Comment

The VPRA commented that the commission has proposed limiting the exclusions from definition as a solid waste, the generator controlled exclusion, verified recycler exclusion, and remanufacturing exclusion, to activities and material transfers located in the state of Texas and that this limitation would negatively impact commerce. VPRA commented that the exclusions from definition as a solid waste, the generator controlled exclusion, verified recycler exclusion, and remanufacturing exclusion, should not be limited to hazardous secondary materials transferred to facilities located in Texas but should be expanded to include hazardous secondary materials transferred from a generator located in the U.S. to a verified recycling facility located in the U.S. VPRA commented that the rule should be amended to apply to materials that remain within the U.S. and are transferred between generator, verified recycler and remanufacturing facility located in the U.S. that fall within the appropriate exclusion in accordance with EPA's intent. TIP commented that limiting the verified recycler exclusion to hazardous secondary materials generated in Texas is inconsistent with the federal rule and recommended amending the preamble to include a verified reclamation facility located in the U.S. in accordance with 40 CFR §261.4(a)(24). TCC commented that the preamble limits applicability of the exclusions under 40 CFR §261.4(a)(23), (24), and (27) to within the state of Texas and recommends that the preamble be revised to remove the phrase "within Texas."

Response

The commission agrees with these comments. The commission has revised the discussion of the exclusions in the preamble to change the term "Texas" to the phrase "the United States (U.S.) and its territories."

Hazardous Secondary Material Import

Comment

The VPRA commented that the EPA has stated in guidance, "2015 Definition of Solid Waste Final Rule-Frequent Questions March 31, 2015," that the hazardous secondary material exclusions are available for material imported into the U.S. where the importer would assume the generator duties for the imported material.

Response

The commission agrees that under established federal regulations and commission rules, an importer of record of material from a foreign country assumes the generator responsibilities for those materials. The commission has made no changes in response to this comment.

Legitimacy Criteria

Comment

The TCC commented that when the product of the recycling process is comparable to a legitimate product or intermediate and requirements of 40 CFR §260.43(a)(4)(i), (ii), or (iii) are met, that there is no need to determine whether the other discrete subparts have been met and that a facility may make the determinations out of order such as first reviewing 40 CFR §260.43(a)(4)(ii) (return to the generator and commodity specifications), before reviewing 40 CFR §260.43(a)(4)(i) (analogous). The TCC also commented that TCEQ should clarify that 40 CFR §260.43(a)(4) determination will be satisfied by complying with 40 CFR §260.43(a)(4)(i), (ii), or (iii), and that such a demonstration constitutes compliance with 40 CFR §260.43(a)(4).

Response

The commission agrees with this comment based on the plain language of 40 CFR §260.43(a)(4)(i) - (iii), which the commission is adopting at §335.27. The commission has made no changes in response to this comment.

Documentation of Legitimacy Criteria

Comment

The TCC commented that TCEQ should adopt a presumption of legitimacy for pre-2008 exclusions. TCC commented that EPA has indicated in the Definition of Solid Waste rule preamble and in guidance that all recycling, including the recycling under the pre-2008 exclusions, must be legitimate and meet 40 CFR §260.43(a)(1) - (4) criteria but that EPA is not requiring facilities to submit or maintain documentation of 40 CFR §260.43(a) criteria under the pre-2008 recycling exclusions because EPA believes that if the conditions of the pre-2008 recycling exclusions are met, that the material is legitimately recycled and meets 40 CFR §260.43(a)(1) - (4). TCC expressed concern that EPA's findings regarding the pre-2008 exclusions will be lost over time if not clarified and that a future interpretation that documentation of 40 CFR §260.43(a) criteria is required, would be inconsistent with EPA's intent. TCC cited 80 FR 1720 - 1721 and 1739 - 1741 and the EPA document "2015 Definition of Solid Waste Final Rule Frequent Questions March 31, 2015," in support of its comments. Additionally, the TCC recommended that TCEQ clarify the requirements for a legitimacy demonstration and the documentation required under 40 CFR §260.43(a)(4)(ii). TCC specifically requests that TCEQ include in the preamble the following list of examples that would meet the legitimacy criteria without additional analyses or statistical demonstration when recycled by being "returned to the original process or processes from which they are generated:" return to the original process or other processes from which the hazardous secondary material derives; return via closed- or open-loop; return from on-site or off-site; return from second, third and later generation (e.g., downstream processes); use of the hazardous secondary material-produced product or intermediate; existing recycling of hazardous secondary material in connection with the manufacturing and used both on-site and off-site, or a product or intermediate made with the hazardous secondary material, and production process or processes include those activities that tie directly into the manufacturing operation or those activities that are the primary operation at the establishment.

Response

The commission agrees that no additional documentation is being required by this rule adoption for pre-2008 exclusions meeting 40 CFR §260.43(a)(4)(i) and (ii). The commission recognizes the commenter's concerns and need for additional regulatory guidance regarding the criteria for evaluating legitimate recycling, and notes that individual determinations regarding legitimate recycling may be necessary due to the diverse nature of industry in Texas. Because the commission's rules must be at least as stringent as the federal requirements promulgated by the EPA and limited federal regulatory guidance is available, the commission respectfully declines to comment on the EPA's intent, the EPA's frequently asked questions document, to restate the EPA's preamble discussions in this adoption preamble, or to include specific examples in this adoption preamble. The commission has made no changes in response to this comment.

Comment

The TCC commented that documentation of the four legitimacy criteria is not required for recycling conducted under the pre-2008 exclusions. Additionally, the TCC commented that no documentation is required to be maintained on-site for immediate access by an inspector prior to an environmental investigation of recycling involving return to process or processes in accordance with TCC's understanding of EPA's position.

Response

The commission agrees that no additional documentation is being required by this rule adoption for pre-2008 exclusions meeting 40 CFR §260.43(a)(4)(i) and (ii). Existing rules require documentation of the legitimacy criteria in accordance with §335.1(140)(I) and 40 CFR §261.2(f). Therefore, the commission requires owners and operators that generate, store, process, or recycle hazardous secondary materials to provide the commission upon request, documentation demonstrating the legitimacy of recycling activities. The commission has made no changes in response to this comment.

Comment

The TCC commented that recycling involving return to process or processes represent the recycling of hazardous secondary materials that are not solid wastes in accordance with the pre-2008 exclusion found at 40 CFR §261.2(c)(3), Table 1. TCC provided examples of common chemical industry practices of recycling hazardous secondary materials to make commodity grade chemicals and commented that these examples do not represent the management of a solid waste. TCC further commented that recycling involving return to process or processes practices represent the recycling of hazardous secondary materials is understood to be a widely accepted manufacturing practice as the characteristic by-product is to be reclaimed and reused in a major manufacturing process and is, therefore, not a solid waste. Additionally, the TCC commented that, under the new definition of solid waste rule, recycling involving return to the process or processes would not require any additional legitimacy demonstration or associated documentation. Finally, the TCC commented that the federal preamble supports TCC's interpretation that documentation, certification, and notice requirements only apply to pre-2008 exclusions when the product comparison is required by 40 CFR §260.43(a)(4)(iii).

Response

The commission acknowledges that legitimate recycling of hazardous secondary materials to make commodity grade chemicals and legitimate recycling of a characteristic by-product by reuse or return to the process or processes from which it originated are widely accepted manufacturing practices. However, even when a hazardous secondary material is recycled by being

returned to the process or processes from which it originated, §335.1(140)(I) and §335.27 and 40 CFR §261.2(f) require owners and operators to provide the commission upon request, documentation demonstrating the legitimacy of recycling activities. The commission has made no changes in response to this comment.

No Analogous Product/Process Knowledge

Comment

The TCC commented that EPA guidance states that no analytical testing and no further demonstration of legitimacy is required to satisfy 40 CFR §260.43(a)(4), when the hazardous secondary materials are returned to the original process or processes from which they were generated, such as in concentrating metals in minerals processing. The TCC provided language from EPA's "2015 Definition of Solid Waste Final Rule Frequent Questions March 31, 2015," restated in four comments/examples, adding that EPA believes that the iterated examples will apply to the majority of recycling and that analytical testing to determine compliance with 40 CFR §260.43(a)(4), will be infrequent. The TCC commented that EPA guidance states that no analytical testing and no further demonstration of legitimacy is required to satisfy 40 CFR §260.43(a)(4), when the person recycling has the necessary knowledge, such as knowledge about the incoming hazardous secondary material and the recycling process, to be able to demonstrate that the product of recycling does not exhibit a hazardous characteristic and contains hazardous constituents at levels comparable to or lower than those in products made from virgin materials. The TCC requested that TCEQ add language from EPA guidance to the rule preamble to indicate that when documenting a legitimacy demonstration to satisfy 40 CFR §260.43(a)(4), that process knowledge may be utilized instead of analytical testing.

Response

The commission does not agree that process knowledge will always be adequate to demonstrate compliance with 40 CFR §260.43(a)(4). Certain circumstances exist under which a generator is capable of relying on process knowledge when making a hazardous waste determination that complies with Chapter 335, Subchapter R. An owner or operator is responsible for demonstrating whether the product of recycling contains hazardous constituents at levels comparable to or lower than those in products made from virgin materials, and must determine on a case-by-case basis whether the use of process knowledge is adequate. At a minimum, documentation of the determination would include any process knowledge, including a full description of the process, a list of chemical constituents that enter the process, and a full description of the hazardous secondary materials including identification of and the concentrations of chemical constituents in the hazardous secondary materials. The commission has made no changes in response to this comment.

Speculative Accumulation

Comment

The TCC commented that hazardous secondary material that is stored in a unit for greater than one year will not be considered to be speculatively accumulated, as defined by 40 CFR §261.1(c)(8), if a demonstration is made that 75% or greater of the hazardous secondary materials in inventory on January 1st of the previous year was recycled during the previous calendar year.

Response

The commission acknowledges that this comment generally describes the requirements of the plain language of §335.17 and 40 CFR §261.1(c)(8). The commission has made no changes in response to this comment.

Comment

The TCC commented that the speculative accumulation requirements of 40 CFR §261.1(c)(8) are not applicable to the following exclusions or exemptions: (i) 40 CFR §261.4(a)(13)/§261.2, Table 1 (scrap metal); (ii) 40 CFR §261.6(a)(3)(ii) (scrap metal); (iii) 40 CFR §261.2(c)(4), Table 1 (commercial chemical products); (iv) 40 CFR §261.6(a)(3)(i) (industrial ethyl alcohol); (v) 40 CFR §261.6(a)(3)(iii) - (iv) (fuels produced from the refining of oil-bearing hazardous waste); (vi) 40 CFR §261.4(b)(2)(i) (growing and harvesting of agricultural crops); (vii) 40 CFR §261.4(b)(2)(ii) (raising of animals, including animal manures); (viii) 40 CFR §262.4(b)(3) (mining overburden returned to the mine site); (ix) 40 CFR §261.4(b)(12) (used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment); (x) 40 CFR §261.4(b)(14) (used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products); (xi) 40 CFR §261.4(a)(8) (closed loop recycling); and (xii) 40 CFR §261.4(a)(26) (solvent wipes).

Additionally, the TCC requested that TCEQ clarify which exemptions and exclusions the speculative accumulation requirements are applicable to 40 CFR §261.1(c)(8).

Response

The commission is adopting the speculative accumulation documentation and labeling requirements of 40 CFR §261.1(c)(8) at §335.17(a)(8). The commission is not revising the applicability of existing §335.17. The commission's existing rule defines when a material is accumulated speculatively. The changes being adopted at §335.17(a)(8) do not broaden or reduce the scope of the applicability of the speculative accumulation requirements. The changes add a requirement that a label, or documentation if labeling is not practicable, be made indicating the first date of accumulation of the material. The commission has made no changes in response to this comment.

Comment

The TCC commented that labeling fixed equipment for the purpose of demonstrating speculative accumulation requirements is not required by 40 CFR §261.1(c)(8) because the federal rule states that "[i]f placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method" and requested that TCEQ explain that this requirement includes material stored in batch tanks, continuous-flow tanks, waste piles, or containment buildings.

Response

The commission is adopting the requirements of 40 CFR §261.1(c)(8) at §335.17. The commission agrees that the plain language of 40 CFR §261.1(c)(8) allows demonstration of compliance by using a log or other method when placing a label on the unit is not practicable. The commission has made no changes in response to this comment.

Contained Standard/Definition

Comment

The TCC commented that its interpretation that one or more releases from a container does not presumptively negate compli-

ance with the "contained" standard is supported by EPA's document "2015 Definition of Solid Waste Final Rule Frequent Questions March 31, 2015." The TCC additionally commented that its interpretation of the definition of solid waste rule is that a facility is not required to meet the contained standard, that the new definition of "Contained" is intended as a presumption of compliance rather than a requirement for compliance, and that its interpretation is supported by EPA's document, "2015 Definition of Solid Waste Final Rule Frequent Questions March 31, 2015." Finally, TCC quoted EPA's example of the contained standard not requiring a specific type management in a container when performance based standards depend on the type of material being managed such as scrap metal, a material whose hazardous constituents are generally immobile that is capable of being managed in an uncovered pile on the ground and still be considered "contained."

Response

The commission believes the plain language of 40 CFR §261.4(a)(23)(ii)(A), (24)(v)(A), and (27)(vi)(B)(5) and (D) - (E) adequately describe what constitutes being "contained" with respect to the storage, processing and recycling of hazardous secondary materials. The commission's rules must be at least as stringent as the federal requirements promulgated by the EPA. When implementing the EPA's definition of solid waste, the commission relies on the plain language of the federal rules. The commission respectfully declines to comment on the EPA's intent or the EPA's frequently asked questions document, or to restate the EPA's preamble discussions in this adoption preamble. The commission has made no changes in response to this comment.

Comment

The TCC commented that materials subject to the pre-2008 exclusions do not have to be contained, as defined in 40 CFR §260.10.

Response

The commission is adopting the EPA's definition of "Contained" for hazardous secondary materials in the definitions section at §335.1(33). The requirement for containment is set out by 40 CFR §260.43(a)(3) and adopted at §335.27. These requirements are broadly applicable to hazardous secondary materials. Therefore, the commission disagrees with this comment. The commission has made no changes in response to this comment.

Comment

The TCC commented that hazardous secondary materials that have no analogous raw material, even if subject to one or more of the pre-2008 exclusions, must be contained as specified in 40 CFR §260.43(a)(3).

Response

The commission is adopting the requirements of 40 CFR §260.43(a)(3) relating to legitimate recycling of hazardous secondary materials at §335.27. To the extent that hazardous secondary material is recycled for the purpose of the exclusions or exemptions from the hazardous waste regulations where there is no analogous raw material and where the recycling activity can be characterized as being conducted under the pre-2008 exclusions, the commission agrees with this comment. The commission has made no changes in response to this comment.

Comment

The TCC commented that it interprets 40 CFR §261.4(a)(24) to mean that the verified recycler requirements do not apply to pre-2008 exclusions and that its interpretation is supported by EPA's document "2015 Definition of Solid Waste Final Rule Frequent Questions March 31, 2015."

Response

The commission is adopting the verified recycler requirements of 40 CFR §261.4(a)(24) at §§335.18, 335.19, and 335.703 - 335.706. The commission generally agrees with this comment because certain requirements of the new opportunities for verified recycler facilities are distinct and limited to intermediate facilities and verified recycler facilities and because the exclusions from solid waste operate independently. The commission has made no changes in response to this comment.

Comment

The TCC commented that the wording of 40 CFR §260.43(a)(4)(iii), "or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk" is capable of multiple interpretations and that EPA's intent is that the rule language refers to the product made using recycled material and not from recycled product.

Response

The commission agrees with this comment based on the plain language of 40 CFR §260.43(a)(4)(iii), which the commission is adopting at §335.27. The plain language of 40 CFR §260.43(a)(4)(iii) uses the phrases "the product of the recycling process" and "the recycled product." The commission has made no changes in response to this comment.

Postpone Implementation

Comment

The TCC requested that TCEQ postpone implementing the definition of solid waste rule until July 2017 because regulated entities need additional time to make time consuming evaluations of multiple waste streams and compliance determinations, particularly when making the evaluations and determinations for multiple facilities and because regulated entities need a greater time period over which to expense the capital expenditures required to bring facilities into compliance and because TCC estimates implementation for complex facilities may require 18 to 24 months.

Response

The commission recognizes the commenter's concerns regarding the complexities and costs presented by the new definition of solid waste rule. In order to maintain RCRA authorization, EPA requires states to adopt the sections of the new definition of solid waste that are not optional by July 1, 2016. Under the commission's schedule for this rulemaking, these rules will be in effect on June 16, 2016. The commission has made no changes in response to this comment.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §§335.1, 335.4, 335.10 - 335.12, 335.17 - 335.19, 335.21, 335.26, 335.27, 335.32

Statutory Authority

The amendments and new sections are adopted under Texas Water Code (TWC), §5.103 (Rules) and §5.105 (General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), §361.024 (Rules and Standards), and §361.036 (Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.040 (Treatment of Steel Slag as Solid Waste), which provides an exclusion from regulation as a solid waste for certain steel slag.

The adopted amendments and new sections implement THSC, Chapter 361.

§335.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings.

(1) Aboveground tank--A device meeting the definition of "Tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(2) Act--Texas Health and Safety Code, Chapter 361.

(3) Active life--The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

(4) Active portion--That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. *(See* also "Closed portion" and "Inactive portion.")

(5) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "Natural gas" and "Storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "Hydrocarbons" and "Underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency in accordance with the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 *et seq.).*

(6) Administrator--The administrator of the United States Environmental Protection Agency or his designee.

(7) Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on site, or to a point of shipment for disposal off site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(8) Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(9) Area of concern--Any area of a facility under the control or ownership of an owner or operator where a release to the environment of hazardous wastes or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration.

(10) Authorized representative--The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(11) Battery--As defined in §335.261 of this title (relating to Universal Waste Rule).

(12) Boiler--An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The

following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units;

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler).

(13) Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(14) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(15) Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(16) Carbon dioxide stream--Carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(17) Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(18) Cathode ray tube (CRT)--A vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means its glass has been removed from its housing, or casing whose vacuum has been released.

(19) Cathode ray tube (CRT) collector--A person who receives used, intact CRTs for recycling, repair, resale, or donation.

(20) Cathode ray tube (CRT) exporter--Any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

(21) Cathode ray tube (CRT) glass manufacturer--An operation or part of an operation that uses a furnace to manufacture CRT glass.

(22) Cathode ray tube (CRT) processing--Conducting all of the following activities:

(A) receiving broken or intact CRTs;

(B) intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(C) sorting or otherwise managing glass removed from CRT monitors.

(23) Certification--A statement of professional opinion based upon knowledge and belief.

(24) Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(25) Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(26) Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(27) Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. *(See* also "Active portion" and "Inactive portion.")

(28) Closure--The act of permanently taking a waste management unit or facility out of service.

(29) Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(30) Component--Either the tank or ancillary equipment of a tank system.

(31) Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(32) Consignee--The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(33) Contained--Hazardous secondary materials held in a unit (including a "Land-based unit" as defined in this section) that meets the following criteria:

(A) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(B) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit;

(C) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the

unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions; and

(D) hazardous secondary materials in units that meet the requirements of 40 Code of Federal Regulations Parts 264 and 265 are presumptively contained.

(34) Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(35) Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.112(a)(21) or §335.152(a)(19) of this title (relating to Standards).

(36) Contaminant--Includes, but is not limited to, "Solid waste," "Hazardous waste," and "Hazardous waste constituent" as defined in this section; "Pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC), §361.401; "Hazardous substance" as defined in THSC, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.267.

(37) Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(38) Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(39) Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(40) Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(41) Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(42) Designated facility--A hazardous waste treatment, storage, or disposal facility which: has received a permit (or interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 124 and 270; has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271; or is regulated under 40 CFR §261.6(c)(2) or 40 CFR Part 266, Subpart F and has been designated on the manifest by the generator pursuant to 40 CFR §262.20. For hazardous wastes, if a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. For Class 1 wastes, a designated facility is any treatment, storage, or disposal facility authorized to receive the Class 1 waste that has been designated on the manifest by the generator. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

(43) Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(44) Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(45) Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(46) Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(47) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(48) Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "Disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(49) Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(50) Electronic manifest or e-Manifest--The electronic format of the hazardous waste manifest that is obtained from the United States Environmental Protection Agency's (EPA's) national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

(51) Electronic manifest system or e-Manifest system--The United States Environmental Protection Agency's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(52) Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of non-hazardous industrial solid waste; and

(B) meets the definition of "Tank," "Tank system," "Container," or "Transport vehicle," as defined in this section; or "Vessel" as defined in 40 CFR §260.10.

(53) Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the *Federal Register.*

(54) Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(55) Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(56) Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(57) Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(58) Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(59) Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(60) Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(61) Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste, or for the management of hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) or §335.602(a)(5) of this title (relating to Standards), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste);

(C) regardless of subparagraph (B) of this paragraph, a "Remediation waste management site," as defined in 40 Code of Federal Regulations §260.10, is not a facility that is subject to §335.167 of this title, but is subject to corrective action requirements if the site is located within such a facility.

(62) Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

(63) Food-chain crops--Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(64) Freeboard--The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(65) Free liquids--Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(66) Gasification--For the purpose of complying with 40 Code of Federal Regulations §261.4(a)(12)(i), gasification is a process, conducted in an enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

(67) Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(68) Groundwater--Water below the land surface in a zone of saturation.

(69) Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States En-

vironmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(70) Hazardous secondary material--A secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as "Hazardous waste" as defined in this section.

(71) Hazardous secondary material generator--Any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of 40 Code of Federal Regulations §261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

(72) Hazardous substance--Any substance designated as a hazardous substance under 40 Code of Federal Regulations Part 302.

(73) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq*.

(74) Hazardous waste constituent--A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR §261.24.

(75) Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(76) Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(77) In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(78) Inactive portion--That portion of a facility which is not operated after November 19, 1980. *(See* also "Active portion" and "Closed portion.")

(79) Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of "Infrared incinerator" or "Plasma arc incinerator."

(80) Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(81) Individual generation site--The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

(82) Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for "Hazardous waste" burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(83) Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include "Hazardous waste" as defined in this section.

(84) Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(85) Inground tank--A device meeting the definition of "Tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(86) Injection well--A well into which fluids are injected. *(See* also "Underground injection.")

(87) Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(88) Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(89) Intermediate facility--Any facility that stores hazardous secondary materials for more than ten days, other than a hazardous secondary material generator or reclaimer of such material.

(90) International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

(91) Lamp--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(92) Land-based unit--When used to describe recycling of hazardous secondary materials, an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(93) Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(94) Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(95) Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(96) Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(97) Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(98) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(99) Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(100) Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(101) Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed by the generator or offeror in accordance with the instructions in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and the applicable requirements of 40 Code of Federal Regulations Parts 262 - 265.

(102) Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the manifest by a registered source.

(103) Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(104) Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

(105) Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(106) Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(107) Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(108) New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after

July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. *(See* also "Existing tank system.")

(109) No free liquids--As used in 40 Code of Federal Regulations §261.4(a)(26) and (b)(18), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference, and that there is no free liquid in the container holding the wipes.

(110) Off-site--Property which cannot be characterized as on-site.

(111) Onground tank--A device meeting the definition of "Tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(112) On-Site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(113) Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. *(See* also "Incinerator" and "Thermal processing.")

(114) Operator--The person responsible for the overall operation of a facility.

(115) Owner--The person who owns a facility or part of a facility.

(116) Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(117) PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(118) Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, or disposal facility in accordance with specified limitations.

(119) Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

(120) Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(121) Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "Petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq.))* and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels--i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils--i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils--i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils--i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils--i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants--i.e., automotive and industrial lubricants;

(x) building materials--i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials--i.e., transformer oils and cable oils; and

(xii) used oils--See definition for "Used oil" in this section.

(B) For the purposes of this chapter, a "Petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, *et seq.))* and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(122) Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(123) Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(124) Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation and Recovery Act and solid waste management units.

(125) Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(126) Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(127) Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(128) Primary exporter--Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 Code of Federal Regulations Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(129) Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of "Processing" does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.,* as amended.

(130) Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(131) Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(132) Receiving country--A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(133) Regional administrator--The regional administrator for the United States Environmental Protection Agency region in which the facility is located, or his designee.

(134) Remanufacturing--Processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(135) Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(136) Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under §335.166(5) of this title (relating to Corrective Action Program) or §335.167(c) of this title.

(137) Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, or disposal.

(138) Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency or state approved corrective action.

(139) Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(140) Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(141) Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(142) Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.

(143) Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(144) Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(145) Small quantity generator--A generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

(146) Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from "Activities associated with the exploration, development, or production of oil or gas or geothermal resources," as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with the Texas Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) in accordance with the federal Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq.,* as amended; or

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §§261.4(a)(1) - (24), (26), and (27), 261.39, and 261.40, as amended through January 13, 2015 (80 FR 1694), subject to the changes in this clause, by variance, or by non-waste determination granted under §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations), and §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations). For the purposes of the exclusions under 40 CFR §261.39 (as amended through June 26, 2014 (79 FR 36220)) and §261.40, 40 CFR §261.41 is adopted by reference as amended through July 28, 2006 (71 FR 42928). For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid waste' in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of 'Solid waste' in §335.1 of this title (relating to Definitions)":

(I) in the certification statement under 40 CFR §261.38(c)(1)(i)(C)(4), the reference to "40 CFR §261.38" is changed to "40 CFR §261.38, as revised under subparagraph (A)(iv) under the definition of 'Solid waste' in 30 TAC §335.1," and the reference to "40 CFR §261.28(c)(10)" is changed to "40 CFR §261.38(c)(10)";

(II) in 40 CFR §261.38(c)(2), the references to "§260.10 of this chapter" are changed to "§335.1 of this title (relating to Definitions)," and the reference to "parts 264 or 265 of this chapter" is changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities)";

(III) in 40 CFR §261.38(c)(3) - (5), the references to "parts 264 and 265, or §262.34 of this chapter" are changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";

(IV) in 40 CFR §261.38(c)(5), the reference to "§261.6(c) of this chapter" is changed to "§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)";

(V) in 40 CFR §261.38(c)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director";

(VI) in 40 CFR §261.38(c)(8), the reference to "§262.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)";

(VII) in 40 CFR §261.38(c)(9), the reference to "§261.2(c)(4) of this chapter" is changed to "§335.1(146)(D)(iv) of this title (relating to Definitions)"; and

(VIII) in 40 CFR §261.38(c)(10), the reference to "implementing authority" is changed to "executive director."

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated;

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

(iv) sham recycling as explained in subparagraph (J) of this paragraph.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 in Figure: 30 TAC §335.1(146)(D)(iv) indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of "Solid waste" provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 in Figure: 30 TAC §335.1(146)(D)(iv) are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 in Figure: 30 TAC §335.1(146)(D)(iv) are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33, but that exhibit one or more of the hazardous waste characteristics, or will be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (unless they meet the requirements of 40 CFR §261.4(a)(17), (23), (24), or (27)). Materials without an asterisk in Column 3 of Table 1 in Figure: 30 TAC §335.1(146)(D)(iv) are not solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 in Figure: 30 TAC §335.1(146)(D)(iv) are solid wastes when accumulated speculatively.
Figure: 30 TAC §335.1(146)(D)(iv)

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2).

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that will otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as will be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel, or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Subchapter R of this chapter (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Subchapter R of this chapter; and

(-b-) does not exceed a concentration limit under §312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

(viii) with the exception of the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials).

(K) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(L) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(M) Steel slag may not be considered as solid waste if the steel slag is an intended output or result of the use of an electric arc furnace to make steel, introduced into the stream of commerce, and managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

(147) Solvent-contaminated wipe--A wipe that, after use or after cleaning up a spill, either:

(A) contains one or more of the F001 through F005 solvents listed in 40 Code of Federal Regulations (CFR) §261.31 or the corresponding P- or U-listed solvents found in 40 CFR §261.33;

(B) exhibits a hazardous characteristic found in 40 CFR Part 261, Subpart C, when that characteristic results from a solvent listed in 40 CFR Part 261; and/or

(C) exhibits only the hazardous waste characteristic of ignitability found in 40 CFR §261.21 due to the presence of one or more solvents that are not listed in 40 CFR Part 261. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at 40 CFR §261.4(a)(26) and (b)(18).

(148) Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(149) Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(150) Staging pile--An accumulation of solid, non-flowing "Remediation waste," as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(151) Standard permit--A Resource Conservation and Recovery Act permit authorizing management of hazardous waste issued under Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units) and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit). The standard permit may have two parts, a uniform portion issued in all cases and a supplemental portion issued at the executive director's discretion.

(152) Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(153) Sump--Any pit or reservoir that meets the definition of "Tank" in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(154) Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(155) Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(156) Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(157) TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(158) Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. *(See* also "Incinerator" and "Open burning.")

(159) Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(160) Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(161) Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste or hazardous secondary materials are held during the normal course of transportation.

(162) Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(163) Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(164) Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(165) Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 Code of Federal Regulations §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(166) Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

(167) Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(168) Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. *(See* also "Injection well.")

(169) Underground tank--A device meeting the definition of "Tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(170) Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

(171) United States Environmental Protection Agency (EPA) acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(172) United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D and to each characteristic identified in 40 CFR Part 261, Subpart C.

(173) United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(174) Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(16)(F) of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(175) Universal waste handler--Has the definition adopted as "Large quantity handler of universal waste" and "Small quantity handler of universal waste" under §335.261 of this title (relating to Universal Waste Rule).

(176) Universal waste transporter--Has the definition adopted under 40 Code of Federal Regulations §273.9.

(177) Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(178) Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(179) Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, conditionally exempt small quantity generator hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(180) User of the electronic manifest system--A hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(A) is required to use a manifest to comply with:

(i) any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(ii) any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(B) elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the United States Environmental Protection Agency electronic manifest system; or

(C) elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(181) Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §§466 *et seq.,* §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of "Tank" or "Tank system" as defined in this section.

(182) Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(183) Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(184) Wipe--A woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(185) Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

§335.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials.

(a) For the purposes of the definition of "Solid waste" in §335.1 of this title (relating to Definitions) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) A spent material is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(2) Sludge has the same meaning used in Texas Health and Safety Code, §361.003.

(3) A by-product is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form in which it is produced by the process.

(4) A material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. For purposes of 40 Code of Federal Regulations (CFR) §261.4(a)(23) and (24), smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in §335.221(a)(1) of this title (relating to Applicability and Standards), and if the residuals meet the requirements specified in §335.221(a)(23) of this title.

(5) A material is used or reused if it is either:

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(B) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(6) Scrap metal is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wires) or metal pieces that may be combined to-

gether with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

(7) A material is recycled if it is used, reused, or reclaimed.

(8) A material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40 CFR §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) Excluded scrap metal is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (40 CFR §261.4(a)(14)).

(11) Home scrap metal is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) Prompt scrap metal is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title, under the definition of "Solid waste", §335.6 of this title (relating to Notification Requirements), §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.20 of this title (relating to Variance To Be Classified as a Boiler), §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations), §335.22 of this title (relating to Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis), §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities), §335.24 of this title, Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and Subchapter V of this chapter (relating to Standards for Reclamation of Hazardous Secondary Materials).

§335.18. Non-Waste Determinations and Variances from Classification as a Solid Waste.

(a) In accordance with the standards and criteria in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations), and in accordance with the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations) the executive director may determine on a case-by-case basis that the following recyclable materials and nonhazardous recyclable materials are not solid wastes:

(1) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials));

(2) materials that are reclaimed and then reused within the original production process in which they were generated;

(3) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

(4) hazardous secondary materials that are reclaimed in a continuous industrial process;

(5) hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate; or

(6) hazardous secondary materials that are transferred for reclamation under 40 Code of Federal Regulations §261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Resource Conservation and Recovery Act Part B permit or interim status standards.

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title, §335.19 of this title, §335.20 of this title (relating to Variance To Be Classified as a Boiler), §335.21 of this title, §335.22 of this title (relating to Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis), §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and Subchapter V of this title (relating to Standards for Reclamation of Hazardous Secondary Materials).

§335.19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following criteria:

(1) the manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) the reason that the applicant has accumulated the material for one or more years without recycling 75% of the weight or volume accumulated at the beginning of the year;

(3) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) the extent to which the material is handled to minimize loss; and

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) the extent to which the material is handled before reclamation to minimize loss;

(3) the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) the location of the reclamation operation in relation to the production process;

(5) whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) whether the person who generates the material also reclaims it; and

(7) other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like material will be based on whether the hazardous secondary material is legitimately recycled as specified in §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials) and on whether all of the following decision criteria are satisfied:

(1) whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(2) whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(3) whether the partially reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) whether there is a market for the partially reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading);

(5) whether the partially reclaimed material is handled to minimize loss; and

(6) other relevant factors.

(d) The executive director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation in accordance with the requirements of 40 Code of Federal Regulations (CFR) §261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Resource Conservation and Recovery Act (RCRA) Part B permit or interim status standards. The executive director's decision will be based on the following criteria:

(1) the reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to §335.27 of this title;

(2) the reclamation facility or intermediate facility must satisfy the financial assurance requirements of §335.703 of this title (relating to Financial Assurance Requirements);

(3) the reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under RCRA, Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;

(4) the intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under 40 CFR Part 261, Subpart M;

(5) if residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and

(6) the intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.

(e) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.20 of this title (relating to Variance To Be Classified as a Boiler), §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations), §335.22 of this title (relating to Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis), §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), Subchapter H of this chapter (relating to Stan-

dards for the Management of Specific Wastes and Specific Types of Facilities), and Subchapter V of this chapter (relating to Standards for Reclamation of Hazardous Secondary Materials).

§335.21. Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations.

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed flame combustion devices as boilers, and applications for non-waste determinations:

(1) the owner or operator must apply to the executive director for the variance. The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) or §335.20 of this title (relating to Variance To Be Classified as a Boiler);

(2) the owner or operator must apply to the executive director for the non-waste determination. The application must address the relevant criteria referenced in §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations);

(3) the executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public meeting upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the public meeting (if any). Any person affected by a final decision of the executive director may file with the chief clerk a motion for reconsideration, in accordance with §50.39 of this title (relating to Motion for Reconsideration).

(4) in the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in §335.19 or §335.20 of this title or §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations), upon which a variance or non-waste determination has been based, the applicant must send a written description of the change in circumstances to the executive director. The executive director may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination;

(5) variances and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, owners or operators of facilities must re-apply for a variance or non-waste determination. If an owner or operator of a facility re-applies for a variance or non-waste determination within six months, the owner or operator of the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the executive director; and

(6) owners or operators of facilities receiving a variance or non-waste determination must provide notification as required by §335.26 of this title (relating to Notification Requirements for Hazardous Secondary Materials).

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 May 26, 2016.

TRD-201602669
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: December 25, 2015
For further information, please call: (512) 239-6812

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SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.112

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (Rules) and §5.105 (General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), §361.024 (Rules and Standards), and §361.036 (Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

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. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.152

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (Rules) and §5.105 (General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), §361.024

(Rules and Standards), and §361.036 (Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

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 R. WASTE CLASSIFICATION

30 TAC §335.504

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (Rules), and §5.105 (General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), §361.024 (Rules and Standards), and §361.036 (Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

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 U. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARD PERMIT

30 TAC §335.602

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (Rules) and §5.105 (General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), §361.024 (Rules and Standards), and §361.036 (Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

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

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For further information, please call: (512) 239-6812

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SUBCHAPTER V. STANDARDS FOR RECLAMATION OF HAZARDOUS SECONDARY MATERIALS

30 TAC §§335.701 - 335.706

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.103 (Rules) and §5.105 (General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), and §361.024 (Rules and Standards), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted sections implement THSC, Chapter 361.

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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Robert Martinez
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 151. OPERATIONS OF THE SCHOOL LAND BOARD

31 TAC §151.6

The School Land Board (SLB) adopts new §151.6, relating to the Procedures for the Release of Funds from the Real Estate Special Fund Account, under Title 31, Part 4, Chapter 151 of the Texas Administrative Code. The SLB adopts the new section without changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2673). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

New §151.6 will establish the procedures to be used by the School Land Board (SLB) to determine the dates that releases will be made and the amounts of money that will be released on those dates from the Real Estate Special Fund Account (RESFA) to either the Available School Fund (ASF) or the State Board of Education (SBOE) for investment in the Permanent School Fund (PSF), as required by §51.413(b) of the Texas Natural Resources Code.

In the last legislative session, H.B. 1551 amended §51.413(b), Texas Natural Resources Code, to provide that the Board adopt rules to establish the procedure to be used to determine the amount and date of any transfer of money from the RESFA to either the ASF or the SBOE for investment in the PSF.

The adopted rule drafted in response to H.B. 1551 is comprised of three sections:

Paragraph (1) states that no later than July 31 of each even-numbered year, the Chief Investment Officer ("CIO") will: (A) perform an analysis that determines an amount equal to 6% of the average market value of the TXGLO Real Assets Investment Portfolio ("Portfolio") over the trailing sixteen-quarter measurement period; (B) round the amount determined in (A) up or down to the nearest $5,000,000 increment; and (C) determine the average quarterly change in the average market value of the Portfolio over the trailing sixteen-quarter measurement period, then multiply this amount times 4 and add the resulting amount to the amount determined in (A) and round the resulting amount up or down to the nearest $5,000,000 increment.

Paragraph (2) states that not later than September 1 of each even-numbered year, the CIO will provide to the Board the results of the CIO's analyses performed in accordance with paragraph (1) and make recommendations to the SLB regarding the release of funds from the RESFA. The Board will adopt a resolution detailing the actual amounts to be released to either the ASF or the SBOE in each of the individual years of the next-approaching biennium and the actual dates of the releases.

Paragraph (3) states that not later than September 1 of each even-numbered year, the CIO will submit a report to the Legislature, Comptroller, SBOE, and Legislative Budget Board that states the dates and amounts approved by the Board for release to either the ASF or to the SBOE during next-approaching biennium.

COMMENTS

There were no comments received during the 30-day comment period.

LEGAL AUTHORITY

The new section is adopted under Texas Natural Resources Code, Chapter 51, including §51.407 and §51.413(b), which authorizes the board to adopt rules to establish the procedure to be used to determine the amount and date of any transfer of money from the RESFA to either the ASF or the SBOE for investment in the PSF.

Texas Natural Resources Code §51.413 and §32.061 are affected by this adopted rulemaking.

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 May 26, 2016.

TRD-201602705
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
School Land Board
Effective date: June 15, 2016
Proposal publication date: April 15, 2016
For further information, please call: (512) 569-2740

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.48

The Comptroller of Public Accounts adopts amendments to §5.48, concerning deductions for contributions to charitable organizations, without changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2674).

The amendment will modify the existing language to provide that state employees can submit an electronic deduction authorization entered through an online giving tool website or application. The amendment will also modify the existing language regarding personal identifying information required to be included in a deduction change authorization or a deduction cancellation authorization. In addition, the amendment will clarify that all references to local campaign manager(s) and local employee committee(s) are only applicable if the state policy committee has appointed a local campaign manager(s) and/or a local employee committee(s) under Government Code, §659.140. The amendment is authorized under Government Code, §659.132(h) and Senate Bill 217, 83rd Legislature, 2013.

Subsection (a) modifies the existing language to provide that state employees can submit an electronic deduction authoriza-

tion entered through an online giving tool website or application. The subsection is also modified to clarify that references to local campaign manager(s) and local employee committee(s) are only applicable if the state policy committee has appointed a local campaign manager(s) and/or a local employee committee(s) under Government Code, §659.140.

Subsection (b)(1), (3), (6), and (7) modify the existing language to provide that state employees can submit an electronic deduction authorization or cancellation entered through an online giving tool website or application.

Subsection (b)(3)(C)(i) and (6)(B)(i) modify the existing language to provide that appropriate identifying information is to be included in a deduction change authorization rather than a social security number.

Subsections (e), (j), (k), (u), and (w) modify the existing language to provide that state employees can submit an electronic deduction authorization entered through an online giving tool website or application.

Subsections (h), (i), (j), (n), (p), (q) and (r) also modify the existing language to clarify that references to local campaign manager(s) and local employee committee(s) are only applicable if the state policy committee has appointed a local campaign manager(s) and/or a local employee committee(s) under Government Code, §659.140.

New subsection (y) adds language to provide requirements that must be satisfied for the use of an online giving tool website or application.

The agency received one comment on the proposed amendments from Homer D. Trevino, Executive Vice President & General Manager, United Way of Waco-McLennan County. His comment and the agency's response are as follows.

Mr. Trevino commented that the proposed changes should provide for the use of electronic forms only and that local campaigns should only be allowed to use electronic forms rather than electronic forms and/or paper forms.

The agency responds that we are unable to accommodate this request because some agency payroll systems require electronic files to contain social security numbers and, for security reasons, the online giving tool website or application will not collect them. Also, paper forms may be necessary when the online giving tool website or application are unavailable, such as when a newly hired employee submits a deduction authorization outside of the normal campaign period.

The adoption is pursuant to Government Code, §659.142(d) and Senate Bill 217, 83rd Legislature, 2013, which allow the comptroller to adopt rules.

The amendment implements changes made to the state employee charitable campaign by the state policy committee under Government Code, §659.140. The amendment also implements Government Code, Chapter 659, Subchapter I, as amended by Senate Bill 217, 83rd Legislature, 2013.

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 May 26, 2016.

TRD-201602662

Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: June 15, 2016
Proposal publication date: April 15, 2016
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER F. SECURITY AND CONTROL

37 TAC §380.9709, §380.9710

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9709 (Youth Search) and §380.9710 (Entry Search) with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8453).

The changes to the proposed text of §380.9709 and §380.9710 consist of correcting minor grammatical errors.

JUSTIFICATION FOR RULEMAKING ACTION

The justification for these amended rules is the protection of youth in TJJD's care and individuals who enter a TJJD residential facility from being victimized by sexual abuse, sexual activity, or sexual harassment. These rule changes are also intended to promote the safety of staff, youth, and the public through practices designed to maintain a safe and orderly environment in TJJD residential facilities.

SUMMARY OF CHANGES

The amended §380.9709 includes the following exceptions to the general requirement that the staff member conducting a pat-down or strip search must be the same gender as the youth being searched: 1) cross-gender searches are allowed in exigent circumstances (which are defined as any set of temporary and unforeseen circumstances that require immediate action to combat a threat to the security or institutional order of a facility); and 2) limited by consideration of facility and staff safety and security, TJJD will honor the preference of a youth to be searched by a male or female staff member if the youth self-identifies as transgender or intersex and that identification is supported by collateral assessment processes. Additionally, the amended rule no longer includes step-by-step processes for conducting pat-down searches and strip searches. These processes are addressed in TJJD's internal procedures.

The amendments to §380.9710: 1) expand the scope of the rule to apply to all residential facilities operated by TJJD, not just secure facilities; 2) include the following exceptions to the general requirement that the staff member conducting a pat-down search at the entry point of a TJJD facility must be the same gender as the person being searched: A) cross-gender pat searches are allowed when it is not possible for a same-gender staff to conduct the search due to facility and staff safety and security;

and B) limited by operational considerations and by facility and staff safety and security, TJJD will honor the preference of a person to be searched by a male or female staff member if the person self-identifies as transgender or intersex; 3) clarify that the TJJD Office of Inspector General is the law enforcement agency to which TJJD will turn over seized items when appropriate; 4) delete the list of prohibited items; 5) clarify that a list of all prohibited items is posted at *all security search points* (rather than "at each entrance"); and 6) remove the step-by-step processes for conducting pat-down entry searchers. These processes are addressed in TJJD's internal procedures.

SUMMARY OF PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed amendments.

RULE REVIEW

In the Proposed Rules section of the November 27, 2015, issue of the *Texas Register* (40 TexReg 8453), TJJD published a notice of intent to review §380.9709 and §380.9710 as required by Texas Government Code §2001.039. TJJD did not receive any public comments regarding the rule review.

TJJD has determined that the reasons for adopting these rules continue to exist. Accordingly, these rules are readopted with amendments as described in this notice.

STATUTORY AUTHORITY

The amended sections are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. The amended sections are also adopted under Code of Federal Regulations, Title 28, Part 115, which establishes national standards for compliance with the Prison Rape Elimination Act.

§380.9709. Youth Search.

(a) Purpose. This rule establishes requirements for searching Texas Juvenile Justice Department (TJJD) youth, their property, and their rooms to detect and deter contraband. The purpose of all provisions in this rule is to promote and protect the safety of the facility, staff, and youth.

(b) Applicability. This rule applies to residential facilities operated by TJJD.

(c) Definitions.

(1) Reasonable Belief--a belief based on facts or circumstances sufficient to cause a reasonable person to believe that the person to be searched has prohibited items.

(2) Probable Cause--a determination based on facts and circumstances that would cause a reasonably prudent person to believe it is more likely than not that the person to be searched has a prohibited item.

(d) General Provisions.

(1) TJJD staff may conduct a search of a TJJD youth or a youth's room for the purpose of finding and seizing contraband.

(2) When contraband is seized from a youth, the search and disposition of items must be documented. See §380.9711 of this title.

(3) Areas where youth are housed or served may be subject to be searched by the use of the canine (K-9) teams. See §380.9713 of this title for more information on the use of K-9 teams.

(e) Room Searches and Pat-Down Searches.

(1) Room searches and pat-down searches may be conducted with or without probable cause.

(2) Room and pat-down searches must be conducted in accordance with the following rules.

(A) Room and pat-down searches may be unannounced and irregularly timed.

(B) Room and pat-down searches must be conducted routinely to control possession by youth of contraband or to recover missing or stolen property.

(C) Two trained staff members must be in attendance for room and pat-down searches.

(D) The staff conducting a pat-down search must be of the same gender as the youth being searched, except in exigent circumstances as defined in §380.9337 of this title.

(E) Limited by consideration of facility and staff safety and security, TJJD honors the preference of a youth to be pat searched by a male or female staff member if the youth self-identifies as transgender or intersex and that identification is supported by collateral assessment processes.

(F) Room and pat-down searches must be conducted in a professional manner. Staff must not make jokes, conversation, or comments while conducting searches.

(G) Room and pat-down searches are documented.

(f) Strip Searches.

(1) Strip searches must be based on a reasonable belief that the youth has custody or control of contraband. However, reasonable belief is not required when a youth returns from contact with the general public or from outside the facility or from visitation.

(2) Strip searches must be conducted in accordance with the following rules.

(A) The search must be conducted in a private setting.

(B) Two trained staff members must conduct the search.

(C) The staff members conducting the search must be of the same gender as the youth, except in exigent circumstances as defined in §380.9337 of this title.

(D) Limited by consideration of facility and staff safety and security, TJJD honors the preference of a youth to be strip searched by a male or female staff member if the youth self-identifies as transgender or intersex and that identification is supported by collateral assessment processes.

(E) The search must be conducted in a professional manner. Staff must not make jokes, conversation, or comments while conducting the strip search.

(F) The search must be documented.

(g) Physical Body-Cavity Searches.

(1) Physical body-cavity searches may only occur on probable cause that the youth possesses contraband and with the authorization of the facility administrator.

(2) Physical body-cavity searches must be conducted by off-site medical personnel who are not part of the facility's health care staff.

(3) Physical body-cavity searches refer to manual or instrument inspection of body cavities including the vagina or rectum.

(4) Physical body-cavity searches must be documented.

§380.9710. Entry Search.

(a) Purpose. This rule establishes requirements for conducting searches at the entry point of Texas Juvenile Justice Department (TJJD) facilities to prevent the introduction of items that are prohibited.

(b) Applicability. This rule applies to residential facilities operated by TJJD.

(c) General Provisions. Each person entering a facility operated by TJJD is subject to a search of his/her person, vehicle, and any property he/she is bringing into the facility.

(d) Definitions.

(1) Reasonable Belief--a belief based on facts or circumstances sufficient to cause a reasonable person to believe that the person to be searched has prohibited items.

(2) Routine Search--a search conducted at a scheduled time during which every person is searched at the entry point of a TJJD facility.

(3) Random Search--a search conducted at an unannounced time during which every person will be searched at the entry point of a TJJD facility.

(e) Entry Searches.

(1) TJJD conducts routine searches, random searches, or a search anytime there is a reasonable belief a person possesses an item that is prohibited.

(2) Entry searches may involve one or more of the following:

(A) use of metal detectors (walk-through or wand);

(B) use of trained detection dogs;

(C) visual or touch inspection of property;

(D) requiring pockets to be emptied;

(E) removal and inspection of shoes; or

(F) pat-down body search (outside the person's clothing).

(3) Entry searches must use the least intrusive method possible as determined by the circumstances.

(4) Whenever possible, considering facility and staff safety and security, pat-down searches conducted at the entry point are conducted by a staff member who is the same gender as the person being searched. Limited by operational considerations and by facility and staff safety and security, TJJD honors the preference of a person to be pat-searched by a male or female staff member if the person self-identifies as transgender or intersex.

(5) Any person who refuses to be searched may be prohibited from entering the facility and may be subject to other administrative action, as appropriate.

(6) Any person who refuses to have his/her personal property searched will be prohibited from taking the property into the facility and may be subject to other administrative action, as appropriate.

(7) Any item that is or appears to be a prohibited item and/or contraband as defined in §380.9107 of this title will not be allowed in a residential facility and may be seized.

(8) Seized items may be turned over to the TJJD Office of Inspector General (OIG) for identification or disposition.

(9) If personal property is seized, TJJD determines within 24 hours (or the next business day if on a weekend or holiday) whether the item will be:

(A) retained as evidence for an administrative investigation;

(B) turned over to OIG for criminal investigation and/or disposition; or

(C) returned to the person from whom the property was seized.

(f) Prohibited Items.

(1) A list of prohibited items and contraband is prominently posted at each security search point in secure facilities and halfway houses.

(2) Items on the prohibited list may be seized during entry searches.

(3) Individual facilities may not add items to the prohibited list. Requests to include additional items on the list must be made in writing to the division director over residential facilities.

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

Filed with the Office of the Secretary of State on May 24, 2016.

TRD-201602527
Jill Mata
General Counsel
Texas Juvenile Justice Department
Effective date: July 1, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 490-7278

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 21. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

CHAPTER 877. GRANT AWARDS

40 TAC §877.1, §877.3

The Texas Council for Developmental Disabilities (Council) adopts amendments to §877.1 concerning General Provisions and to §877.3 concerning Payment Withhold, Suspension or Termination of Funding without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8745). The rules will not be republished.

The purpose of the amendments to these sections is to apply consistent equitable consequences to Council award recipients in the event they are found to be in non-compliance with reporting requirements, and to provide uniform guidance to apply consistent procedures that may result in withholding payment or reduction of payments. These amendments will add Payment Withhold, which may grant a payment withhold pending the result of corrective action, partially restoring funds or grant funds are suspended.

There may be fiscal implications as a result of enforcing these sections as amended.

No comments were received regarding adoption of the amendments.

The adopted amendments are authorized under the Texas Human Resources Code, §112.020, which provides authority for the Council to adopt rules as necessary to implement the Council's duties and responsibilities.

The amendments will effect Texas Human Resources Code, Title 7, Chapter 112, Developmental Disabilities.

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 May 25, 2016.

TRD-201602661
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Effective date: June 14, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 437-5432

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER E. PROCEDURES IN CONTESTED CASE

43 TAC §§1.29, 1.37, 1.38

The Texas Department of Transportation (department) adopts amendments to §1.29, Notice of Hearing, §1.37, Notification of Decision, and §1.38, Motions for Rehearing, all concerning procedures in contested cases. The amendments to §§1.29, 1.37, and 1.38 are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1826) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

S.B. No. 1267, 84th Regular Session, 2015, amended Government Code, Chapter 2001, the Administrative Procedure Act (APA) to, among other things, make its deadlines more closely align with the Texas Rules of Civil Procedure and expand notice requirements. The department's procedures for contested cases, located in Title 43, Part 1, Chapter 1, Subchapter E of the Texas Administrative Code must be amended to comply with the changes to the APA made by S.B. 1267. The amendments substitute references to the APA for the restatement of statutory requirements provided in the current rules.

Amendments to §1.29, Notice of Hearing, replace a detailed description of the required contents of a notice of hearing with the simpler provision that a notice of hearing will conform with the notice requirements of the APA, which are provided by Government Code, §2001.052, as amended by S.B. 1267.

Amendments to §1.37, Notification of Decision, replace the requirement that a notification of decision will be sent to each party by first class mail with the statement that a notification will be sent to each party in the manner required by the APA. S.B. 1267 amended Government Code, §2001.142 to expand the methods that may be used to send the required notice and to add a process for determining when the notice was received.

Amendments to §1.38, Motions for Rehearing, make several changes relating to rehearing requests. The amendments delete subsection (a) because it is inaccurate; Government Code, §2001.145 provides exceptions to the requirement that a motion for rehearing is a prerequisite to an appeal of a decision or order in a contested case. The amendments also replace the deadlines for filing a motion for rehearing and a reply to a motion for rehearing with references to the APA. Those deadlines are found in Government Code, §2001.146 and were amended by S.B. 1267. Finally, the amendments replace the statement that a notice of a ruling on a motion for rehearing will be sent to each party by first class mail with a statement that a notice will be sent to each party in the manner required by the APA. S.B. 1267 amended Government Code, §2001.142 to expand the methods that may be used to send notice of the decision on a motion for rehearing.

SUBMITTAL OF COMMENTS

No comments concerning §§1.29, 1.37, and 1.38 were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §2001.004, which requires a state agency to "adopt rules of practice stating the nature and requirements of all available formal and informal procedures" under the APA.

CROSS REFERENCE TO STATUTE

Government Code, §2001.052, and Chapter 2001, Subchapter F.

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 May 26, 2016.

TRD-201602702
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: June 15, 2016
Proposal publication date: March 11, 2016
For further information, please call: (512) 463-8630

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CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION

43 TAC §15.52

The Texas Department of Transportation (department) adopts amendments to §15.52, concerning Agreements. The amendments to §15.52 are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1827) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Subchapter E of 43 TAC Chapter 15 describes federal, state, and local responsibilities for cost participation in highway improvement projects. These amendments make several changes to §15.52, Agreements.

Amendments to §15.52(3)(A)(i)(I) change the wording of the criteria for an adjustment to a local government's fixed price amount obligation under a joint participation agreement between the department and a local government for a highway improvement project. The amendments change the phrase "site conditions change" to allow an adjustment if certain conditions encountered at the project site differ materially from those indicated in or expected under the contract for the project, as described by 23 C.F.R. §635.109. The term "differing site conditions" is used to be consistent with those federal regulations.

Amendments to §15.52(3)(A)(ii)(II) change the wording of a factor that the department will consider when determining the fixed price amount. Currently, the rule provides "the need for expeditious project completion" as one of those factors. The amendment changes that wording to "the need for accelerated project delivery" in order to be consistent with the terminology used in Federal Highway Administration programs.

Amendments to §15.52(3)(C)(ii)(III) change the wording of a factor that the executive director will consider in approving a request for periodic payments. Currently, the rule provides "the need for expeditious project completion" as one of those factors. The amendment changes that wording to "the need for accelerated project delivery." This change is consistent with the change made to §15.52(3)(A)(ii)(II).

Amendments to §15.52(5) change the phrase "changed site conditions" to "differing site conditions" to correspond to the changes made by the amendments to §15.52(3)(A)(i)(I) described above.

The amendment to §15.52(6)(A) corrects the reference to the rule provision that allows an adjustment to a local government's fixed price obligation under a joint participation agreement.

The amendments to §15.52(6)(B)(ii) provide that, when the specified percentage method of payment is used in a joint funding agreement, the local government, rather than the department, is responsible for any extra funds required to complete the project. Under current §15.52(6)(B)(ii), the department determines the final cost of a project after its completion. If the department finds that the amount received is insufficient to pay the local government's funding share, the rule provides that the department is to pay the balance. If the amount received exceeds the local government's funding share, the excess is returned to the local government. This change more appropriately allocates the risk of cost overruns to the party that has the greater ability to manage the cost of the project.

Amendments to §15.52(6)(C) provide that, when the periodic payment method is used, the local government, rather than the department, is responsible for any extra funds required to complete the project. This is similar to the change made to §15.52(6)(B)(ii) to cover the insufficiency, and more appropriately allocates the risk of cost overruns to the party that has the greater ability to manage the costs of the project.

Amendments to §15.52(8)(D)(iii) change one of the factors that the department evaluates to determine whether to approve a local government's request to manage one or more elements of performance of a project from "need for expeditious project completion" to "the need for accelerated project delivery." This change is made to be consistent with the changes made in §15.52(3)(A)(ii)(II).

SUBMITTAL OF COMMENTS

Comments concerning §15.52 were received from four cities.

Comment: City of Anna, Texas

The City comments that the proposed rule change, as it relates to joint project costs, does not address increased costs caused by the department or allow for unforeseen conditions. It proposes that reasonable and warranted costs be shared at the same percentage as the joint participation project.

Response: The department disagrees with this comment. The standard funding arrangement on projects with a combination of local funds and state and/or federal funds, including those projects managed by the department, is a fixed price arrangement. In these agreements, a local government is responsible for a fixed price amount specified in their agreement with the department regardless of the actual cost of performing the work, unless the parties execute an amendment to adjust the price. The amendments to §15.52(6)(B)(ii) and (C) apply only to projects funded under non-standard funding arrangements requiring special approval by the executive director. The specified percentage arrangement will be the preferred arrangement for those projects managed by the local government.

Comment: City of Haslet, Texas

The City is concerned about its inability to either control or predict cost overruns and asserts that it is unfair to require the City to cover those costs because it "has the least amount of participation in the costs of the project."

Response: The department disagrees with this comment. The changes in risk allocation apply only to agreements funded with non-standard payment arrangements requiring special approval by the executive director. The specified percentage arrangement will be the preferred funding arrangement for those projects managed by the local government.

Comment: City of Mesquite, Texas

The City states that it opposes the proposed changes to 43 TAC §15.52(3)(B)(ii) and (3)(C), which shift the burden for project cost overruns from the department to the local governments for highway improvement projects, because the department prepares the cost estimates and manages the entire project delivery process, with little input or control on the City's part. The City suggests that local governments should be required to cover only those excess costs resulting solely from changes made at their own request. Lastly, it comments that the fear of receiving a "surprise bill" from the department years after a project is completed will discourage local government participation on highway improvement projects.

Response: The department assumes that the City intended to comment on 43 TAC §15.52(6)(B)(ii) and (3)(C). Projects controlled by the department will typically use the standard payment arrangement for joint participation agreements, the fixed price arrangement, which strictly limits the circumstances under which a local government would be required to pay more than the amount initially agreed upon. The amendments apply only to nonstan-

dard payment arrangements that require special approval by the executive director. The specified percentage arrangement is the preferred funding arrangement for those projects managed by the local government.

Further, the department encourages all local governments to participate in the cost estimation process. Input from local governments is valuable and necessary in allowing the parties to arrive at accurate project costs.

Comment: City of Houston, Texas

The City comments that the proposed amendments to §15.52(6)(B)(ii) and §15.52(6)(C) would unfairly burden local governments with costs beyond their control, and warns that joint participation agreements under these rules could violate the constitutional prohibition against "unfunded liabilities." The City maintains that local governments are precluded from controlling projects under joint participation agreements.

The City further comments that an agreement that requires the City to commit to payments greater than the amount appropriated and approved by the governing body when authorizing the agreement would violate the constitutional prohibition on creation of a debt unless the City were to divert money away from other city projects or services to create a sinking fund to cover potential overruns.

The City suggests that new wording be included stating that when an overrun occurs and the local government is responsible for payment, specifically, "...that the department will notify the local government of the amount of the difference and subject to an appropriation by the local government's governing body, the local government shall promptly transmit that amount to the department."

Response: The department disagrees with these comments and declines to change the wording of the amendment. Projects controlled by the department will typically use the standard payment arrangement for joint participation agreements, the fixed price arrangement, which strictly limits the circumstances under which a local government would be required to pay more than the amount initially agreed upon. The specified percentage funding arrangement will be the preferred funding arrangement for those projects managed by the City. In the event that a City agrees to participate in a project under a specified percentage arrangement rather than the standard fixed price arrangement, constitutional concerns can be addressed in the joint participation agreement. The department is sensitive to the challenges local governments face when trying to pay for local services and when funding joint participation projects with the department, while being responsible for covering unexpected contingencies that occur in any particular fiscal year. However, the rules that are already in place require local governments in certain circumstances to pay cost overruns in joint participation projects.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 221; Transportation Code, Chapter 222, Subchapter C; and Transportation Code, §224.033.

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 May 26, 2016.

TRD-201602703
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: June 15, 2016
Proposal publication date: March 11, 2016
For further information, please call: (512) 463-8630

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Fakheri Zayed - Second Grade

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Council for Developmental Disabilities

Title 40, Part 21

The Texas Council for Developmental Disabilities (Council) adopts the review of Chapter 876, General Provisions, §§876.1 - 876.12, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8813).

The Council considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review. As a result of the review, the Council determined that the rules are still necessary and readopts this chapter.

This concludes the review of Chapter 876, General Provisions.

TRD-201602659
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: May 25, 2016

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The Texas Council for Developmental Disabilities (Council) adopts the review of Chapter 877, Grant Awards, §§877.1 - 877.5, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8813).

The Council considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review. As a result of the review, the Council determined that the rules are still necessary and readopts this chapter.

Elsewhere in this issue of the *Texas Register,* the Texas Council for Developmental Disabilities contemporaneously adopts amendments to §877.1 and §877.3.

This concludes the review of Chapter 877, Grant Awards.

TRD-201602660
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: May 25, 2016

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Texas Board of Professional Engineers

Title 22, Part 6

The Texas Board of Professional Engineers (Board) re-adopts existing rules in 22 Texas Administrative Code Chapter 131, Organization and Administration. The proposed rule review was published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1723).

The rules are re-adopted pursuant to and following the Board's Quadrennial Rule Review required by the Texas Government Code §2001.039 during which the Board published its Notice of Intent to Review Rules and Schedule. This review revealed that the original reasons for the adoption of all rules still exist and that all rules are necessary for the Board's performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The Board did not receive any comments on the re-adoption of Chapter 131.

Chapter 131 is re-adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This concludes the review of Chapter 131, Organization and Administration.

TRD-201602725
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: May 31, 2016

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The Texas Board of Professional Engineers (Board) re-adopts existing rules in 22 Texas Administrative Code Chapter 133, Licensing. The proposed rule review was published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1723).

The rules are re-adopted pursuant to and following the Board's Quadrennial Rule Review required by the Texas Government Code §2001.039 during which the Board published its Notice of Intent to Review Rules and Schedule. This review revealed that the original reasons for the adoption of all rules still exist and that all rules are necessary for the Board's performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The Board received four comments regarding the review and re-adoption of Chapter 133. The comments related to the rules regarding licensing requirements for education and experience standards. Those

comments were responded to individually and were outside the scope of this rule review.

Chapter 133 is re-adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This concludes the review of Chapter 133, Licensing.

TRD-201602726
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: May 31, 2016

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The Texas Board of Professional Engineers (Board) re-adopts existing rules in 22 Texas Administrative Code Chapter 135, Firm Registration. The proposed rule review was published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1723).

The rules are re-adopted pursuant to and following the Board's Quadrennial Rule Review required by the Texas Government Code §2001.039 during which the Board published its Notice of Intent to Review Rules and Schedule. This review revealed that the original reasons for the adoption of all rules still exist and that all rules are necessary for the Board's performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The Board did not receive any comments on the re-adoption of Chapter 135.

Chapter 135 is re-adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This concludes the review of Chapter 135, Firm Registration.

TRD-201602727
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: May 31, 2016

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The Texas Board of Professional Engineers (Board) re-adopts existing rules in 22 Texas Administrative Code Chapter 137, Compliance and Professionalism. The proposed rule review was published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1724).

The rules are re-adopted pursuant to and following the Board's Quadrennial Rule Review required by the Texas Government Code §2001.039 during which the Board published its Notice of Intent to Review Rules and Schedule. This review revealed that the original reasons for the adoption of all rules still exist and that all rules are necessary for the Board's performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The Board did not receive any comments on the re-adoption of Chapter 137.

Chapter 137 is re-adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This concludes the review of Chapter 137, Compliance and Professionalism.

TRD-201602728
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: May 31, 2016

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The Texas Board of Professional Engineers (Board) re-adopts existing rules in 22 Texas Administrative Code Chapter 139, Enforcement. The proposed rule review was published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1724).

The rules are re-adopted pursuant to and following the Board's Quadrennial Rule Review required by the Texas Government Code §2001.039 during which the Board published its Notice of Intent to Review Rules and Schedule. This review revealed that the original reasons for the adoption of all rules still exist and that all rules are necessary for the Board's performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The Board did not receive any comments on the re-adoption of Chapter 139.

Chapter 139 is re-adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This concludes the review of Chapter 139, Enforcement.

TRD-201602729
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: May 31, 2016

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State Securities Board

Title 7, Part 7

Chapter 115 - Securities Dealers and Agents

Chapter 116 - Investment Advisers and Investment Adviser Representatives

Pursuant to the notice of proposed rule review published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2508), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 115, Securities Dealers and Agents, and Chapter 116, Investment Advisers and Investment Adviser Representatives.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Texas Government Code.

No comments were received regarding the readoption of Chapters 115 and 116.

This concludes the review of 7 TAC Chapters 115 and 116.

TRD-201602654

John Morgan
Securities Commissioner
State Securities Board
Filed: May 25, 2016

Caitlin Wong - Second Grade

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §41.8(a)(3)(C)

QUARANTINE SCHEDULE FOR INFESTED AND EXPOSED PREMISES

North of Highway 90

Date of Pasture Vacation or Systematic Treatment		Date of Pasture Release	
August	16 - 31	June	16 - 30
September	1 - 30	July	1 - 31
October	1 - 31	August	1 - 31
November	1 - 30	September	1 - 30
December	1 - 31	September	30
January	1 - 31	September	30
February	1 - 28	September	30
March	1 - 31	September	30
April	1 - 30	October	1 - 31
May	1 - 31	November	1 - 31
June	1 - 15	December	1 - 15

June 16 - **August** 15

	June															
V	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
R	16	19	22	25	28	31	3	6	9	12	15	18	21	24	27	
	December						**January**									
	July															
V	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
R	30	2	5	8	11	14	17	20	23	26	1	4	7	10	13	
	Jan February										**March**					
	July															
V	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
R	17	20	23	26	29	1	4	7	10	13	16	19	22	25	28	1
	March					**April**										**May**
	August															
V	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
R	4	7	10	13	16	10	22	25	28	31	3	6	9	12	15	
	May										**June**					

V - Date Vacated R - Date Released

Fever tick eradication activity must be started within two weeks from the time fever tick infestation or exposure is found and reported to the owner or his agent, unless otherwise prescribed by the Texas Animal Health Commission.

Date of Systematic Treatment is first treatment of all livestock with no cattle fever ticks found on scratch inspection.

QUARANTINE SCHEDULE FOR INFESTED AND EXPOSED PREMISES

South of Highway 90

Date of Pasture Vacation or Systematic Treatment		Date of Pasture Release	
August	1 - 31	May	1 - 31
September	1 - 30	June	1 - 30
October	1 - 31	July	1 - 31
November	1 - 30	August	1 - 31
December	1 - 31	September	1 - 30
January	1 - 31	September	30
February	1 - 28	September	30
March	1 - 31	September	30
April	1 - 30	October	1 - 31
May	1 - 31	November	1 - 31
June	1 - 15	December	1 - 15

June 16 - **July** 31

	June														
V	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
R	16	19	22	25	28	31	3	6	9	12	15	18	21	24	27
	December						**January**								

	July														
V	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
R	30	2	5	8	11	14	17	20	23	26	1	4	7	10	13
	Jan	**February**									**March**				

	July															
V	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
R	17	20	23	26	29	1	4	7	10	13	16	19	22	25	28	1
	March					**April**										**May**

V - Date Vacated R - Date Released

This eradication activity must be started within two weeks from the time tick infestation or exposure is found and reported to the owner or his agent, unless otherwise prescribed by the Texas Animal Health Commission.

Date of Systematic Treatment is first treatment of all livestock with no cattle fever ticks found on scratch inspection.

Figure: 16 TAC §31.4(b)(4)

HEALTH RISK WARNING SIGN

- **Drinking any type of alcohol while pregnant can hurt your baby's brain, heart, kidneys, and other organs and can cause birth defects.**
- **The safest choice is not to drink at all when you are pregnant or trying to become pregnant.**
- **If you might be pregnant, think before you drink.**

AVISO SOBRE RIESGOS DE SALUD

- **Beber cualquier tipo de alcohol cuando está embarazada puede hacerles daño al cerebro, al corazón, a los riñones y a otros órganos de su bebé y puede causar defectos de nacimiento.**
- **Lo más seguro es no beber nada de alcohol cuando está intentando quedar embarazada o ya lo está.**
- **Si es posible que esté embarazada, piénselo antes de beber.**

Figure: 22 TAC §577.15

(a) APPLICATION FOR INITIAL LICENSE

Type of License Application	Total Fee
Veterinary Regular License	$515
Veterinary Special License	$575
Veterinary Provisional License	$600
Veterinary Temporary License	$200
Equine Dental Provider License	$100
Veterinary Technician License	$50

(b) LICENSE RENEWALS.

(1) Current License Renewals

Type Of License	Board Fees
Veterinary Regular License	$~~159~~ 166.85
Veterinary Special License	$~~174~~ 181.85
Veterinary Inactive License	$105
Equine Dental Provider License	$65
Equine Dental Provider Inactive License	$55
Veterinary Technician Regular License	$35
Veterinary Technician Inactive License	$25

(2) Expired License Renewals – Less Than 90 Days Delinquent

Type Of License	Board Fees
Veterinary Regular License	$~~234~~ 241.85
Veterinary Special License	$~~259~~ 266.85
Veterinary Inactive License	$155
Equine Dental Provider License	$95
Equine Dental Provider Inactive License	$80
Veterinary Technician Regular License	$50
Veterinary Technician Inactive License	$35

(3) Expired License Renewals – Greater Than 90 Days and Less Than 1 Year Delinquent

Type Of License	Board Fees
Veterinary Regular License	$~~309~~ 316.85

Veterinary Special License	~~$344~~ 351.85
Veterinary Inactive License	$205
Equine Dental Provider License	$125
Equine Dental Provider Inactive License	$105
Veterinary Technician Regular License	$65
Veterinary Technician Inactive License	$45

(c) SPECIALIZED LICENSE CATEGORIES

Type Of License	Total Fee
Veterinary Reinstatement	$250
Veterinary Re-Activation	$150
Equine Dental Provider Re-Activation	$25
Veterinary Technician Re-Activation	$25

(d) OTHER FIXED FEES AND CHARGES

(1) Criminal History Evaluation Letter: $32
(2) Returned Check Fee: $25
(3) Duplication of License: $40
(4) Letter of Good Standing: $25
(5) Continuing Education Approval Review Process: $25
(6) Continuing Education Approval Review submitted less than 30 days prior to the continuing education event: $50
(7) Equine Dental Certification approval review process: $1500

Figure: 30 TAC §335.1(146)(D)(iv)

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i)(1)	**Energy Recovery/Fuel S.W. Def. (D)(ii)(2)**	**Reclamation S.W. Def. (D)(iii)(3)[2]**	**Speculative Accumulation S.W. Def. (D)(iv)(4)**
Spent materials (listed hazardous and not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous)[1]	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous)[1]	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous)[1]	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal that is not excluded under subparagraph (A) of this paragraph (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(a)(9) of this title) (nonhazardous)[1]	*	*	*	*

NOTE: The terms "spent materials," "sludges," "by-products," "scrap metal," and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

[1] These materials are governed by the provisions of §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) only.

[2] Except as provided in 40 CFR §261.2(c)(3) and §261.4(a)(17) for mineral processing secondary materials or as provided in 40 CFR §261.4(a)(23), (24), or (27) for hazardous secondary materials.

Figure: 40 TAC §748.863(a)

Who is required to receive the training?	What type of pre-service training?	How many hours of training are required?	When must the training be completed?
(1) All caregivers	General pre-service training	8 hours	Before the person can be the only caregiver responsible for a child in care
(2) Child care administrators, professional level service providers, treatment directors, and case managers	Pre-service training regarding normalcy	2 hours	Before the person can be a designated person that makes decisions regarding a child's participation in childhood activities, or within 90 days of beginning job duties, whichever occurs earlier
(3) Caregivers caring for children receiving only child care services or programmatic services	Pre-service training regarding emergency behavior intervention	8 hours	At least 4 hours of training before the person can be the only caregiver responsible for a child in care, and all 8 hours of training within 90 days of being responsible for a child in care
(4) Caregivers caring for children receiving treatment services, except for those exclusively caring for children receiving treatment services for primary medical needs	Pre-service training regarding emergency behavior intervention	16 hours, however, if your operation prohibits the use of emergency behavior intervention, then only 8 hours of training are needed	At least half of the required hours of training before the person can be the only caregiver responsible for a child in care, and all of the required hours of training within 90 days of being responsible for a child in care
(5) Child care administrators, professional level service providers, treatment directors, and case managers, except those exclusively assigned to children receiving treatment services for primary medical needs	Pre-service training regarding emergency behavior intervention	8 hours	All 8 hours of training within 90 days of beginning job duties

Figure: 40 TAC §748.931(a)

Who is required to receive the annual training?	How many hours of annual training are required?
(1) Caregivers where an operation has less than 25 children in care that are receiving treatment services and less than 30% of their total population of children in care are receiving treatment services	(A) 20 hours. (B) Of the 20 hours, the training must include: (i) Two hours of training specific to trauma informed care; (ii) Two hours of training specific to normalcy; (iii) Four hours of training, every six months, specifically related to the emergency behavior intervention techniques that you allow. The caregiver must have this training within 180 days from the date that the caregiver last received such training; and (iv) Two hours of transportation safety training if the caregiver transports a child in care whose chronological or developmental age is younger than nine years old.
(2) Caregivers where an operation has 25 or more children in care that are receiving treatment services or 30% or more of their total population of children in care are receiving treatment services	(A) 50 hours. (B) Of the 50 hours, the training must include: (i) Two hours of training specific to trauma informed care; (ii) Two hours of training specific to normalcy; and (iii) Four hours of training, every six months, specifically related to the emergency behavior intervention techniques that you allow. The caregiver must have this training within 180 days from the date that the caregiver last received such training; and (iv) Two hours of transportation safety training if the caregiver transports a child in care whose chronological or developmental age is younger than nine years old.
(3) Caregivers in a cottage home	(A) 20 hours. (B) Of the 20 hours, the training must include: (i) Two hours of training specific to trauma informed care; (ii) Two hours of training specific to normalcy; and (iii) Four hours of training specifically related to the emergency behavior intervention techniques that you allow. The caregiver must have this training within 12 months from the date that the caregiver last received such training; and (iv) Two hours of transportation safety training if the caregiver transports a child in care whose chronological or developmental age is younger than nine years old.
(4) Child-care administrators, professional level service providers, treatment directors, and case managers who hold a relevant professional license	(A) 15 hours, (B) Of the 15 hours, the training must include: (i) Two hours of training on normalcy if the person is a designated person that makes

	decisions regarding any child's participation in childhood activities; and (ii) Two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old. (C) Annual training hours used to maintain a person's relevant professional license may be used to complete these hours, as long as they include the necessary components of subsection (B) or those components are completed separately. (D) There are no annual training requirements for emergency behavior intervention. However, if there is a substantial change in techniques, types of intervention, or operation policies regarding emergency behavior intervention, then the staff must be re-trained in emergency behavior intervention.
(5) Professional level service providers, treatment directors, and case managers who do not hold a relevant professional license	(A) 20 hours. (B) Of the 20 hours, the training must include: (i) Two hours of training specific to trauma informed care; (ii) Two hours of training specific to normalcy; and (iii) Two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old. (C) There are no annual training requirements for emergency behavior intervention. However, if there is a substantial change in techniques, types of intervention, or operation policies regarding emergency behavior intervention, then the staff must be re-trained in emergency behavior intervention.

Figure: 40 TAC §749.503(a)

Serious Incident	(i)To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Within 2 hours after the child's death.	(B)(i) YES (B)(ii) Within 2 hours after the child's death	(C)(i) YES (C)(ii) Immediately, but no later than 1 hour after the child's death
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (C)(ii) Not Applicable
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES, including whether you plan to move the child until the investigation is complete. (A)(ii) As soon as you become aware of it.	(B)(i) YES, including whether you plan to move the child until the investigation is complete. (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable

Serious Incident	(i)To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
in substantial physical injury to the child.			
(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable
(6) A child is indicted, charged, or arrested for a crime, not including being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained; or when law enforcement responds to an alleged incident at the foster home.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable
(7) A child developmentally or chronologically under 6 years old is absent from a foster home and cannot be located, including the removal of a child by an unauthorized person.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES (C)(ii) Immediately upon determining the child is not on the premises and the child is

Serious Incident	(i)To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
			still missing.
(8) A child developmentally or chronologically 6 to 12 years old is absent from a foster home and cannot be located, including the removal of a child by an unauthorized person.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.
(9) A child 13 years old or older is absent from a foster home and cannot be located, including the removal of a child by an unauthorized person.	(A)(i) YES (A)(ii) No later than 2 hours from when the child's absence is discovered and the child is still missing.	(B)(i) YES (B)(ii) No later than 2 hours from when the child's absence is discovered and the child is still missing.	(C)(i) YES (C)(ii) No later than 2 hours from when the child's absence is discovered and the child is still missing.
(10) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(i) NO (C)(ii) Not applicable
(11) A suicide attempt by a child.	(A)(i) YES (A)(ii) As soon as you become aware of the incident.	(B)(i) YES (B)(ii) As soon as you become aware of the incident.	C)(i) NO (C)(ii) Not applicable

Figure: 40 TAC §749.503(d)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of your agency or a foster home unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires a foster home to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(4) An allegation that a person under the auspices of your agency who directly cares for or has access to a child in the setting has abused drugs within the past seven days.	(A)(i) YES (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO (B)(ii) Not applicable.
(5) An investigation of abuse or neglect by any other entity (other than Licensing) of an employee, professional level service provider, foster parent, contract staff, volunteer, or other adult at the agency.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become	(B)(i) NO (B)(ii) Not applicable.

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
	aware of the investigation.	
(6) An arrest, indictment, or a county or district attorney accepts an "Information" regarding an official complaint, against an employee, professional level service provider, foster parent, contract staff, volunteer, or other adult at the agency alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?); or when law enforcement responds to an alleged incident at the foster home.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.	(B)(i) NO (B)(ii) Not applicable.

Figure: 40 TAC §749.513

Serious incident	Documentation
(1) Child death, substantial physical injury, or a suicide attempt reportable under §749.503(a)(1), (2), and (11) of this title (relating to When must I report and document a serious incident?).	Any emergency behavior intervention implemented on the child within 48 hours prior to the serious incident.
(2) Any substantial physical injury reportable under §749.503(a)(2) of this title that resulted from a short personal restraint.	Documentation of the short personal restraint, including the precipitating circumstances and specific behaviors that led to the emergency behavior intervention.
(3) Child absent without permission.	(A) Any efforts made to locate the child; (B) The date and time you notified the parent(s) and the appropriate law enforcement agency and the names of the persons with whom you spoke regarding the child's absence and subsequent location or return to the foster home; and (C) If the parent cannot be located, dates and times of all efforts made to notify the parent regarding the child's absence and subsequent location or return to the foster home.
(4) Any physical or sexual abuse committed by a child against another child reportable under §749.503(a)(4) or (5) of this title.	The difference in size, age, and developmental level of the children involved in the physical or sexual abuse.

Figure: 40 TAC §749.673

Options for qualifications:	Educational qualifications:	Professional qualifications:
Option 1	(1) A master's degree from an accredited college or university; or (2) A bachelor's degree from an accredited college or university in social work or other human services field.	(A) One year of documented full-time work experience in a child-placing agency, in a residential child-care operation, or as a conservatorship caseworker or foster adoptive home development worker for the department. The experience must be in conducting assessments, service planning, or case management duties. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities; or (B) One year working under the direct supervision of child placement management staff. The direct supervision with the child placement management staff must consist of 10 documented, monthly, face-to-face, individual, case-related conferences over the year. The direct supervision must continue until the employee's previous experience and directly supervised experience totals one year.
Option 2	(4) A bachelor's degree from an accredited college or university.	(A) Two years of documented full-time work experience in a child-placing agency, in a residential child-care operation, or as a conservatorship caseworker or foster adoptive home development worker for the department. The experience must be in conducting assessments, service planning, or case management duties. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities; or (B) Two years of working under the direct supervision of child placement management staff. The direct supervision with the child placement management staff must consist of 10 documented, monthly, face-to-face, individual, case-related conferences over each annual period. The direct supervision must continue until the employee's previous experience and directly supervised experience totals two years.

Figure: 40 TAC §749.675

Options for qualifications:	A license in social work or another human services field:	Educational qualifications:	Professional qualifications. Any field placement or practicum experience may not be counted:
Option 1	Yes	(A) A master's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	One year of documented full-time experience in a child-placing agency, in a residential child-care operation, or as a conservatorship caseworker or foster adoptive home development worker for the department. The experience must be in conducting assessments, service planning, or case management duties.
Option 2	No	(1) (A) A master's degree from an accredited college or university; and (B) Nine credit hours in undergraduate or graduate level courses that focus on family and individual function and interaction; or (2) (A) A bachelor's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in undergraduate or graduate level courses that focus on family and individual function and interaction.	Two years of documented full-time experience in a child-placing agency, in a residential child-care operation, or as a conservatorship caseworker or foster adoptive home development worker for the department. The experience must be in conducting assessments, service planning, or case management duties.
Option 3	No	(A) A bachelor's degree from an accredited college or university; and (B) Nine credit hours in undergraduate or graduate level courses that focus on family and individual function and interaction.	Three years of documented full-time experience in a child-placing agency, in a residential child-care operation, or as a conservatorship caseworker or foster adoptive home development worker for the department. The experience must be in conducting assessments, service planning, or case management duties.

Figure: 40 TAC §749.863(a)

Who is required to receive the training?	What type of pre-service training?	How many hours of training are required?	When must the training be completed?
(1) All caregivers	General pre-service training	8 hours	Before this person can be the only caregiver responsible for a child in care
(2) Foster parents	Pre-service training regarding normalcy	2 hours	Before this foster parent can be responsible for a child in care
(3) Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services	Pre-service training regarding normalcy	2 hours	Before the person can be a designated person that makes decisions regarding a child's participation in childhood activities, and within 90 days of beginning job duties
(4) Caregivers caring for children receiving only child care services or programmatic services	Pre-service training regarding emergency behavior intervention	8 hours	At least 4 hours of training before the person can be the only caregiver responsible for a child in care, and all 8 hours of training within 90 days of being responsible for a child in care
(5) Caregivers caring for children receiving treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder	Pre-service training regarding emergency behavior intervention	16 hours, however, if your agency prohibits the use of emergency behavior intervention, then only 8 hours of training are needed	At least half of the required hours of training before the person can be the only caregiver responsible for a child in care, and all of the required hours of training within 90 days of being responsible for a child in care
(6) Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services, or those exclusively assigned to children receiving treatment services for primary medical needs	Pre-service training regarding emergency behavior intervention	8 hours	All 8 hours of training within 90 days of beginning job duties

Figure: 40 TAC §749.931(a)

Who is required to receive the annual training?	How many hours of annual training are required?
(1) Caregivers caring for children receiving only child-care services, programmatic services, and/or treatment services for primary medical needs	(A) For homes with two foster parents, the foster parents must receive a total of 20 hours. Of the 20 hours, the training must include: (i) Four hours for each foster parent of training specific to the emergency behavior interventions allowed by your agency; (ii) One hour for each foster parent of training specific to trauma informed care; (iii) Two hours for each foster parent of training specific to normalcy; and (iv) The appropriate distribution of the remaining 6 hours, and each foster parent must receive some amount of the remaining training hours. (B) For all other caregivers, including a foster parent in a one-parent foster home, 20 hours. Of the 20 hours, the training must include: (i) Four hours of training specific to the emergency behavior interventions allowed by your agency; (ii) Two hours of training specific to trauma informed care; and (iii) Two hours of training specific to normalcy. (C) For foster group homes only, each person's annual required training hours must also include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old. (D) Caregivers exclusively caring for children receiving treatment services for primary medical needs are exempt from emergency behavior intervention training requirements.
(2) Caregivers caring for children receiving treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorders	(A) For homes with two foster parents, the foster parents must receive a total of 50 hours. Of the 50 hours, the training must include: (i) Eight hours for each foster parent of training specific to the emergency behavior interventions allowed by your agency; (ii) Two hours for each foster parent of training specific to trauma informed care; (iii) Two hours for each foster parent of training specific to normalcy; and (iv) The appropriate distribution of the remaining 26 hours, and each foster parent must receive some amount of the remaining training hours. (B) For all other caregivers, including a foster parent in a one-parent foster home, 30 hours. Of the 30 hours, the training must include: (i) Eight hours of training specific to the emergency behavior interventions allowed by your agency; (ii) Two hours of training specific to trauma informed care; and (iii) Two hours of training specific to normalcy. (C) For foster group homes only, each person's annual required training hours must also include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.
(3) Child placement staff with less than one year of child-placing experience	(A) 30 hours. Of the 30 hours, the training must include: (i) One hour of training on prevention, recognition, and reporting on child abuse and neglect; (ii) Two hours of training specific to trauma informed care; (iii) Two hours of training specific to normalcy; and (iv) Two hours of transportation safety training if the person

	transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. (B) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(4) Child placement staff with at least one year of child-placing experience and all child placement management staff, except those exclusively assigned to provide adoption services	(A) 20 hours. Of the 20 hours, the training must include: (i) One hour of training on prevention, recognition, and reporting on child abuse and neglect; (ii) Two hours of training specific to trauma informed care; (iii) Two hours of training specific to normalcy; and (iv) Two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. (B)There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(5) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who hold a relevant professional license	(A) 15 hours. Of the 15 hours, the training must include: (i) One hour of training on prevention, recognition, and reporting on child abuse and neglect. This requirement does not apply to executive directors; and (ii) Two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. (B) Annual training hours used to maintain a person's relevant professional license may be used to complete these hours, as long as they include the necessary components of subsection (A) or those components are completed separately. (C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(6) Executive directors, treatment directors, and full-time professional service providers who do not hold a relevant professional license	(A) 20 hours. Of the 20 hours, the training must include: (i) One hour of training on prevention, recognition, and reporting on child abuse and neglect. This requirement does not apply to executive directors; (ii) Two hours of training specific to trauma informed care; (iii) Two hours of training specific to normalcy; and (iv) Two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. (B) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.

Figure: 40 TAC §749.1135

If:	Then:
(1) You intend to provide treatment services for a child with an emotional disorder or autism spectrum disorder	(A) The admission assessment must include a written, dated, and signed: (i) Psychiatric evaluation or psychological evaluation, including the child's diagnosis; or (ii) Psychosocial assessment as defined in §749.43 of this title (relating to What do certain words and terms mean in this chapter?). (B) A psychiatric evaluation, psychological evaluation, or psychosocial assessment must have been completed within: (i) 14 months of the date of admission, if the child is coming from another regulated placement; or (ii) Six months of the date of admission, if the child is not coming from another regulated placement. (C) The admission assessment must include the reason(s) for choosing treatment services for the child. (D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.
(2) You intend to provide treatment services for a child with an intellectual disability	(A) The admission assessment must include a written, dated, and signed: (i) Psychological evaluation with psychometric testing, including the child's diagnosis; or (ii) Psychosocial assessment as defined in §749.43 of this title. (B) A psychological evaluation or psychosocial assessment must be completed within 14 months of the date of admission. (C) A psychological evaluation must: (i) Be performed by a licensed psychologist who has experience with intellectual disabilities or published scales; (ii) Include the use of standardized tests to determine the intellectual functioning of a child. The test results must be documented in the evaluation; (iii) Determine and document the child's level of adaptive functioning; and (iv) Indicate manifestations of an intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5). (D) The admission assessment must include the reason(s) for choosing treatment services for the child. (E) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.
(3) You intend to provide treatment services for a child with primary medical needs	(A) The admission assessment must have a licensed physician's signed, written orders as the basis for the child's admission. There must also be an evaluation from the physician, a nurse practitioner, or a physician's assistant that confirms that the child can be cared for appropriately in a foster home setting. (B) There must be a documented evaluation from a health care professional that the foster parents have

If:	Then:
	been trained to meet the needs of the child and demonstrated competency. (C) The written orders and/or hospital discharge must include orders for: (i) Medications; (ii) Treatments; (iii) Diet; (iv) Range-of-motion program at stated intervals; (v) Habilitation, as appropriate; and (vi) Any special medical or developmental procedures. (D) The admission assessment must include the reason(s) for choosing treatment services for the child. (E)(D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.
(4) The child's behavior and/or history within the last two months indicates that the child is an immediate danger to self or others	(A) The admission assessment must include a written, dated, and signed: (i) Psychiatric evaluation or psychological evaluation, including the child's diagnosis; or (ii) Psychosocial assessment as defined in §749.43 of this title. (B) A psychiatric evaluation or psychological evaluation must include: (i) The child's diagnosis, if applicable; (ii) An assessment of the child's needs and potential danger to self or others; and (iii) Recommendations for care, treatment, and further evaluation. If the child is admitted, the recommendations must become part of the child's service plan and must be implemented. (C) A psychiatric evaluation, psychological evaluation, or psychosocial assessment must have been completed within: (i) 14 months of the date of admission, if the child is coming from another regulated placement; or (ii) Six months of the date of admission, if the child is not coming from another regulated placement.

Figure: 40 TAC §749.1309(b)

Type of Service	Items that must be included:
(1) Child-care services	(A) The child's needs identified in the admission assessment, in addition to basic needs related to day-to-day care and development, including: (i) Medical needs, including scheduled medical exams and plans for recommended follow-up treatment; (ii) Dental needs, including scheduled dental exams and plans for recommended follow-up treatment; (iii) Intellectual functioning, including any testing and plans for recommended follow-up; (iv) Developmental functioning, including any developmental delays and plans to improve or remediate developmental functioning; (v) Educational needs and how those needs will be met, including planning for high school completion and post-secondary education and training, if appropriate, and any school evaluations or recommendations; (vi) Plans for normalcy, including: (I) Social, extracurricular, recreation, and leisure activities; and (II) Integrating the child into the community and community activities, as appropriate; (vii) Therapeutic needs, including plans for psychiatric evaluation, psychological evaluation, psychosocial assessment or follow-up treatment, testing, and the use of psychotropic medications; and (viii) Cultural identity needs, including assisting children in connecting with their culture in the community; (B) Plans for maintaining and improving the child's relationship with family members, including recommendations for visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family; (C) Recent information from the current caregiver's evaluation of the child's behavior and level of functioning; (D) Specific goals and strategies to meet the child's needs, including instructions to caregivers responsible for the care of the child. Instructions must include specific information about: (i) The child's personal trauma history; (ii) Level of supervision required; (iii) The child's trauma triggers; (iv) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment; (v) Discipline techniques; (vi) Behavior intervention techniques; (vii) Plans for trips and visits away from the foster home; and (viii) Any actions the caregivers must take or conditions the caregivers must be aware of to meet the child's special needs, such as medications, medical care, dietary needs, therapeutic care, how to communicate with the child, and reward systems; (E) If the child is 13 years old or older, a plan for educating the child in the following areas: (i) Healthy interpersonal relationships; (ii) Healthy boundaries; (iii) Pro-social communication skills; (iv) Sexually transmitted diseases; and (v) Human reproduction; (F) If the child is 14 years old or older, plans for the caregivers to

Type of Service	Items that must be included:
	assist the child in obtaining experiential life-skills training to improve the child's transition to independent living. Plans must: (i) Be tailored to the child's skills and abilities; and (ii) Include training in practical activities that include, but are not limited to, grocery shopping, meal preparation, cooking, using public transportation, performing basic household tasks, and money management, including balancing a checkbook; (G) For children 16 years old and older, preparation for independent living, including employment opportunities, if appropriate; (H) For children who exhibit high-risk behaviors: (i) Plans to minimize the risk of harm to the child or others, such as special instructions for caregivers, sleeping arrangements, or bathroom arrangements; and (ii) A specific safety contract developed between the child and staff that addresses how the child's safety needs will be maintained; (I) Expected outcomes of placement for the child and estimated length of stay in care; (J) Plans for discharge; (K) The names and roles of persons who participated in the development of the child's service plan; (L) The date the service plan was developed and completed; (M) The effective date of the service plan; and (N) The signatures of the service planning team members that were involved in the development of the service plan.
(2) Treatment services	For children receiving treatment services, the plan must address all of the child's waking hours and include: (A) The child-care services planning requirements noted in paragraph (1) of this subsection; (B) A description of the emotional, behavioral, and physical conditions that require treatment services; (C) A description of the emotional, behavioral, and physical conditions the child must achieve and maintain to function in a less restrictive setting, including any special treatment program and/or other services and activities that are planned to help the child achieve and to function in a less restrictive setting; and (D) A list of emotional, physical, and social needs that require specific professional expertise, and plans to obtain the appropriate professional consultation and treatment for those needs. Any specialized testing, recommendations, and/or treatment must be documented in the child's record.
(3) Treatment services for children with an intellectual disability	(A) The child-care and treatment services planning requirements noted in paragraphs (1) and (2) of this subsection; (B) A minimum of one hour per day of visual, auditory and tactile stimulation to enhance the child's physical, neurological, and emotional development; (C) An educational or training plan encouraging normalization appropriate to the child's functioning; and (D) Career planning for older adolescents who are not receiving treatment services for a severe or profound intellectual disability.
(4) Transitional living program	(A) Child-care service planning requirements noted in paragraph (1) of this subsection; (B) Plans for encouraging the child to participate in community life and to form interpersonal relationships/friendships outside the transitional living program, such as extra-curricular recreational activities; (C) Plans for education related to meal planning, meal preparation,

Type of Service	Items that must be included:
	grocery shopping, public transportation, searching for an apartment, and obtaining utility services; (D) Career planning, including assisting the child in enrolling in an educational or vocational job training program; (E) Money management and assisting the child in establishing a personal bank account; (F) Assisting the child with how to access resources, such as medical and dental care, counseling, mental health care, an attorney, the police, and other emergency assistance; (G) Assisting the child in obtaining the child's social security number, birth certificate, and a driver's license or a Department of Public Safety identification card, as needed; and (H) Problem-solving, such as assessing personal strengths and needs, stress management, reviewing options, assessing consequences for actions taken and possible short-term and long-term results, and establishing goals and planning for the future.

Figure: 40 TAC §749.1317

Type of Treatment Service	The roles of professional service providers in service planning include:
(1) Emotional disorder and autism spectrum disorder	(A) Reviewing the child's diagnoses; (B) Reviewing the identified needs and the plan for treatment based on the child's diagnoses; (C) Reviewing the techniques, strategies, and therapeutic interventions that are planned for the child to improve adaptive functioning; and (D) Reviewing any medications prescribed for a child with special review of psychotropic medications; the presence or absence of medication side effects, including the effects of the medications on the child's behavior; laboratory findings; and any reason the child should not use a medication.
(2) Intellectual disability	(A) Assessing the child's educational needs and progress toward meeting those needs; (B) Ensuring coordination between educators, caregivers, agency employees, and other professionals involved in the child's treatment; and (C) Providing information to the education system on the strategies and techniques used with the child in the agency.
(3) Primary medical needs	(A) Reviewing any medications prescribed for a child; (B) Recommending any special equipment needed by a child; and (C) Reviewing special instructions and training to caregivers for the daily care of the child.

Figure: 40 TAC §749.1331

Type of Service	Review and Update
(1) Child-care services	At least 180 days from the date of the child's last service plan.
(2) Treatment services for emotional disorder, autism spectrum disorder, or primary medical needs	At least 90 days from the date of the child's last service plan.
(3) Treatment services for intellectual disabilities mental retardation	In the first year of care, the plan must be reviewed at least every 180 days from the date of the child's last service plan. Thereafter, the plan must be reviewed at least annually from the date of the child's last service plan review.

Figure: 40 TAC §749.1921(d)

Types of service	The caregivers must:
(1) Child-care services	(A) Ensure that opportunities to participate in community activities, such as school sports or other extracurricular school activities, religious activities, or local social events, are available to the child; and (B) Organize family activities, religious activities, or local social events that are available to the child.
(2) Treatment services	(A) Meet the requirements in paragraph (1)(A) of this chart; (B) Ensure that each child receiving treatment services has an individualized recreation plan designed by the service planning team or professionals who are qualified to address the child's individual needs, that the plan is implemented, and that the plan is revised by the service planning team or qualified professionals, as needed; and (C) Ensure that medical and physical support are given if the recreational and leisure-time activities require it for a child who is receiving treatment services for primary medical needs, autism spectrum disorder, or intellectual disability.

Figure: 40 TAC §749.2447

Required Information	Description of Discussion, Assessment and Documentation Requirements
(1) The age of the prospective foster parents. Ages of all other members of the household.	All prospective foster parents must be at least 21 years old. You must document the ages of all household members and include documentation verifying the ages of the foster parents.
(2) The educational level of the prospective foster parents.	You must ensure and document that each foster parent is able to comprehend and benefit from training and provide appropriate care and supervision to meet the needs of children in care, in areas such as health, education, and discipline/behavior management, by doing either or both of the following: (A) Require that foster parents have a high school diploma or a G.E.D. high school equivalency. The Texas Education Agency (TEA) or another public education entity outside of Texas must recognize the high school program or high school equivalent program; or (B) Have a screening program that: (i) Ensures that each foster parent is able to be an appropriate role model for children in placement; (ii) Ensures that each foster parent is able to communicate with the child in the child's own language, or has other means to communicate with the child in the child's own language; and (iii) Addresses adequately basic competencies that would otherwise be met by a high school diploma or G.E.D. including basic reading, writing, and math.
(3) Personal characteristics.	You must document information from foster parents that demonstrate: (A) Emotional stability, good character, good health, and adult responsibility; and (B) The ability to provide nurturing care, appropriate supervision, reasonable discipline, and a home-like atmosphere for children.
(4) History of current and previous interpersonal relationships, including marriages, common-law marriages, and other relationships between people who share or have shared a domestic life without being married.	You must document information regarding the marital status of the foster parents, including the present marital status, as well as a history of previous marriages or significant interpersonal relationships. You must include a description of the marriage or relationship, including reasons why any previous marriages or significant interpersonal relationships were ended.
(5) A history of the prospective foster parents' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the prospective foster parents.
(6) The financial status of the prospective foster family.	(A) You must discuss with the prospective foster parents the current reimbursement process, if applicable, and the foster parents' understanding of that process. (B) You must verify and document that the prospective foster parents have sufficient up-front income or other readily available assets to support their household and all children in care prior to receiving the foster care reimbursement for services provided. For each prospective foster parent you must obtain, document and assess the following: (i) Proof of income for the past 60 days or two complete calendar months. Disability, social security, and/or other sources of income such as family support, Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) must be included, as applicable; (ii) A copy of two consecutive itemized bank statements and/or the previous year's tax return. The bank statements must be related to the previous two

Required Information	Description of Discussion, Assessment and Documentation Requirements
	calendar months prior to the date of application. If a foster family does not have two consecutive itemized bank statements or a previous year's tax return, then you must copy and document the evidence used to verify the financial status of the prospective foster family, including documenting the information used to verify the itemized monthly household expenses; and (iii) A monthly household expense report itemizing the following expenses: (I) Mortgage/Rent; (III) Utilities; (IV) Transportation; (IV) Food; (V) Medical; (VI) Clothing; (VII) Insurance; (VIII) Credit cards and loans; (IX) Legal (i.e. attorney fees, alimony and/or child support); (X) Pet; and (XI) Entertainment/miscellaneous.
(7) The results of criminal history and central registry background checks conducted on the prospective foster parents and any non-client person 14 years of age or older who regularly or frequently stays or is present in the home.	(A) Persons applying to foster children and any person, excluding clients, 14 years of age or older who will regularly or frequently be staying or present at the home, must obtain a criminal history and central registry background check. See Chapter 745, Subchapter F of this title (relating to Background Checks). The specific results of those checks must be documented and assessed in the foster home screening and the foster home record. Any assessments of other parts of a home screening must include and assess relevant background check result information. For example, the paragraphs (3) and (6) regarding a foster family's personal characteristics and financial status should consider and assess a misdemeanor theft by check, even though this crime is not a bar to becoming a foster parent. (B) With respect to law enforcement service call information, you must do the following: (i) Obtain service call information from the appropriate law enforcement agency for each of the prospective foster parents' addresses over the past two years. Discuss with the prospective foster parents any service call information that you obtain from a law enforcement agency and the facts surrounding the incident. (ii) Whether results were found or not, ask the prospective foster parents whether any law enforcement agency has responded to any of their residences in the past two years. If you obtain additional information from the prospective foster parents, request background information from each law enforcement agency that responded. Discuss the incident and any additional background information that you obtain with the prospective foster parents. (iii) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.
(8) The prospective foster parents' motivation to provide foster care.	Assess and document the prospective foster parents' motivation and willingness to provide foster care.
(9) Health status of all persons living in the home.	Document information about the physical and mental health status (including substance abuse history) of all persons living in the home in relation to the family's ability to provide foster care. You must discuss whether any health-related issues noted may affect the prospective foster parent's ability to care for a child in care. You must also observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations and, if applicable, professional evaluations.

Required Information	Description of Discussion, Assessment and Documentation Requirements
(10) The quality of the current interpersonal relationship, including marriage, common-law marriage, or a relationship between people who share a domestic life without being married, and family relationships.	Discuss, assess, and document the quality of the current and previous interpersonal and family relationships in relation to the family's ability to provide foster care. You must discuss and assess the stability of a couple's current and previous relationships, the strengths and problems of the relationship, and how those issues will affect the current environment and the prospective foster parents' ability to care for any foster children placed in the home. You must discuss and assess the quality of the relationships between prospective foster parents and their children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to foster children placed in the home.
(11) The prospective foster parents' feelings about their childhoods and parents.	Discuss, assess, and document the prospective foster parents' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of those experiences.
(12) The prospective foster parents' attitudes about a foster child's or his biological family's religion.	Evaluate and document prospective foster parents on: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child the opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if a foster parent's religious beliefs prohibit certain medical treatment.
(13) The prospective foster parents' values, feelings, and practices in regard to child care and discipline.	Discuss, assess, and document the applicants' knowledge of child development and their child-care experience. Discuss and assess the ways the applicants were disciplined as children and their reactions to the discipline they received. Discuss and assess the prospective foster parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. Discuss your approved disciplinary methods, which must comply with Subchapter K, Division 6 of this chapter (relating to Discipline and Punishment). If the prospective foster parents' current discipline methods are different than those that you approve, discuss and assess how they would change their child-care practices to conform to your approved methods.
(14) The prospective foster parents' sensitivity to and feelings about children who may have been subjected to abuse or neglect.	Discuss, assess, and document the prospective foster parents' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences will affect them, their families, and foster children in their care. Discuss and assess the prospective foster parent's ability to help children who have been abused or neglected. If a prospective foster parent experienced abuse or neglect as a child, assess his handling of those experiences and the impact of those experiences on the applicant's ability to help children deal with their own experiences. Assess the availability of family and community resources to meet the needs of the children in the family's care.
(15) The prospective foster parents' sensitivity to and feelings about children's experiences of separation from or loss of their biological families.	Discuss, assess, and document the prospective foster parents' understanding of the dynamics of separation and loss and the effects of these experiences on children. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the potential foster parents' acceptance of the process of grief and loss for children and assess their ability to help a child through the grieving process.
(16) The prospective foster parents' sensitivity to, and feelings about, a child's biological family.	Discuss, assess, and document the prospective foster parents' feelings about the child's parents, including the issue of abuse or neglect of the child by the child's parents or other family members. Discuss and assess their sensitivity and reactions to the child's parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about the child's parents and assess their ability to help the child deal with those feelings. Discuss and assess the prospective foster parents' sensitivity to and acceptance of the child's relationships with the child's siblings. Discuss and assess their willingness to support the child's relationships with parents, siblings, and extended family, including their support

Required Information	Description of Discussion, Assessment and Documentation Requirements
	for contacts between the child and the child's family.
(17) The attitude of other household members about the prospective foster parents' plan to provide foster care.	Discuss, assess, and document the attitudes of other household members toward the plan to provide foster care. Discuss and assess their involvement in the care of foster children, their attitudes toward foster children, and their acceptance of the verification as a foster family.
(18) The attitude of the prospective foster parents' extended family regarding foster care.	Discuss, assess, and document the extended family's attitude toward foster care and foster children and the involvement the extended family will have with foster children. Discuss and assess the impact the extended family's attitudes will have on the family's ability to provide foster care and whether the extended family will serve as a support system for the foster family and for foster children.
(19) Support systems available to prospective foster parents.	Discuss, assess, and document the support systems available to each foster parent and the support the family may receive from these resources. You must ask each prospective foster parent for information about any person who may provide support as a caregiver during an unexpected event or crisis situation, such as an illness or disability of a foster parent, loss of transportation, or the death of an immediate family member. Verify and document identifying information and availability of each person that will provide support as a caregiver. Any of these persons will need a fingerprint-based criminal history check before acting as a caregiver. Unless the person will be a caregiver immediately after you verify the home, the background check on the person does not have to be completed before you verify the home.
(20) The prospective foster parents' expectations of and plans for foster children.	Discuss, assess, and document the prospective foster parents' expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Discuss and assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.
(21) The language(s) spoken by the prospective foster parents.	Document the language(s) spoken by each prospective foster parent.
(22) Prospective foster parent's ability to work with specific kinds of behaviors and backgrounds.	(A) Discuss, assess, and document each prospective foster parent's willingness and ability to work with specific and challenging behaviors of foster children, including such things as backgrounds, special needs and/or disabilities. (B) Discuss, assess, and document the prospective foster parents' understanding of the concepts of trauma informed care and how they would use those concepts in the care, treatment, and management of children placed in their home. (C) Discuss, assess and document the prospective foster parents' willingness and ability to: (i) Care for and work with children of a specific gender; (ii) Care for and work with children of a specific age range; (iii) Care for a specific number of children, including whether or not the children are part of the same sibling group; (iv) Provide respite care services to any additional number of children of a specific gender, within a specific age range, and with special needs that the family will not be providing care for full time; and (v) Provide any additional services Licensing regulates according to §749.61 of this title (relating to What types of Services does Licensing regulate?).
(23) Background information from other child-placing agencies.	(A) Request and assess the following background information (if provided) from any and all child-placing agencies that previously conducted a foster home screening, pre-adoptive home screening, or post placement adoptive report: (i) The screening, report, and related documentation; (ii) Documentation of supervisory visits and evaluations; (iii) Any record of deficiencies and their resolutions; and

Required Information	Description of Discussion, Assessment and Documentation Requirements
	(iv) The most current fire and health inspections. (B) You must address the closure or any identified risk indicators, as applicable, with the prospective foster parents before approval and verification of the home if the background information indicates that: (i) The foster home was previously closed by a child-placing agency; or (ii) There was one or more potential risk indicators that the child placing agency did not adequately address with the foster parents.

Figure: 40 TAC §749.2655

Type of change:	Time for notification:
(1) A change in the location of the foster home.	Before moving.
(2) Any major life changes as defined at §749.2805 of this title (relating to What is a "major life change in the foster family"?).	Before the change occurs, if possible; otherwise, immediately upon discovery.
(3) A change affecting a condition of the verification.	Before the change occurs, if possible; otherwise, immediately upon discovery.

Figure: 40 TAC §749.3137(a)

If the age of the youngest child is...	Swimming Child/Adult Ratio
(1) 0 to 23 months old	1:1
(2) 2 years old	2:1
(3) 3 years old	3:1
(4) 4 years old	4:1
(5) 5 years old or older in a foster family home or foster group home; and either: (A) One child is receiving treatment services for primary medical needs; or (B) Three or more children are receiving treatment services	4:1
(6) 5 years old or older in a foster family home or foster group home, no children are receiving treatment services for primary medical needs, and no more than two children are receiving treatment services	6:1

Aden Jamison
Second Grade

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Juluis L. Brooks;* Cause No. D-1-GN-15-001614; in the 201st Judicial District Court, Travis County, Texas.

Background: This is an enforcement action brought by the State of Texas on behalf of the Texas Commission on Environmental Quality (TCEQ) against Juluis L. Brooks (Brooks), who owns real property located at 1301 East Front Street in Midland, Midland County, Texas (the Site), with four out-of-service underground storage tanks (USTs) located beneath the property. State law and TCEQ rules require the proper and permanent removal of the tanks from service.

Proposed Settlement: The parties propose an Agreed Final Judgment and Permanent Injunction, which, among other things, orders Brooks to hire licensed UST contractors to perform the permanent removal of the tanks from the Site according to TCEQ rules, including the performance of site assessment and release determination, and any necessary remediation. The proposed settlement also provides for an award to the State against Brooks $3,500 in civil penalties, $3,675 in administrative penalties, as well as the State's reasonable attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment and Permanent Injunction should be reviewed. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas, and copies may be obtained in person or by mail for the cost of copying. A copy is also lodged with the Travis County District Court. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Craig J. Pritzlaff, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201602736
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: May 31, 2016

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State Auditor's Office

Request for Proposals for Fiscal Year 2017 Training Courses

The Texas State Auditor's Office (SAO) is seeking instructors to provide training courses for fiscal year 2017. The Request for Proposal and instructions for submitting a proposal can be found via the following link: http://www.sao.texas.gov/training/RFP/default.html.

TRD-201602744
Kelly Linder
Chief of Staff
State Auditor's Office
Filed: June 1, 2016

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/06/16 - 06/12/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/06/16 - 06/12/16 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 06/01/16 - 06/30/16 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 06/01/16 - 06/30/16 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/16 - 09/30/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/16 - 09/30/16 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 07/01/16 - 09/30/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101[1] for the period of 07/01/16 - 09/30/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 07/01/16 - 09/30/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 07/01/16 - 09/30/16 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 07/01/16 - 09/30/16 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/16 - 06/30/16 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/16 - 06/30/16 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

[4] Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201602745
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 1, 2016

♦ ♦ ♦

Court of Criminal Appeals

Availability of Grant Funds

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects for prosecutors, prosecutor office personnel, criminal defense attorneys who regularly represent indigent defendants in criminal matters, clerks, judges, and other court personnel of the appellate courts, district courts, county courts at law, county courts, justice courts and municipal courts of this State, or other persons as provided by statute.

The Court of Criminal Appeals also announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects on actual innocence for law enforcement officers, law students, criminal defense attorneys, prosecuting attorneys, judges, or other persons as provided by statute.

Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Act. The grant period is September 1, 2016 through August 31, 2017. The deadline for applications is July 1, 2016. Applicants may request an application packet by contacting the Judicial Education Section of the Texas Court of Criminal Appeals: 201 West 14th Street, Suite 103, Austin, Texas 78701, (512) 475-2312, judicialeducation@txcourts.gov.

TRD-201602651
Abel Acosta
Clerk of the Court
Court of Criminal Appeals
Filed: May 25, 2016

♦ ♦ ♦

Deep East Texas Council of Governments

Request for Proposals - Regional Coordination Transportation Plan

The Deep East Texas Council of Governments (DETCOG) announces the issuance of a Request for Proposals (RFP) #0527.0788. DETCOG seeks a consultant to assist in its two-year rural transit planning process. The rural transit plan will include the counties of Angelina, Houston, Jasper, Nacogdoches, Newton, Polk Sabine, San Augustine, San Jacinto, Shelby, Trinity and Tyler.

The deadline for proposals is Monday, June 20, 2016, at 2 p.m. The award date is June 23, 2016. DETCOG reserves the right to accept or reject any or all proposals submitted. DETCOG is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits DETCOG to pay for any costs incurred prior to the award of a contract.

Parties interested in submitting a proposal may obtain information by contacting the Regional Planner, Bob Bashaw at (409) 394-704 ext. 5302 or "bob.bashaw@detcog.org". A copy of the RFP may be downloaded from the "www.DETCOG.org" website.

TRD-201602722
Rusty Phillips
Assistant Executive Director
Deep East Texas Council of Governments
Filed: May 27, 2016

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Employees Retirement System of Texas

Request for Proposal to Provide Third-Party Administrative Services, Including a High Deductible Health Plan, for HealthSelect℠ of Texas

In accordance with Chapter 1551 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") will issue a Request for Proposal ("RFP") seeking a qualified third-party administrator ("TPA") to provide health care administration (claims processing, network management and utilization review) benefits and services for HealthSelect℠ of Texas, including a high deductible health plan, under the Texas Employees Group Benefits Program ("GBP"). The TPA shall provide the level of services required in the RFP and meet other requirements that are in the best interest of ERS, the GBP, its participants and the state of Texas ("State"). The TPA shall be required to execute a Contractual Agreement ("Contract") provided by and satisfactory to, ERS.

A vendor wishing to submit a proposal shall meet the minimum requirements and criteria as described in Article V of the RFP.

The RFP will be posted on or after June 15, 2016, to ERS' server. To access the RFP, email a request to ivendorquestions@ers.state.tx.us and provide the following information in the subject line of its request: TPA RFP. Upon receipt of the request, ERS will email the requisite user name and password to access the RFP. The RFP will include documents for review and response.

General questions concerning the RFP and/or ancillary bid materials should be sent by email to ivendorquestions@ers.state.tx.us. When submitting questions, provide the following information in the subject line of its email request: TPA RFP. The submission deadline for all RFP questions is expected to be June 28, 2016, at 4:00 p.m. CT. ERS expects to complete the posting of RFP questions and answers by 5:00 p.m. CT on July 7, 2016. Please review the RFP for specific deadlines.

To be eligible for consideration, a vendor is required to submit its proposal in accordance with the instructions set forth in the RFP. All materials shall be received by ERS no later than 10:00 a.m. CT on July 27, 2016, or such other date specified in the RFP.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of ERS, the GBP, its participants and the State. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or in connection with the preparation of a proposal. ERS reserves the

right to vary all provisions set forth at any time prior to execution of a Contract where ERS deems it to be in the best interests of ERS, the GBP, its participants and the State.

TRD-201602746
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Filed: June 1, 2016

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is July 11, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on July 11, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 3-D Mobile Home and RV Park, Incorporated; DOCKET NUMBER: 2016-0180-PWS-E; IDENTIFIER: RN101241271; LOCATION: Denison, Grayson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(f)(2), (3)(A)(i)(III) and (ii)(III), by failing to maintain and provide facility records to commission personnel upon request; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results and a chemical analysis report of a representative sample of water from the well; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards and is readily accessible; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located as to minimize the drawing of contaminants into the well; and 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet from the well casing in all directions, is at least six inches thick and is sloped to drain away from the easement at not less than 0.25 inch per foot; PENALTY: $1,690; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: A AND K ENTERPRISES, INCORPORATED dba Country Food Store; DOCKET NUMBER: 2016-0301-PST-E; IDENTIFIER: RN101183861; LOCATION: Lane City, Wharton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30 TAC §334.77(b) and §334.78(c), by failing to submit a report to the TCEQ summarizing the initial abatement steps taken within 20 days after a release of a regulated substance from a UST system, and failing to submit a site assessment report within 45 days after a confirmed release of a regulated substance from a UST system; 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure the UST corrosion protection system was operated and maintained in a manner that will ensure continuous corrosion protection; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay outstanding water system fees for TCEQ Financial Account Number 90200288; PENALTY: $13,794; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2016-0215-PWS-E; IDENTIFIER: RN101450187; LOCATION: League City, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank; and 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's pressure tank; PENALTY: $1,084; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2016-0179-PWS-E; IDENTIFIER: RN101232676; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: public water

supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of Well Number 1; 30 TAC §290.42(l), by failing to provide a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.45(b)(1)(A)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; PENALTY: $684; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: BASF Corporation; DOCKET NUMBER: 2016-0177-IWD-E; IDENTIFIER: RN100218049; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: industrial wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0003977000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001 and 003, by failing to comply with permitted effluent limitations; PENALTY: $46,875; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of Whitesboro; DOCKET NUMBER: 2016-0105-MWD-E; IDENTIFIER: RN102796679; LOCATION: Whitesboro, Grayson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010464001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010464001, Sludge Provisions, by failing to timely submit the annual sludge report by September 30, 2015; PENALTY: $51,000; Supplemental Environmental Project offset amount of $51,000; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Far East Partners, Incorporated dba Watts Grocery; DOCKET NUMBER: 2015-1828-PST-E; IDENTIFIER: RN102258209; LOCATION: Frisco, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month; 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves (also known as shear or impact valves) are securely anchored at the base of the dispensers; 30 TAC §334.50(d)(9)(A)(iv) and (v) and §334.72(3), by failing to report a suspected release to the TCEQ within 72 hours of discovery; 30 TAC §334.74(1), by failing to investigate a suspected release of a regulated substance within 30 days of discovery; and 30 TAC §334.74(3), by failing to file a suspected release investigation report with the agency within 45 days after discovery of the suspected release; PENALTY: $11,982; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: John J. Vander Horst Credit Shelter Trust and Carole Jane Vander Horst and Alan Dale Vander Horst dba Vander Horst Dairy and Farming; DOCKET NUMBER: 2016-0297-AGR-E; IDENTIFIER: RN102739166; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and §321.31(a), and Texas Pollutant Discharge Elimination System Permit Number WQ0003322000, Part VI.A., by failing to prevent the unauthorized discharge of wastewater from a concentrated animal feeding operation into or adjacent to any water in the state; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Martin Operating Partnership L.P.; DOCKET NUMBER: 2016-0096-MLM-E; IDENTIFIER: RN102605136; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: storage and distribution facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and §305.535(c)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004074000, Permit Conditions Number 2.h, by failing to prevent the bypass of untreated or partially treated industrial wastewater into or adjacent to any water in the state; TWC, §26.121(a)(1), 30 TAC §305.125(1) and §335.4, and TPDES Permit Number WQ0004074000, Operational Requirements Number 11.a, by failing to not cause, suffer, allow, or permit the unauthorized discharge of industrial solid waste and by failing to not cause, suffer, allow, or permit the storage of industrial solid waste in such a manner so as to cause the discharge or imminent threat of discharge of industrial solid waste into or adjacent to any water in the state; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0004074000, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of industrial wastewater into or adjacent to any water in the state; and 30 TAC §305.125(1), and TPDES Permit Number WQ0004074000, Other Requirements Number 2, by failing to perform all measurements, tests, and calculations in a representative manner to ensure the accurate reporting of data; PENALTY: $14,253; Supplemental Environmental Project offset amount of $5,700; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Santa Rita KC, LLC; DOCKET NUMBER: 2016-0311-EAQ-E; IDENTIFIER: RN107097248; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: residential development project; RULES VIOLATED: 30 TAC §213.4(a)(1) and Water Pollution Abatement Plan (WPAP) Number 11-14011601 Standard Condition Number 6, by failing to obtain approval of a WPAP Exception Request prior to initiating a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §213.5(f)(1) and WPAP Number 11-14011601 Standard Condition Number 7, by failing to provide written notification of intent to commence construction to the Austin Regional Office no later than 48 hours prior to commencement of a regulated activity; and 30 TAC §213.4(g)(3) and WPAP Number 11-14011601 Standard Condition Number 4, by failing to submit proof of recordation of notice in the county deed records to the Austin Regional Office within 60 days of receiving written WPAP approval; PENALTY: $5,027; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin Texas 78711-3087, (512) 339-2929.

(11) COMPANY: Sunoco Partners Marketing and Terminals L.P.; DOCKET NUMBER: 2016-0357-AIR-E; IDENTIFIER: RN100214626; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: petroleum storage and transport terminal; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 1980, Special Conditions Number 1, Federal Operating Permit Number 1573, Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $9,600; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: Zia Omar dba Shell Gas Station; DOCKET NUMBER: 2016-0028-PST-E; IDENTIFIER: RN101541308; LOCATION: White Settlement, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(ii), (iii)(I) and (4)(A), and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons, and by failing to provide release detection by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to ensure any overspill containers or catchment basins, which are associated with a underground storage tank system, are inspected at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves are securely anchored at the base of the dispensers; and 30 TAC §334.605(a), by failing to ensure that a certified Class A and Class B operator is re-trained within three years of their last training date; PENALTY: $8,793; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201602733
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 31, 2016

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Correction of Error

The Texas Commission on Environmental Quality submitted "Notice of Request for Public Comment and Notice of a Public Meeting to Receive Comments on Four Total Maximum Daily Loads for Indicator Bacteria in Cottonwood Creek, Fish Creek, Kirby Creek, and Crockett Branch Watersheds Upstream of Mountain Creek Lake" for publication in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3942).

On page 3942, first column, first paragraph of the notice, "Kirby Creek" should have been included in the list of creeks and rivers. The corrected paragraph reads as follows:

"The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment Four Total Maximum Daily Loads (TMDL) for Indicator Bacteria in Cottonwood Creek, Fish Creek, Kirby Creek, and Crockett Branch Watersheds Upstream of Mountain Creek Lake in Dallas and Tarrant Counties."

On page 3942, first column, second paragraph of the notice, the segment letters should have been capitalized and a comma should follow the words "Kirby Creek". The corrected paragraph reads as follows:

"The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDLs for indicator bacteria in four assessment units in Segments 0841F, 0841K, 0841N, and 0841V located in Cottonwood Creek, Fish Creek, Kirby Creek, and Crockett Branch in Dallas and Tarrant Counties and the decision to join the implementation efforts of an approved, adjacent Implementation Plan (I-Plan)."

On page 3942, second column, eighth paragraph of the notice, the words "Kirby Creek" were omitted. The corrected paragraph reads as follows:

"Written comments on the draft TMDLs and the decision to join the existing Greater Trinity River I-Plan should be submitted to Jason Leifester, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-1414; or submitted electronically to www1.tceq.texas.gov/rules/ecomments/ by June 27, 2016, and should reference *Four Total Maximum Daily Loads for Indicator Bacteria in Cottonwood Creek, Fish Creek, Kirby Creek, and Crockett Branch Watersheds Upstream of Mountain Creek Lake."*

TRD-201602751

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Notice of Comment Period and Hearing on Draft Air Curtain Incinerator General Operating Permit

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft Air Curtain Incinerator General Operating Permit (GOP) Number 518. In addition to the federally required renewal, the draft GOP contains revisions based on recent federal and state rule changes, which include updates to the requirements tables; the addition of new requirements tables; and updates to the terms. This renewal also corrects typographical errors, and updates language for administrative preferences.

The draft GOP is subject to a 30-day comment period. During the comment period, any person may submit written comments on the draft GOP. The hearing will be held in Austin on July 7, 2016, at 10:00 a.m. in 201S, Building E of the TCEQ offices, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Open discussion within the audience will not occur during the hearing; however, a TCEQ staff member will be available to discuss the draft GOP 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Copies of the draft GOP may be obtained from the TCEQ website at *http://www.tceq.state.tx.us/permitting/air/nav/titlev_news.html* or by contacting the TCEQ Office of Air, Air Permits Division at (512) 239-1250. Written comments may be mailed to Ms. Becky Southard, Texas Commission on Environmental Quality, Office of Air, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087. All comments should reference draft GOP 518. Comments must be received by 5:00 p.m., July 13, 2016. For further information, contact Ms. Southard at (512) 239-1638.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4000. Requests should be made as far in advance as possible.

TRD-201602721
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 27, 2016

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Notice of Public Hearing on Proposed Amendments to 30 TAC Chapter 7

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 7, MOU Between the Texas State Soil and Water Conservation Board and TCEQ, §7.102, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement the proposed Memoranda of Understanding (MOU) rulemaking is a coordination between the Texas Commission on Environmental Quality and the Texas State Soil and Water Conservation Board that adopts by reference updates and procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the Letter of Agreement into the MOU.

The commission will hold a public hearing on this proposal in Austin, Texas, on July 12, 2016 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2016-020-007-OW. The comment period closes July 15, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Kerry Niemann, Water Quality Planning Division, (512) 239-0483.

TRD-201602664
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 26, 2016

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Notice of Public Meeting Proposed Air Quality Permit Number 138162

APPLICATION. Capitol Aggregates, Inc. has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Air Quality Permit Number 138162, which would authorize construction of a Rock Crushing Plant located at 1576 County Road 265, Hondo, Medina County, Texas 78861. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.48665&lng=-98.98795&zoom=13&type=r. The facility will emit the following contaminants: volatile organic compounds, nitrogen oxides, carbon monoxide, sulfur dioxide, and particulate matter including particulate with diameters of 10 microns or less and 2.5 microns or less.

The executive director has determined the application is administratively complete and will conduct a technical review of the application.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, June 23, 2016 at 7:00 PM

South Texas Regional Training Center

402 Carter Street

Hondo, Texas 78861

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at http://www.tceq.texas.gov/about/comments.html. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The application will be available for viewing and copying at the TCEQ central office, the TCEQ San Antonio regional office, and the Hondo Public Library, 1011 19th Street, Hondo, Medina County, Texas. The facility's compliance file, if any exists, is available for public review in the San Antonio regional office of the TCEQ. Further information may also be obtained from Capitol Aggregates, Inc., P.O. Box 33240, San Antonio, Texas 78265-3240 or by calling Mr. Paul Detterline, Director of Environmental Affairs at (210) 871-7214.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: May 25, 2016

TRD-201602741
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 1, 2016

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in

reference to the listed filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Personal Financial Statement due February 12, 2016

Veronica Aleman, 217 Segovia Dr., Laredo, Texas 78046

Daniel Biggs, 7979 Westheimer, Apt. 101, Houston, Texas 77063

Mitchell Bosworth, 5411 Sycamore Creek Dr., Kingwood, Texas 77345

Fidel Castillo, P.O. Box 10135, San Antonio, Texas 78210

Rabeea Sultan Collier, 14707 Arbor Trace Ln., Houston, Texas 77396

Sandra Crenshaw, 2018 Lanark Ave., Dallas, Texas 75203

LaTronda Darnell, 6447 Candleview Ct., San Antonio, Texas 78244

Kimberley DeLaGarza Solar, 109 West Court, Seguin, Texas 78155

Joseph Farkus, 5102 Vickery Blvd., Unit B, Dallas, Texas 75206

John T. Floyd, 2927 Dixon Ct., Pearland, Texas 77584

Christine Guajardo, 1000 Ranchway #96, Laredo, Texas 78045

Cristoban Hernandez, 10314 Autumn Harvest Dr., Houston, Texas 77064

Hope Knight, P.O. Box 552, Centerville, Texas 75833

Kenneth Lowder, 7803 Sativa Cr., Baytown, Texas 77521

Marilynn Mayse, 4306 York St., Dallas, Texas 75210

Jose Menendez, 1518 Townsend House Dr., San Antonio, Texas 78251

Emett Gary Merwin, 5009 Sugarberry Dr, McKinney, Texas 75071

James D. Morrison, 64 Cauthen Dr., Huntsville, Texas 77320

Hugo Noyola, 127 Yellowstone Lake Dr., Laredo, Texas 78041

Lynn Oliver, P.O. Box 3318, Bandera, Texas 78003

Morriss Overstreet, P.O. Box 35, Prairie View, Texas 77446

Ronald Reynolds, 6140 Highway 6 S, Ste 233, Missouri City, Texas 77459

Osbert Rodriguez, 1020 Dennet Rd., Brownsville, Texas 78526

Ben Roeder, 1228 16th, Galveston, Texas 77550

Judith Sanders-Castro, 9122 Autumn Skies, San Antonio, Texas

Deborah Shafto, 7620 Santa Fe Dr., Houston, Texas 77061

Matthew Spees, 712 E Morris St., Madisonville, Texas 77864

Angela Tucker, 2100 Bloomdale Rd., Ste 10030, McKinney, Texas 75071

Nathan Webb, 5817 1/2 Victor St., Dallas, Texas 75214

TRD-201602739
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: May 31, 2016

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Texas Facilities Commission

Request for Proposals #303-6-20550-A

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of a Re-Advertisement of Request for Proposals (RFP) #303-6-20550-A. TFC seeks a five (5) or ten (10) year lease of approximately 14,635 usable square feet of space that consists of 14,440 square feet of office space and 195 square feet of outdoor employee lounge area space in Georgetown, Texas.

The deadline for questions is June 29, 2016 and the deadline for proposals is July 13, 2016 at 3:00 p.m. The award date is August 17, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=124780.*

TRD-201602715
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 27, 2016

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Request for Proposals #303-7-20565

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts-Audit Division (CPA), announces the issuance of Request for Proposals (RFP) #303-7-20565. TFC seeks a five (5) or ten (10) year lease of approximately 2,499 square feet of office space in Lubbock, Texas.

The deadline for questions is June 28, 2016 and the deadline for proposals is July 11, 2016 at 3:00 p.m. The award date is August 17, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=124778.*

TRD-201602713
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 27, 2016

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Request for Proposals #303-8-20570

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of Aging and Disability Services (DADS), announces the issuance of Request for Proposals (RFP) #303-8-20570. TFC seeks a five (5) or ten (10) year lease of approximately 8,410 square feet of office space in Collin County, Texas.

The deadline for questions is June 30, 2016 and the deadline for proposals is July 19, 2016 at 3:00 p.m. The award date is August 17, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor

the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=124786.*

TRD-201602723
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 27, 2016

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 23, 2016, through May 27, 2016. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 3, 2016. The public comment period for this project will close at 5:00 p.m. on Wednesday, July 3, 2016.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Corpus Christi Authority

Location: The project site is located in two locations (northern site and southern site) in Corpus Christi Bay near the junction of the Corpus Christi Ship Channel and La Quinta Channel CE Station 40+00, near Ingleside-on-the Bay, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Ingleside, Texas.

LATITUDE & LONGITUDE (NAD 83):

27.87128, -97.24899 (northern site) & 27.81564, -97.22118 (southern site)

Project Description: The applicant requests an extension of time and an amendment to its previously authorized permit for dredging activities in the LQC and a 10-year maintenance dredging program. The applicant is currently authorized to dredge approximately 1.4 million cubic yards of material within a 20-acre area at the junction of the CCSC and LQC to a depth of -45 feet mean low tide (MLT) with an additional -2 feet of advanced maintenance and up to -2 feet of allowable over depth for a total possible depth of -49 feet MLT. The applicant proposes to add two dredging areas (Northern and Southern Dredge Areas) and two dredged material placement areas (DMPA), the existing Good Hope DMPA and a new private Copano DMPA, to its project. The Southern Dredge Area has an approximate size of 15.11 acres, which includes 8.57 acres that overlap the currently authorized dredge area and 6.54 acres of new area. The southern modification would widen the existing 400-foot-wide channel variably from approximately CE Station 32+15.62 to Station 60+00 up to an approximate 550-foot width on a 1V:2H side slope with a depth of -52 feet MLT plus -2 feet allowable over depth (for a total possible depth of -54 feet MLT) to match the existing federal template in this reach. This would result in dredging approximately 157,500 cubic yards of additional material. The Northern Dredge Area is an approximate 14.87-acre area, and the modification would widen the existing 400-foot-wide channel variably between CE Station 230+00 to Station 280+00 up to an approximate 500-foot width on a 1V:2H side slope and the required depth of -47 feet MLT plus up to 2 feet of allowable over depth (for a total possible depth of -49 feet MLT) to match the existing federal template in this reach. This would result in dredging approximately 557,500 cubic yards of material. Dredging would be conducted by either hydraulic or mechanical methods with dredged material placed in DMPAs 9, 10, and 13 as well as the additional DMPAs Good Hope and Copano. The proposed Copano DMPA consists of three existing bauxite residue drying beds located near Copano Bay, in Aransas County, Texas. The existing infrastructure and pipelines to hydraulically transport the dredged material extend from the LQC shoreline to the Copano DMPA and is currently serviceable. The dredged material would be contained by existing levees surrounding the DMPA. The applicant's stated purpose of the proposed work is to improve navigational safety and general maneuvering effectiveness for a variety of vessels representing multiple waterway users within the CCSC and transiting the LQC to access existing and new facilities on the LQC and LQC Extension.

CMP Project No: 16-1327-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2005-01290. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Solis at the above address or by email.

TRD-201602706
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: May 26, 2016

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Texas Health and Human Services Commission

Notice of Public Hearing on Health and Human Services Commission Strategic Plan 2017-2021

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Friday, June 17, 2016, at 1:00 p.m., Central Standard Time. HHSC, Department of State Health Services (DSHS), Department of Family and Protective Services (DFPS), Department of Assistive and Rehabilitative Services, and Department of Aging and Disability Services will conduct a public hearing to receive stakeholder input for the health and human services strategic plan for 2017-2021. HHSC, DFPS, and DSHS will each develop strategic plans, and HHSC will develop a Coordinated Strategic Plan covering all five health and human services agencies.

1. Welcome and introductions

2. Public comment

3. Adjourn

The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the south entrance to the building. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Strategic Planning Unit at (512) 206-5802 at least 72 hours prior to the hearing so appropriate arrangements can be made.

In-Person and Telephone Testimony. Public testimony will be taken in person at the meeting as well as via telephone. Every person wishing to testify at the hearing will be required to register at the meeting. Every person wishing to testify via telephone must submit an email to strategicplancomments@hhsc.state.tx.us no later than 1:00 p.m. CST on Friday, June 17, 2016; the email must include the person's name, a telephone number where he or she can be reached, and a statement requesting to submit oral testimony via telephone. Testimony will first be taken from all persons present at the meeting and will be followed by testimony submitted via telephone. Call-in: 1-877-226-9790; Access Code: 5950374.

Written Comments. Written comments will be taken until 5:00 p.m. on Friday, June 17, 2016. Comments may be submitted to strategicplancomments@hhsc.state.tx.us.

Contact: Questions regarding agenda items, content, or meeting arrangements should be directed to Mathilde Hyams-Flores in the Strategic Planning Unit, HHSC, (512) 206-5802 or strategicplancomments@hhsc.state.tx.us.

TRD-201602747
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 1, 2016

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Notice of Public Hearing on Proposed Medicaid Payment Rate for Truman W. Smith Children's Care Center

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Thursday, June 23, 2016, at 9:00 a.m. to receive public comment on the proposed rate for the Truman W. Smith Children's Care Center, a nursing facility that is a member of the pediatric care facility special reimbursement class of the Nursing Facility Program operated by the Department of Aging and Disability Services.

The hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before HHSC approves them. The public hearing will be held in Conference Room 5155 of the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the front of the building facing Lamar Boulevard. Persons requiring Americans with Disabilities Act accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to increase the reimbursement rate for the nursing facility pediatric care facility special reimbursement class for Truman W. Smith Children's Care Center from $251.22 per day to $261.74 per day. The proposed rate will be effective retroactive to September 1, 2015, and was determined in accordance with the rate setting methodology listed below under "Methodology and Justification," which indicates that payment rates for pediatric care facilities are to be determined annually, coincident within the state's fiscal year, within available funds.

Methodology and Justification. The proposed rate was determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology.

Briefing Package. A briefing package describing the proposed rates will be available at *http://www.hhsc.state.tx.us/rad/rate-packets.shtml* on June 10, 2016. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RAD-LTSS@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201602748
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 1, 2016

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Texas Department of Housing and Community Affairs

Announcement of the Opening of the Public Comment Period for the Draft Report of Findings and Recommendations of the Housing and Health Services Coordination Council

The Texas Department of Housing and Community Affairs (the "Department") announces the opening of a 16-day public comment period for the Draft Report ("Report") of Findings and Recommendations of the Housing and Health Services Coordination Council ("Council") as required by Texas Government Code §2306.1096(c). The 16-day public comment period begins Monday, June 20, 2016, and continues until 5:00 p.m. Austin local time on Tuesday, July 5, 2016.

The Report gives the public an opportunity to provide input into the Report prior to submission to the Office of the Governor and the Legislative Budget Board on August 1, 2016. The Report includes the definition of Service-Enriched Housing, Council findings, and recommendations.

Beginning June 20, 2016, the Report will be available on the Department's Web site at http://www.tdhca.state.tx.us/public-comment.htm. A paper copy may be requested by contacting the Housing Resource Center at P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 475-2953.

Written comment should be sent by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to *info@tdhca.state.tx.us,* or by fax to (512) 475-0070.

TRD-201602710

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 27, 2016

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Texas Department of Insurance

Company Licensing

Application for USAA TEXAS LLOYD'S COMPANY, a domestic Lloyd's plan, to convert to and change its name to USAA CONVERSION INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in San Antonio, Texas.

Application for incorporation in the state of Texas by TEXAS NATIONAL SPECIALTY INSURANCE COMPANY a domestic fire and/or casualty company. The home office is in Irving, Texas.

Application for incorporation in the state of Texas by POST OAK NATIONAL INSURANCE OCMPANY, a domestic fire and/or casualty company. The home office is in Irving, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201602678
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: May 26, 2016

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Texas State Library and Archives Commission

Request for Qualifications, Consultant Contract Notice

Description of Proposed Consulting Contract:

The Texas State Library and Archives Commission (TSLAC) intends to contract with a qualified consultant who has experience planning and implementing library or statewide evaluation studies. The contractor will evaluate and assess the progress made by the agency in administering federal Library Services and Technology Act (LSTA) grant funds for libraries in Texas. The Institute for Museum and Library Services (IMLS), authorizes the LSTA Grants to States program, and requires that all State Library Administrative Agencies (SLAAs), comprising all 50 states plus some territories, develop 5-year statewide plans. Section 9134(c) of the IMLS authorizing legislation directs SLAAs to *"independently evaluate,* and report to the IMLS Director regarding, the activities assisted under this subchapter, prior to the end of the 5-year plan." The current LSTA 5-year plan for Texas covers the federal fiscal years 2013 - 2017 (state fiscal years 2014 - 2018).

The Report will examine grant activities for three full fiscal years (SFYs 2014, 2015, and 2016) and partial data for one fiscal year (SFY 2017). The report will meet all requirements described by existing IMLS evaluation guidelines, as well as new "Measuring Success Initiative" guidelines that are currently under development by IMLS.

The State Plan must identify specific needs for library services to be addressed in the pertinent five-year period. This needs assessment should be based on the SLAA's *most recent five-year evaluation,* complementary data, and advisory input.

TSLAC is the only statewide agency with an in-depth knowledge of the library field in the state of Texas, and this evaluation is statutorily required to be performed by an independent evaluator. There are no other state agencies with the knowledge and background to investigate and evaluate the progress made by TSLAC in administering federal LSTA grant funds for libraries in Texas. As a result, it is necessary for our agency to issue a Request for Proposals (RFP) and contract with an external vendor to perform the required work and produce the mandatory State Report.

Proposed Contract Amount:

Expected contract amount not to exceed $65,000.

Proposed Contract Term:

July 2016 - February 2017.

Electronic State Business Daily Posting:

Posting Number: 306-16-8535 http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=124830.

RFQ Open Date:

June 21, 2016.

TRD-201602738
Donna Osborne
Chief Operations and Fiscal Officer
Texas State Library and Archives Commission
Filed: May 31, 2016

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Texas Lottery Commission

Scratch Ticket Game Number 1767 "Win It All"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1767 is "WIN IT ALL". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1767 shall be $1.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1767.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100 and $500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1767 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
$1.00	ONE$
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

I. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1767), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1767-0000001-001.

J. Pack - A Pack of the "WIN IT ALL" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

K. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does

not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

L. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "WIN IT ALL" Scratch Ticket Game No. 1767.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "WIN IT ALL" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 12 (twelve) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the PRIZE for that number. If a player matches any of YOUR NUMBERS Play Symbols to the WIN IT ALL NUMBER Play Symbol, the player WINS ALL 5 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 12 (twelve) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No matching non-winning Prize Symbols on a Ticket.

D. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

E. No prize amount in a non-winning spot will correspond with the YOUR NUMBER Play Symbol (i.e., 2 and $2).

F. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

G. The WIN IT ALL NUMBER Play Symbol will never match the WINNING NUMBER Play Symbol.

H. The WIN IT ALL NUMBER Play Symbol will match one (1) and only one (1) YOUR NUMBERS Play Symbol an only on intended five (5) times winning Tickets.

I. When the WIN IT ALL NUMBER Play Symbol matches a YOUR NUMBERS Play Symbol, there will be no occurrence of any YOUR NUMBERS Play Symbols matching the WINNING NUMBER Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "WIN IT ALL" Scratch Ticket Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "WIN IT ALL" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "WIN IT ALL" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "WIN IT ALL" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 11,040,000 Scratch Tickets in Scratch Ticket Game No. 1767. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1767 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,104,000	10.00
$2	736,000	15.00
$5	257,600	42.86
$10	128,800	85.71
$20	43,700	252.63
$50	8,280	1,333.33
$100	1,610	6,857.14
$500	46	240,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.84. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1767 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1767, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201602749
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 1, 2016

♦ ♦ ♦

Scratch Ticket Game Number 1785 "Back to School Crossword"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1785 is "BACK TO SCHOOL CROSSWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1785 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1785.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z and BLACKENED SQUARE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1785 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
▓ SYMBOL	

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $3.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $100 or $500.

H. High-Tier Prize - A prize of $5,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (17851785), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 17851785-0000001-001.

K. Pack - A Pack of the "BACK TO SCHOOL CROSSWORD" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Tickets 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be

no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BACK TO SCHOOL CROSSWORD" Scratch Ticket Game No. 17851785.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BACK TO SCHOOL CROSSWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 141 (one hundred forty-one) possible Play Symbols. The player must scratch all of the 18 CALL LETTERS and the 2 BONUS letters. The player then scratches all the letters found in the BACK TO SCHOOL CROSSWORD puzzle that exactly match the CALL LETTERS and the BONUS letters. If the player has scratched at least 3 complete WORDS, the player wins the prize found in the PRIZE LEGEND. Only one prize will be paid per Ticket. Only letters within the BACK TO SCHOOL CROSSWORD puzzle that are matched with the CALL LETTERS and BONUS letters can be used to form a complete WORD. In the BACK TO SCHOOL CROSSWORD puzzle, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the CALL LETTERS or BONUS letters to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. A complete WORD must contain at least three letters. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 141 (one hundred forty-one) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo games do not typically have Play Symbol captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 141 (one hundred forty-one) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 141 (one hundred forty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 141 (one hundred forty-one) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. Each Ticket consists of a CALL LETTERS play area, a BONUS letters play area and one BACK TO SCHOOL CROSSWORD Puzzle Grid.

D. Each word will appear only once per Ticket on the BACK TO SCHOOL CROSSWORD Puzzle Grid.

E. Each letter will only appear once per Ticket in the CALL LETTERS play area and BONUS letters play area.

F. Each BACK TO SCHOOL CROSSWORD Puzzle Grid will contain the following: (a) 4 sets of 3-letter words, (b) 5 sets of 4-letter words, (c) 3 sets of 5-letter words, (d) 3 sets of 6-letter words, (e) 1 set of 7-letter words, (f) 2 sets of 8-letter words and (g) 1 set of 9-letter words.

G. All BACK TO SCHOOL CROSSWORD Puzzle Grids will have an equal chance of winning a prize.

H. There will be a minimum of three (3) vowels in the CALL LETTERS play area and BONUS letters play area combined.

I. The length of words found in the BACK TO SCHOOL CROSSWORD Puzzle Grid will range from three (3) to nine (9) letters.

J. Only words from the approved word list will appear in the BACK TO SCHOOL CROSSWORD Puzzle Grid. (Texas_Bonus_v2_2July2015.doc)

K. None of the prohibited words (Texas_Prohibited_v3_2July2015.doc) will appear horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the CALL LETTERS play area (including the BONUS letters play area). In addition, when all rows of the CALL LETTERS (including the BONUS letters play area) are joined together into a single continuous row of letters (first row, followed by second row, etc.), none of the prohibited words will appear in either the forward or reverse direction.

L. A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the CALL LETTERS play area that matches a word in the BACK TO SCHOOL CROSSWORD Puzzle Grid.

M. Each letter, with the exception of vowels, will appear no more than nine (9) times in the BACK TO SCHOOL CROSSWORD Puzzle grid.

N. No Ticket will match eleven (11) words or more.

O. Only one (1) prize paid per Ticket.

P. Three (3) to ten (10) completed words will be revealed as per the prize structure.

Q. Sixteen (16) to eighteen (18) CALL LETTERS will open at least one (1) letter in the BACK TO SCHOOL CROSSWORD Puzzle Grid. At least one (1) of the two (2) BONUS letters will open one (1) or more positions on the BACK TO SCHOOL CROSSWORD Puzzle Grid.

2.3 Procedure for Claiming Prizes.

A. To claim a "BACK TO SCHOOL CROSSWORD" Scratch Ticket Game prize of $3.00, $5.00, $10.00, $20.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BACK TO SCHOOL CROSSWORD" Scratch Ticket Game prize of $5,000 or $50,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BACK TO SCHOOL CROSSWORD" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BACK TO SCHOOL CROSSWORD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BACK TO SCHOOL CROSSWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 17851785. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1785 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	771,840	10.42
$5	1,157,760	6.94
$10	160,800	50.00
$20	96,480	83.33
$100	15,745	510.64
$500	4,020	2,000.00
$5,000	29	277,241.38
$50,000	8	1,005,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.64. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 17851785 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 17851785, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201602750
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 1, 2016

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on May 26, 2016, for a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Skitter, Inc. for a State-Issued Certificate of Franchise Authority, Project Number 45997.

The requested SICFA service area is identified in the application as "state line".

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 45997.

TRD-201602724
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 27, 2016

♦ ♦ ♦

Notice of Application for Limited Code of Conduct Waiver

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 26, 2016 for a limited code of conduct waiver.

Docket Style and Number: Application of Cross Texas Transmission, LLC for a Limited Code of Conduct Waiver, Docket Number 45980.

The Application: Cross Texas Transmission, LLC, a transmission-only electric utility, filed an application requesting a limited code of conduct waiver. Cross Texas seeks to modify its code of conduct to (1) allow Cross Texas to both provide and receive from its non-competitive affiliates transmission system operations and engineering services, and (2) allow Cross Texas to provide control room services to its non-competitive affiliates operating outside of ERCOT. In addition, Cross Texas has included certain non-substantive changes to its code of conduct.

As a member of the LS Power Development, LLC family of companies, Cross Texas shares or receives certain corporate support services and certain engineering services through an intra-company services agreement with LSP Western Transmission Holdings LLC, which uses the employees of LS Power to provide the services to Cross Texas. These affiliates do not provide services or sell products in a competitive energy-related market in Texas, so Cross Texas contends they are not "competitive affiliates" as that term is defined in PURA and the commission's rules.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45980.

TRD-201602735
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 31, 2016

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Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to amend a water certificate of convenience and necessity (CCN) in Denton County, Texas.

Docket Style and Number: Application of Mustang Special Utility District to Amend a Sewer Certificate of Convenience and Necessity in Denton County, Docket Number 45989.

The Application: Mustang Special Utility District (Mustang SUD) filed an application to amend its sewer CCN No. 20930 in Denton County. Mustang SUD seeks to decertify a portion of the City of Oak Point's CCN. The City of Oak Point no longer desires to provide sewer service to the area. Mustang SUD intends to cover the area previously served by the City of Oak Point and to provide service in such areas and in other previous uncertified areas. Some of the area which was previously within the City of Oak Point's sewer CCN and which will be incorporated into Mustang SUD's sewer CCN is within the corporate limits of the Town of Little Elm. The Town Manager of Little Elm, Mr. Matt Mueller, has consented to the proposed amendment.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45989.

TRD-201602704
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2016

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

How to Use the Texas Register

Information Available: The sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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