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# TEXAS REGISTER

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Jose Menchaca  
11th Grade

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# Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

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Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

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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.



# THE GOVERNOR

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As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

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## Appointments

### Appointments for January 17, 2003

Appointed as Commissioner of the Railroad Commission of Texas for a term until the next General Election and until his successor shall be duly elected and qualified, Victor G. Carrillo of Abilene. Mr. Carrillo is replacing Tony Garza who resigned.

Appointed as Justice of the Court of Appeals, Seventh Appellate District, Amarillo, for a term until the next General Election and until his successor shall be duly elected and qualified, James T. Campbell of Amarillo. Mr. Campbell is replacing Justice Phil Johnson who was elected Chief Justice.

Appointed to the Central Texas Regional Mobility Authority for a term until January 17, 2005, Robert E. Tesch of Cedar Park. Mr. Tesch will serve as Presiding Officer of the Board.

Appointed to the Southern Regional Education Board for a term to expire on June 30, 2003, The Honorable Dianne Delisi of Austin (replacing Representative Kent Grusendorf).

Appointed to the Southern Regional Education Board for a term to expire on June 30, 2005, The Honorable Teel Bivings of Austin (reappointed).

Appointed to the Southern Regional Education Board for a term to expire on June 30, 2006, Dr. Shirley Neeley of Houston (replacing Roderrick Paige).

Rick Perry, Governor

TRD-200300486



# THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

## Opinions

### Opinion No. GA-0012

The Honorable Bruce Isaacks, Denton County Criminal District Attorney, P.O. Box 2850, Denton, Texas 76202

Re: Whether statutory county court judges in Denton County are entitled to receive benefit-replacement pay as part of their annual compensation (RQ-0576-JC)

#### SUMMARY

A statutory county court judge in Denton County who held office on August 31, 1995, is entitled to receive benefit-replacement pay. A Denton County statutory county court judge who did not hold office on that date is not entitled to receive benefit-replacement pay, if payment of such benefit-replacement pay would result in the statutory county judge's receiving more compensation than a district court judge in Denton County who assumed office after August 31, 1995.

### Opinion No. GA-0013

The Honorable Clyde Alexander, Chairman, House Committee on Transportation, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Assessment of costs and proper electorate for a proposal under chapter 253 of the Transportation Code that a county improve a road in a subdivision (RQ-0577-JC)

#### SUMMARY

The costs of any improvement to a road in a subdivision made under chapter 253 of the Transportation Code must be levied against the record owners of real property in the subdivision generally. Ballots for the election authorizing such an improvement must be sent to all record owners of real property in the subdivision.

### Opinion No. GA-0014

The Honorable Frank Madla, Chair, Intergovernmental Relations Committee, Texas Senate, P.O. Box 12068, Austin, Texas 78711-2068

Re: Effect of certain annexations on the extraterritorial jurisdiction of the City of San Antonio (RQ-0580-JC)

#### SUMMARY

Section 42.0225 of the Local Government Code, as adopted by Senate Bill 89 of the 76th Legislature, provides that a city's extraterritorial

jurisdiction will not expand if it annexes an area that it owns and that is not contiguous to other territory of the municipality. If the city subsequently annexes the properties that separate the noncontiguous land from its boundaries, the city's extraterritorial jurisdiction will expand pursuant to Local Government Code section 42.021 to include, in the case of a city with a population of 100,000 or more, the unincorporated area within five miles of the city boundary.

If a city annexes such land before December 31, 2002, the land will be subject to Local Government Code section 42.0225: (1) if it is included in its annexation plan, or (2), with respect to land that is not included in its annexation plan during the time period from December 31, 1999, to December 31, 2002, if the first hearing notice required by former section 43.052 was published on or after September 1, 1999.

### Opinion No. GA-0015

The Honorable Robert F. Vititow, Rains County Attorney, 220 West Quitman, P.O. Box 1075, Emory, Texas 75440

Re: Whether the offices of county commissioner and city council member in the same county are incompatible as a matter of law (RQ-0581-JC)

#### SUMMARY

The office of county commissioner and the office of council member of a city located in the county are incompatible as a matter of law. A county commissioner would automatically vacate office by accepting and qualifying for the second office. At that point, the former commissioner would not be entitled to vote at commissioners court meetings or to be paid as a county commissioner. In addition, the county judge would be authorized to appoint someone to fill the vacancy. *See* Tex. Loc. Gov't Code Ann. §87.042 (Vernon 1999). That authority is not contingent upon a judicial declaration that a vacancy exists. Once the county judge appoints someone to fill the vacancy, the appointee will qualify for office upon taking the official oath and executing a bond. *See id.* §81.002 (Vernon Supp. 2003). Once the successor commissioner qualifies for office, the successor commissioner is entitled to vote as commissioner and to be paid for holding that office. Attorney General Letter Opinion 88-049 is affirmed.

*For information regarding this publication, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at 512-463-2110.*

TRD-200300699

Rick Gilpin  
Assistant Attorney General  
Office of the Attorney General  
Filed: January 28, 2003



Request for Opinion

**RQ-0011-GA**

The Honorable Ken Armbrister Chair, Natural Resources Committee,  
Texas State Senate, P.O. Box 12068, Austin, Texas 78711

Re: Whether a municipality's rebate of sales tax is a release or extinction of indebtedness in contravention of Texas Constitution article III, section 55 (Request No. 0011-GA)

**Briefs requested by February 22, 2003**

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us). or call the Opinion Committee at (512) 463-2110.*

TRD-200300704  
Rick Gilpin  
Assistant Attorney General  
Office of the Attorney General  
Filed: January 29, 2003



# EMERGENCY RULES

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

## TITLE 1. ADMINISTRATION

### PART 8. TEXAS JUDICIAL COUNCIL

#### CHAPTER 173. INDIGENT DEFENSE GRANTS

##### SUBCHAPTER D. ADMINISTERING GRANTS 1 TAC §173.309

The Task Force on Indigent Defense (Task Force) is a permanent Standing Committee of Texas Judicial Council. The Task Force adopts an amendment to §173.309 on an emergency basis concerning permitting the Task Force at its discretion to authorize extensions to grants awarded under the indigent defense grant program, rather than only at the request of a grantee county in accordance with §173.307(c)(3).

Chapter 173 establishes the guidelines for the administration of a new grant program for counties to improve indigent defense services. The chapter sets forth the general terms, conditions, criteria, and funding formula for awarding these grants. Grants will aid counties to maintain, improve, and enhance the delivery of indigent defense services, and will promote compliance by counties with the requirements of state law and Task Force policies and standards relating to indigent defense.

The adoption of the amendment on an emergency basis will ensure that counties have sufficient time to expend grant funding awarded to counties in fiscal year 2002. The funds were intended to cover at least part of the increased costs associated with providing indigent defense services due to new statutory requirements imposed by SB 7 passed by the 77th Texas Legislature. The grants awarded to counties for fiscal year 2002 were made in July 2002 with the money sent to the counties in August 2002. The grant award period for the grants ended on September 30th, 2002. This date did not allow many counties enough time to expend the grant funds within the initial grant period. This was due to the newness of the program and the unfamiliarity on the part of some county officials with the manner in which the funds could be expended and the types of purchases that could be made with the funds. The new requirements imposed by SB 7 became effective on January 1, 2002. At that time, counties began incurring the increased costs associated with the new requirements. However, there is a delay in the actual expenditure of funds by counties until the submission and payment of bills from attorneys appointed to represent indigent defendants. This often does not occur until a case is finally disposed. This delay accounts for significant indigent defense costs remaining in the payment pipeline but not expended prior to the expiration of the fiscal year 2002 grant period. Without the adoption of this amendment on an emergency basis, many counties will have to return unspent funds to the Task Force although most counties

would have experienced increased expenditures for which the grant funds were intended.

The amendment is adopted on an emergency basis under the authority of Texas Government Code §71.062 (Technical Support; Grants), concerning the grant and aid program, that provides the Task Force authority to provide grants to assist counties to improve indigent defense practices in the state and to promote compliance with state law concerning indigent defense practices. The Task Force interprets Texas Government Code §71.062 to require the Task Force to adopt by rule the guidelines for administering the grant program.

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

##### §173.309. Grant Termination.

(a) The grant will terminate at the end of the date specified in the grant award, unless an extension is granted in accordance with §173.307(c)(3) or the Task Force otherwise decides to modify the grant period.

(b) If a grantee wishes to terminate a grant in whole or in part before the end of the grant period, the grantee must notify the Task Force in writing. The Task Force or its designee will make arrangements with the grantee for the early termination of the grant.

(c) The Task Force may terminate any grant, in whole or in part, when:

- (1) a grantee fails to comply with any term or condition of the grant or the grantee has failed to comply with any applicable rule;
- (2) the grantee and the Director of the Task Force agree to do so;
- (3) grant funds are no longer available; or
- (4) conditions exist that make it unlikely that grant or program objectives will be accomplished.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2003.

TRD-200300314

Wesley Shackelford

Special Counsel

Texas Judicial Council

Effective Date: January 17, 2003

Expiration Date: June 7, 2003

For further information, please call: (512) 936-6994



# 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 1. ADMINISTRATION

### PART 1. OFFICE OF THE GOVERNOR

#### CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor proposes amendments to Subchapter B §3.87; and Subchapter C §3.505, §3.719, and §3.1413.

The proposed amendments provide processes and procedures relating to grants made through the Criminal Justice Division and include, but are not limited to, program income, eligible applicants under the Victims of Crime Act Fund, district attorney agreement under the Edward Byrne Memorial Fund, and grant period under the Rural Domestic Violence and Child Victimization Enforcement Program.

The proposed amendment to §3.87(e) adds language that was previously contained in §3.719(a)(5) because this language relates primarily to program income. The proposed amendment also adds the words "accrued interest" to §3.87(e) because accrued interest is a type of program income.

The proposed amendment to §3.505 conforms the list of eligible applicant under the Victims of Crime Act Fund to the federal requirements for this funding source.

The proposed amendment to §3.719(a)(4) allows a district attorney who does not have a CJD-funded attorney: (1) to recover some of the cost associated with handling civil forfeiture proceedings; and (2) to develop standardized equitable sharing guidelines for funds, accrued interest, and property attributable to the efforts of a task force that are similar to guidelines applied to funds, accrued interest, and property attributable to the efforts of other law enforcement agencies. In addition, the language in §3.719(a)(5) is deleted and is added to §3.87(e) because this language relates primarily to program income.

The proposed amendment to §3.1413 increases the length of the grant period to 24 months for grants awarded under the Rural Domestic Violence and Child Victimization Enforcement Program in accordance with the federal requirements for this funding source.

The Office of the Governor reviewed the rules affecting the Criminal Justice Division grant processes and procedures with the goal of increasing efficiency and updating the rules to address changes in the administration process. The review disclosed that a number of the rules required further clarification and simplification. As a result, the Office of the Governor has determined that the sections in the Texas Administrative Code identified above should be amended.

Tom Jones, Director of Accounting for the Criminal Justice Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or

local government as a result of enforcing or administering the sections.

Mr. Jones also has determined that for the first five-year period that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient processes and procedures and the current rules will be more easily understood. There will be no anticipated economic cost to persons or small businesses for complying with the sections. There will be no anticipated economic costs to persons who are required to comply with the proposed amendments.

Comments on the proposed amendments may be submitted to Heather Morgan, Office of the Governor, Criminal Justice Division, at hmorgan@governor.state.tx.us; P. O. Box 12428, Austin, Texas 78711; or (512) 463-1919. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

#### SUBCHAPTER B. GENERAL GRANT

#### PROGRAM POLICIES

#### DIVISION 2. GRANT BUDGET

#### REQUIREMENTS

##### 1 TAC §3.87

The amendment of this rule is proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

##### §3.87. *Program Income.*

(a) Rules governing the use of program income are included in the provisions adopted by reference in §3.19 of this chapter.

(b) Grantees must use program income to supplement project costs or to offset project costs. Program income may only be used for allowable project costs. Otherwise, grantees must refund program income to CJD. The use of program income must be reflected in the budget.

(c) CJD may require or allow a grantee to transfer the CJD portion of program income and property to another grant, grantee or to CJD.

(d) Grantees must submit written requests to CJD to carry program income forward from one grant year to the next within 90 calendar days after the end of the grant period. Grantees may not carry program income forward without written CJD approval.

(e) All funds, accrued interest, and property awarded to a grantee under a forfeiture action represent program income, and these funds shall be added to the funds committed to the project in accordance with federal regulations as adopted by reference in §3.19 of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300666  
David Zimmerman  
Assistant General Counsel  
Office of the Governor

Earliest possible date of adoption: March 9, 2003  
For further information, please call: (512) 463-1919



## SUBCHAPTER C. FUND-SPECIFIC GRANT POLICIES

### DIVISION 5. VICTIMS OF CRIME ACT FUND

#### 1 TAC §3.505

The amendment of this rule is proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

#### §3.505. *Eligible Applicants.*

(a) State agencies, units of local government, nonprofit corporations, Native American tribes, crime control and prevention districts, universities, community supervision and corrections departments, COGs, and faith-based organizations that provide direct services to victims of crime are eligible to apply for grants under this fund. In addition, upon [Upp̩n] CJD approval, COGs may receive grants to function as a conduit agency to aid in the selection and management of qualified subgrantees. Faith-based organizations must be tax-exempt nonprofit entities certified by the Internal Revenue Service. Grantees may not use grant funds or program income for proselytizing or sectarian worship.

(b) All applicants must meet one of the following criteria:

(1) the applicant has a record of providing effective services to crime victims; or

(2) if an applicant does not have a demonstrated record of providing such services, it must show that at least 25 percent of its financial support comes from non-federal sources.

(c) All applicants must meet each of the following criteria:

(1) applicants must use volunteers, unless CJD determines that a compelling reason exists to grant an exception;

(2) applicants must promote community efforts to aid crime victims;

(3) applicants must help victims apply for compensation benefits;

(4) applicants must maintain and display civil rights information;

(5) applicants must provide services to victims of federal crimes on the same basis as victims of state and local crimes;

(6) applicants must provide grant-funded services at no charge to victims, and any deviation requires prior written approval by CJD; and

(7) applicants must maintain the confidentiality of all client-counselor information and research data, as required by state and federal law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300667  
David Zimmerman  
Assistant General Counsel  
Office of the Governor

Earliest possible date of adoption: March 9, 2003  
For further information, please call: (512) 463-1919



## DIVISION 7. EDWARD BYRNE MEMORIAL FUND

#### 1 TAC §3.719

The amendment of this rule is proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

#### §3.719. *District Attorney Agreement.*

(a) All applications for multi-jurisdictional task forces under the Edward Byrne Memorial Fund program must include agreements executed by the appropriate district attorneys in accordance with the following rules:

(1) district attorneys must diligently pursue all prosecutable forfeiture actions arising from operations initiated and investigated by the task force;

(2) property seized by the task force under the provisions of law shall remain in the custody of the task force until final disposition of the forfeiture action;

(3) funds seized by the task force may be placed in the custody of the district attorney until final disposition of the forfeiture action provided such funds are maintained in a separate bank account subject to review by the task force and CJD;

(4) upon final disposition of the forfeiture action, all funds, accrued interest, and [aH] property attributable to the efforts of the task force shall be awarded to the task force; however, if the task force does not have a CJD-funded attorney, the district attorney may retain up to 25 percent of the state's portion of the final judgment amount; and

~~[(5) all property and funds awarded to the task force under forfeiture action represent program income, and these funds shall be added to the funds committed to the project in accordance with federal regulations as adopted by reference in §3.19 of this chapter; and]~~

(5) [(6)] the agreement shall be in effect for the entire term of the task force grant (from the start date listed on the Statement of Grant Award until the end date listed thereon).

(b) Applications for multi-jurisdictional task forces under the Edward Byrne Memorial Fund program must include executed agreements for each county listed in the task force impact area. Counties must be contiguous and the participating district attorney may not execute an agreement with more than one task force project. A waiver may be granted by CJD in cases where a city's jurisdictional limits extend beyond a single county. The waiver will cover only that portion of the city that extends into the neighboring county.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300668  
David Zimmerman  
Assistant General Counsel  
Office of the Governor  
Earliest possible date of adoption: March 9, 2003  
For further information, please call: (512) 463-1919



## DIVISION 14. RURAL DOMESTIC VIOLENCE AND CHILD VICTIMIZATION ENFORCEMENT PROGRAM

### 1 TAC §3.1413

The amendment of this rule is proposed under the Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements the Texas Government Code, Title 7, §772.066(a), which requires the Office of the Governor, Criminal Justice Division, to advise and assist the governor in developing policies, plans, programs, and proposed legislation

for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

#### §3.1413. Grant Period.

The grant period for any grant awarded under this program is 24 [~~15~~] months.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300669  
David Zimmerman  
Assistant General Counsel  
Office of the Governor  
Earliest possible date of adoption: March 9, 2003  
For further information, please call: (512) 463-1919



## PART 3. OFFICE OF THE ATTORNEY GENERAL

### CHAPTER 55. CHILD SUPPORT ENFORCEMENT

#### SUBCHAPTER M. INTERCEPT OF INSURANCE CLAIMS

##### 1 TAC §§55.601 - 55.606

The Office of the Attorney General proposes new Subchapter M, §§55.601 - 55.606, pertaining to Intercept of Insurance Claims. The new sections are proposed pursuant to Texas Family Code §231.015. Texas Family Code §231.015 was enacted by the 77th Legislature Regular Session (2001), House Bill 1365, effective September 1, 2001, and State law (Texas Family Code §231.015) requires the State's Title IV-D agency to establish procedures by rule.

Section 55.601. describes §231.015 of the Family Code.

Section 55.602. explains how the Child Support Lien Network is set-up.

Section 55.603. explains the process for data matches.

Section 55.604. explains how to register for access to the data base.

Section 55.605. explains protection for the insurance companies.

Section 55.606. explains the Title IV-D's confidentiality and security.

Cynthia Bryant, Deputy Attorney General for Child Support, has determined that for the first five years these sections as proposed are in effect, there will be no fiscal implications for state or local government.

Ms. Bryant has also determined that for each year of the first five years the sections as proposed are in effect, the public benefit as a result of these new sections will be increased child

support collections as a result of child support liens being imposed on insurance settlement or awards owed to delinquent child support obligors.. In that these new sections merely describe the procedures that a financial institution will follow in complying with a voluntary program established under an already existing State statute, the new sections do not create any new economic costs for insurance companies, nor does the proposed new sections have any anticipated adverse effect on small or micro-businesses.

Ms. Bryant has also determined that there will be no local employment impact as a result of these proposed new sections.

Comments on these proposed new sections should be submitted to Hayley Hall, Business Improvement Section, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas, 78741 or (mailing address) P.O. Box 12017, mail code 046, Austin, Texas 78711-2017.

The new sections are proposed under the authority of Texas Family Code §231.015, which is affected by Federal law (42 USC 666).

The proposed new sections are affected by Texas Family Code §231.015.

#### §55.601. Scope.

Section 231.015 of the Family Code tasks the Child Support Division of the Office of the Attorney General, in consultation with the Texas Department of Insurance and representative of the insurance industry, with establishing by rule a pilot program whereby insurance companies may voluntarily cooperate with the Child Support Division in matching the names of those individuals who are or may be due liability insurance settlements or awards with the names of obligors who owe past-due child support. When such an individual is identified, the Child Support Division will file a child support lien on the pending settlement or award to secure the payment of past-due support. This subchapter explains how the matching process and the lien process work.

#### §55.602. Child Support Lien Network.

The Office of the Attorney General has joined the Child Support Lien Network (CSLN), a consortium of State child support enforcement agencies headed by the State of Rhode Island and Providence Plantations. Each of the participating State provides CSLN with a periodically updated list of its child support obligors. CSLN provides participating insurance companies with two methods of matching a pending settlement or award: an automatic data match, or an interactive lookup. The automatic data match is preferred because insurance companies need only take action on those claims that electronically match to a child support obligor.

#### §55.603. Automated Data Match.

(a) An insurance company can conduct an automatic electronic interface of its pending claims against the list of child support obligors through Insurance Service Office (ISO). ISO is an industry service provider, headquartered in New Jersey, which maintains the a claim search system to assist subscribing insurance companies in fraud detection.

(b) An insurance company desiring to participate in the automatic data matching process must give ISO permission to match its claim data with CSLN. ISO may be contacted at (800) 877-4476 or by email at njsupport@iso.com.

(c) CSLN matches its list of child support obligors daily against the ISO claim data.

(d) A participating insurance company will receive a notice of child support lien (or wage withholding instrument for a workers' compensation claim) only on those claims that the company has registered with ISO and that match the name of an obligor who owes past-due child support. This allows the insurance company to focus work efforts on only those claimants that actually require child support enforcement activity.

#### §55.604. Interactive Lookup.

(a) An insurance company may choose to check the name of an individual insurance claimant to see if there are outstanding child support obligations by accessing the CSLN data base of child support obligors.

(b) To register for access to this data base, a company must:

(1) go to the Office of the Attorney General's child support lien web page at <http://www.childsupportliens.com/TX/> ;

(2) click on the "Register" label in the left margin and complete and electronically submit the registration form; and

(3) print, sign and fax to CSLN at 888-430-6907 a copy of the confidentiality statement.

(c) Once the insurance company registration information has been reviewed and the signed confidentiality statement has been received, secure access to the data base of child support obligors will be approved. The company will be notified via e-mail of access approval. This notice will include the user id that has been assigned, the web site address and basic instructions.

(d) Insurance companies are encouraged to query the CSLN data base of child support obligors as early as possible in the claims process, but not later than 30 days before a claim settlement if possible.

(e) The insurance company receives immediate notification of the status of the match.

(1) If there is no match, the insurance company is informed.

(2) If there is a positive match, the insurance company is informed and provided the basic match data.

(3) If there are multiple possible matches within one state, the insurance company is asked to call CSLN to identify the correct obligor.

(4) If there are multiple possible matches within more than one state, the insurance company is notified that CSLN will work with the insurance company and the affected states to determine the appropriate course of action.

(f) When an interactive match occurs, CSLN notifies the State child support enforcement agency of a match. The State child support agency will send a notice of child support lien (or, in the case of a worker's compensation claim, a wage withholding instrument) to the company.

#### §55.605. Protection from Liability of Insurance Company for Disclosure of Information.

(a) An insurance company that provides information or otherwise responds to a notice of child support lien or levy under Subchapter G, Chapter 157, or acts in good faith to comply with procedures established in the pilot program under this section 231.015 is not liable for those acts under any law to any person.

(b) The federal Social Security Act (42 USC 666(a)(17)(C)(ii)) provides that a financial institution shall not be liable under any federal or state law to any person for encumbering or surrendering any assets it holds in response to a notice of lien or levy issued by the state child support enforcement agency.



§55.606. Confidentiality and Security.

(a) The Title IV-D agency shall consider any information received from an insurance company as confidential. Such information shall be used or disclosed by the Child Support Division only for the purpose of collecting past-due child support or for other purposes as enumerated in subsection (c) of Family Code §231.108.

(b) In accordance with section 453 of the federal Social Security Act, any information provided by the Child Support Division to an insurance company, or its designated agent, for the purpose of conducting a data match may not be used by the institution or its agent for any other purpose and may not be disclosed to any person except to the extent necessary to conduct the data match. The insurance company or its agent shall destroy or erase all information provided to the company after completion of a data match. This subsection does not apply to data contained in a child support lien or other encumbering instrument received from the Child Support Division after the data match process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300625

Rick Gilpin

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: March 9, 2003

For further information, please call: A.G. Younger, Agency Liaison, at (512) 463-2110



## PART 8. TEXAS JUDICIAL COUNCIL

### CHAPTER 173. INDIGENT DEFENSE

#### GRANTS

#### SUBCHAPTER D. ADMINISTERING GRANTS

##### 1 TAC §173.309

The Task Force on Indigent Defense (Task Force) is a permanent Standing Committee of Texas Judicial Council. The Task Force on Indigent Defense (Task Force) proposes an amendment to §173.309, concerning permitting the Task Force at its discretion to authorize extensions to grants awarded under the indigent defense grant program, rather than only at the request of a grantee county in accordance with §173.307(c)(3).

Chapter 173 establishes the guidelines for the administration of a new grant program for counties to improve indigent defense services. The proposed amendment will give the Task Force flexibility to extend grant periods to ensure that counties have sufficient time to expend grant funding previously awarded.

Ms. Glenna Rhea Bowman, Chief Financial Officer of the Office of Court Administration, has determined that for each year of the first five years the proposed amendment is in effect, enforcing or administering the section does not have foreseeable implications relating to cost or revenues of state or local government.

Ms. Bowman has determined that there will be no material economic costs to persons who are required to comply with the proposed amendment, nor does the proposed amendment have any anticipated adverse effect on small or micro-businesses.

Mr. Jim Bethke, Director of the Task Force, has also determined that for each of the first five-year period the proposed amendment is in effect the public benefit will be an improvement in the quality of indigent defense services because any grant period extensions that may be made under this proposed amendment will allow counties the opportunity to expend previously granted funds to improve their indigent defense systems.

Comments on the proposed amendment may be submitted in writing to Wesley Shackelford, Special Counsel, Task Force on Indigent Defense, P.O. Box 12066, Austin, Texas 78711-2066, or by fax to 512-475-3450 no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

The amendment is proposed under the authority of Texas Government Code §71.062 (Technical Support; Grants), concerning the grant and aid program, that provides the Task Force authority to provide grants to assist counties to improve indigent defense practices in the state and to promote compliance with state law concerning indigent defense practices. The Task Force interprets Texas Government Code §71.062 to require the Task Force to adopt by rule the guidelines for administering the grant program.

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

##### *§173.309. Grant Termination.*

(a) The grant will terminate at the end of the date specified in the grant award, unless an extension is granted in accordance with §173.307(c)(3) or the Task Force otherwise decides to modify the grant period.

(b) If a grantee wishes to terminate a grant in whole or in part before the end of the grant period, the grantee must notify the Task Force in writing. The Task Force or its designee will make arrangements with the grantee for the early termination of the grant.

(c) The Task Force may terminate any grant, in whole or in part, when:

- (1) a grantee fails to comply with any term or condition of the grant or the grantee has failed to comply with any applicable rule;
- (2) the grantee and the Director of the Task Force agree to do so;
- (3) grant funds are no longer available; or
- (4) conditions exist that make it unlikely that grant or program objectives will be accomplished.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2003.

TRD-200300313

Wesley Shackelford

Special Counsel

Texas Judicial Council

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 936-6994



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. MEDICAID REIMBURSEMENT RATES

#### SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

##### 1 TAC §355.5902

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.5902, concerning reimbursement methodology for primary home care and family care services, in its Medicaid Reimbursement Rates chapter. The purpose of the amendment is to modify the reimbursement methodology for Primary Home Care and Family Care (PHC/FC) Services to combine two cost areas into a single cost area for reimbursement payment determination.

The Texas Department of Human Services (DHS) is proposing related policy in its Chapter 47 in this issue of the *Texas Register*.

Don Green, Chief Financial Officer, has determined that, for the first five-year period the proposed section will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal implications for local government as a result of enforcing or administering the section.

The estimated fiscal impact for the first five-year period the section is in effect is subject to the availability of funds in state fiscal years (SFY) 2004-2008. The total fiscal impact based on state and federal funding is estimated at \$9,226,414 in SFY 2004; \$10,003,049 in SFY 2005; \$10,003,049 in SFY 2006; \$10,003,049 in SFY 2007; and \$10,003,049 in SFY 2008. Of the total, the impact on state funding is an estimated \$4,088,168 in SFY 2004; \$4,404,857 in SFY 2005; \$4,404,857 in SFY 2006; \$4,404,857 in SFY 2007; and \$4,404,857 in SFY 2008. Of the total, the estimated federal cost is \$5,138,246 in SFY 2004; \$5,598,192 in SFY 2005; \$5,598,192 in SFY 2006; \$5,598,192 in SFY 2007; and \$5,598,192 in SFY 2008.

Steve Lorenzen, Director, Rate Analysis, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be that more providers will have their allowable costs covered by the unit rates for this program. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the amendment ensures that more providers will have their allowable costs covered by the unit rates for this program. There is no anticipated economic cost to persons who are required to comply with the proposed section. There will be no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 685- 3127 in HHSC's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-072, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. For further information regarding the proposal or to make the proposal available for public review, contact local offices of DHS or Carolyn Pratt at (512) 685-3127 in Rate Analysis of HHSC.

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes the commission as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The amendment implements the Government Code, §531.033 and §531.021(b).

§355.5902. *Reimbursement Methodology for Primary Home Care and Family Care Services.*

(a) General requirements. ~~For the completion and submittal of cost reports pertaining to providers' fiscal years ending in calendar year 1997 and subsequent years, providers must apply the information in this section.~~ The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) (No change.)

(c) Reimbursement determination. Reimbursement is determined in the following manner.

(1) Cost determination by cost area. Allowable costs are combined for Primary Home Care and Family Care into three ~~four~~ cost areas, after allocating payroll taxes to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense and after applying employee benefits directly to the corresponding salary line item.

(A) Service support ~~[Field supervisors]~~ cost area. This includes field supervisors' salaries and ~~;~~ wages, benefits, and mileage reimbursement expenses. This also includes building, building equipment, and operation and maintenance costs; administration costs; and other service costs. Administration expenses equal to \$0.18 per Priority 1 unit of service are allocated to Priority 1. The administration costs remaining after this allocation are summed with the other service support costs.

(B)-(C) (No change.)

~~[(D) Building, administration, and other service cost areas. This includes building, building equipment, and operation and maintenance costs; administration costs; and other direct service costs. Administration expenses equal to \$0.18 per Priority 1 unit of service are allocated to Priority 1. The administration costs remaining after this allocation are summed with the facility and the other service costs.]~~

(2) Recommended reimbursement by cost area. For the service support cost area ~~[areas]~~ described in paragraph (1)(A) ~~[and (D)]~~ of this subsection the following is calculated:

(A) (No change.)

(B) Projected cost per unit of service. To determine the projected cost per unit of service for each provider agency, the total projected allowable costs for the service support ~~[each]~~ cost area are divided by total units of service, including nonpriority services, ~~[and]~~ Priority 1 services, and STAR+PLUS services, in order to calculate the projected cost per unit of service ~~[for each cost area]~~.

(C) Projected cost arrays. All provider agencies' projected allowable costs per unit of service are rank ordered from low to

high, along with each provider agency's corresponding total units of service [for each cost area].

(D) Recommended reimbursement for the service support [each] cost area [component]. The total units [hours] of service [used to calculate each cost area component] for each provider agency are summed until the median hour of service is reached. The corresponding projected expense is the weighted median cost component. The weighted median cost component [for each cost area] is multiplied by 1.044 to calculate the recommended reimbursement for the service support [each] cost area [component]. The service support cost area recommended reimbursement is limited, if necessary, to available appropriations.

(3)-(4) (No change.)

(d)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300662

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 438-3734



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

##### 19 TAC §§62.1001, 62.1011, 62.1031, 62.1041, 62.1051, 62.1061

The Texas Education Agency (TEA) proposes amendments to §§62.1001, 62.1011, 62.1031, 62.1041, 62.1051, and 62.1061, concerning the equalized wealth level. These sections establish provisions relating to authority of trustees and durations of agreements; election duties of board of trustees; date of agreement for purposes of determining election date; weighted students in average daily attendance for purposes of tax rate rollback; definition of parcel detached and annexed by the commissioner of education; and election of trustees of district consolidated by the commissioner. The proposed amendments would update statutory references to current provisions of the Texas Education Code (TEC).

In 1993, the 73rd Texas Legislature created the current wealth equalization system in TEC, Chapter 36. Subsequently in 1995, the 74th Texas Legislature moved the wealth equalization provisions in the TEC from Chapter 36 to Chapter 41. At that same time, TEC, Chapter 16, pertaining to the Foundation School Program was recodified as Chapter 42. The changes proposed in 19 TAC §§62.1001, 62.1011, 62.1031, 62.1041, 62.1051, and 62.1061 would modify statutory references to correspond to current codification.

Joe Wisnoski, Assistant Commissioner for School Finance and Fiscal Analysis, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Wisnoski has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be a clear statement in rule form of the proper references to statute. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 475-3499. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under Texas Education Code, §41.006, which authorizes the commissioner to adopt rules necessary for the implementation of TEC, Chapter 41, Equalized Wealth Level.

The amendments implement Texas Education Code, §41.006.

##### §62.1001. Authority of Trustees; Duration of Agreements.

(a) Trustees of independent school districts may not delegate their authority to enter into agreements necessary to achieve the purposes of the Texas Education Code, Chapter 41 [36]. Nor may the trustees authorize any exclusive franchises on the right to negotiate on behalf of the district.

(b) Consolidations under the Texas Education Code, Chapter 41 [36], Subchapter B; detachments and annexations under Subchapter C; and tax base consolidations under Subchapter F are permanent in duration and districts may not enter into agreements that purport to limit the duration of the agreement. Nor may the parties create by agreement any right to cancel the agreement.

##### §62.1011. Election Duties of Board of Trustees.

For the purposes of an election ordered under the Texas Education Code, Chapter 41 [36], the board of trustees that orders the election shall perform any applicable duty assigned to the county judge or to the county commissioners court under the Texas Education Code, Chapter 13 [49].

##### §62.1031. Date of Agreement for Purposes of Determining Election Date.

For the purposes of the Texas Education Code, §41.012 [§36.010], the date of an agreement entered by the board of trustees of a school district under the Texas Education Code, Chapter 41 [36], Subchapter E or F, is the date that the agreement is certified by the commissioner of education.

##### §62.1041. Weighted Students in Average Daily Attendance for Purposes of Tax Rate Rollback.

In determining the number of weighted students in average daily attendance for the purposes of tax rate rollback calculations under the Texas Tax Code, §26.08, the number calculated under the Texas Education Code, §42.302 [§16.302], is adjusted:

(1) as provided by the Texas Education Code, §41.123 [§36.123], by adding the number of weighted students in average daily attendance attributed to the district through a contract to educate nonresident students under the Texas Education Code, Chapter 41 [36], Subchapter E; and

(2) by adding the number of weighted students in average daily attendance attributed to the district through the purchase of attendance credits under the Texas Education Code, Chapter 41 [36], Subchapter D.

*§62.1051. Definition of Parcel Detached and Annexed by Commissioner.*

For the purposes of implementing the Texas Education Code, Chapter 41 [36], Subchapter G, a parcel shall be defined as one or more separately described items of real property, together with the improvements and personal property located on the property, that have the same taxable situs or that are:

- (1) contiguous to each other;
- (2) used as a unit or subject to the same predominant use; and
- (3) located within the boundaries of a single school district.

*§62.1061. Election of Trustees of District Consolidated by Commissioner.*

The election date under the Texas Education Code, §41.253(b) [§36.253(b)], is modified to be the first May uniform election date after the effective date of a consolidation order under the Texas Education Code, Chapter 41 [36].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2003.

TRD-200300471

Cristina De La Fuente-Valadez

Manager, Policy Planning

Texas Education Agency

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 463-9701



## CHAPTER 153. SCHOOL DISTRICT PERSONNEL

### SUBCHAPTER CC. COMMISSIONER'S RULES ON CREDITABLE YEARS OF SERVICE

#### 19 TAC §153.1021

The Texas Education Agency (TEA) proposes an amendment to §153.1021, concerning school district personnel. The section determines the experience for which certain professional staff members are given credit in placement on the state minimum salary schedule. The proposed amendment would add three established and respected international accrediting organizations to the list of recognized accrediting entities for salary increment purposes.

Effective February 1, 1998, the commissioner of education adopted 19 TAC §153.1021, Recognition of Creditable Years of Service, as authorized by the Texas Education Code, §21.403,

75th Texas Legislature, 1997. The provisions of law required the commissioner to adopt rules for determining the experience for which certain professional staff are to be given credit in placement on the state minimum salary schedule.

The existing 19 TAC §153.1021, as amended effective April 16, 2000, concerning placement on the salary schedule applies to teachers, librarians, counselors, and nurses. The rule provides appropriate definitions and explains required documents, necessary credentials, and the service record. The rule details the provisions for creditable years of service, including recognized employing entities for service credit.

The proposed amendment to 19 TAC §153.1021, which adds content and modifies existing language in order to accommodate the addition of three international accrediting associations, includes the following changes.

The definition relating to regional accrediting agencies in subsection (a)(14) is expanded to include the International Baccalaureate Organization, the European Council of International Schools, and the National Council for Private School Accreditation in new subparagraphs (H) - (J), respectively.

Language in subsection (f)(1) is added to reflect Texas public colleges and universities. This change is proposed as clarification to the rule that prior to the 1990 - 1991 school year, minimum days at less than 100% of the day are applicable only to recognized Texas public entities.

Language in subsection (h)(12)(B) describing accreditation by a recognized state or regional accrediting agency is modified to include the additional recognized accrediting agencies in subsection (a)(14).

Language in subsection (h)(13)(C) describing accreditation of foreign private schools is modified to account for the additional recognized regional accrediting agencies in subsection (a)(14).

Joe Wisnoski, Assistant Commissioner for School Finance and Fiscal Analysis, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Wisnoski has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the opportunity to attract to Texas experienced teachers who are teaching in highly qualified international schools overseas. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 475-3499. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under Texas Education Code, §21.403, which authorizes the commissioner to adopt rules for determining the experience for which a teacher, librarian, counselor, or nurse is to be given credit in placing the teacher, librarian, counselor, or nurse on the minimum salary schedule.

The amendment implements Texas Education Code, §21.403.

§153.1021. *Recognition of Creditable Years of Service.*

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

(1) - (13) (No change.)

(14) Regional accrediting agency--The recognized regional accrediting agencies are:

(A) - (E) (No change.)

(F) Northwest Association of Schools and Colleges; [and]

(G) Commission on International and Trans-regional Accreditation ; [-]

(H) International Baccalaureate Organization;

(I) European Council of International Schools/Council of International Schools; and

(J) National Council for Private School Accreditation.

(15) - (20) (No change.)

(b) - (e) (No change.)

(f) Minimum requirements. The table in this subsection indicates the minimum number of days required to earn and receive credit for a year of experience.

Figure: 19 TAC §153.1021(f) (No change.)

(1) For service performed through the 1989-1990 school year, minimum days at less than 100% or at full-time equivalency are applicable only to service in Texas public schools, Texas education service centers, and, beginning in 1978-1979, Texas public colleges and universities.

(2) - (7) (No change.)

(g) (No change.)

(h) Requirements. Requirements for entities recognized for professional personnel are as follows:

(1) - (11) (No change.)

(12) Public or private colleges and universities, and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions.

(A) (No change.)

(B) Accreditation by a recognized state or regional accrediting agency listed in subsection (a)(14) of this section [~~in the United States~~] is required. In states or territories that have no provisions for accrediting, licensing, or approving private elementary or secondary schools, service shall be acceptable provided the person held, while employed, a valid teaching certificate from the state in which the school is located or a valid Texas teaching certificate.

(C) (No change.)

(13) Foreign public or private elementary and secondary schools, colleges, and universities.

(A) - (B) (No change.)

(C) For foreign private schools, private colleges or universities, accreditation must be by a recognized regional accrediting agency listed in subsection (a)(14) [~~in the United States~~].

(D) (No change.)

(14) - (18) (No change.)

(i) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2003.

TRD-200300472

Cristina De La Fuente-Valadez

Manager, Policy Planning

Texas Education Agency

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 463-9701

## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 108. PROFESSIONAL CONDUCT SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

##### 22 TAC §108.10

The State Board of Dental Examiners proposes amendments to §108.10, concerning educational or other requirement that set forth criteria by which a license holder who placed their license in a retired status may re-enter active practice.

Changes proposed at subsection (a) provide reinstatement requirements for dentists or dental hygienists reinstating a retired license. These provisions specify requirements for those applicants who have been engaged in active practice in another state or jurisdiction and for those applicants who have not been practicing prior to the reinstatement request.

Changes proposed to new subsection (b) will require applicants to comply with all applicable provisions of the Dental Practice Act and Rules and Regulations of the board.

Changes proposed to new subsection (c) will require applicants who may have been under a board order at the time of the license retirement to comply with all conditions set forth in any board order that may have been in effect.

Proposed new subsections (d) and (e) replace former subsections (b) and (c).

Bobby Schmidt, Executive Director, State Board of Dental Examiners, has determined for the first five year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Schmidt has determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the rule will be newly established procedures allowing a license holder to re-enter active practice.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred, they will not be of such magnitude to impact the economic viability of a small business.

Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small business when compared to large businesses, as the cost of compliance, if any, will be minimal.

Comments on the proposal may be submitted to Mr. Schmidt, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the *Texas Register*.

The amended rule is proposed under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and §256.102 which provides that the SBDE shall adopt rules concerning retired status of license holders.

The proposed amended rule does not affect other statutes, articles, or codes.

§108.10. Reinstatement of Retired License [Educational or Other Requirement].

(a) The State Board of Dental Examiners may reinstate a retired dental or dental hygiene license to active status provided the license holder submits a written request for reinstatement, pays the appropriate fees due at the time the request is made and meets the following criteria: [The Board may require continuing or remedial education courses of a retired dentist who has applied to the Board to reinstate the dental license to active status to re-enter active practice. A dentist who applies to re-enter active practice must comply with all other applicable provisions of the Dental Practice Act and Rules of the Board. Further, at the time retired status was granted, the dentist must have been in compliance or satisfied all conditions of any Board order that may have been in effect.]

(1) A license holder currently practicing in another state, or territory outside of the United States, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where licensee has held a license;

(B) proof of current active practice;

(C) proof that licensee has taken and passed the Texas jurisprudence examination;

(D) proof of current basic CPR certification; and

(E) proof of completion of twelve hours of continuing education, pursuant to Rule 104.1 (of this title relating to Requirement), taken within the last twelve months.

(2) A license holder who has not actively practiced for at least two years immediately preceding the request to reinstate his/her license shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where licensee has held a license;

(B) proof that licensee has taken and passed the Texas jurisprudence examination;

(C) proof of current basic CPR certification; and

(D) proof of completion of twenty-four hours of continuing education, pursuant to Rule 104.1 (of this title relating to Requirement), taken within the last twelve months of which a minimum of twelve hours must be hands-on.

(b) A license holder who applies to re-enter active practice must comply with all other applicable provisions of the Dental Practice Act and Rules of the Board.

(c) A license holder who applies to re-enter active practice must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time retired status was granted.

(d) ~~[(b)]~~ In keeping with public health and safety, the Board may, in its discretion, require compliance with other reasonable conditions in considering a request to re-enter active practice.

(e) ~~[(c)]~~ The Board may charge a reasonable administrative fee of \$50.00 for a request to re-enter active practice ~~[and shall annually review such fee to determine whether it is adequate or in excess of actual costs].~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300379

Bobby Schmidt

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 463-6400

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**PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

**CHAPTER 513. REGISTRATION**

**SUBCHAPTER B. REGISTRATION OF CPA FIRMS**

**22 TAC §513.9**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.9, concerning Application for Firm License.

The amendment to §513.9 will establish that the person who completes the application is responsible for substantively responding to Board inquiries addressed to the firm.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not affect costs or revenues.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not affect costs or revenues.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not affect costs or revenues.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of

adoption of the proposed amendment will be that it is clear who has the responsibility to respond to Board inquiries.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment only establishes actual current procedure.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, February 26, 2003. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not affect costs or revenues.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon's 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.9. *Application for Firm License.*

(a) Application for a firm license must be made upon a form prescribed by the board and submitted to the executive director. The application must be accompanied by affidavit of an individual owner who holds a license to practice public accountancy in this state affirming that all statements are true and correct. In accordance with Section 501.93 of this title (relating to Responses) this individual shall respond substantively to board inquiries concerning the firm and its eligibility for a firm license.

(b) A firm shall notify the board not later than the 31st day after the date on which information in the affidavit is changed, including information regarding the admission or withdrawal of an owner or resident manager.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2003.

TRD-200300480

Amanda G. Birrell  
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 305-7848

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**TITLE 25. HEALTH SERVICES**

**PART 2. TEXAS DEPARTMENT OF  
MENTAL HEALTH AND MENTAL  
RETARDATION**

**CHAPTER 414. PROTECTION OF  
CONSUMERS AND CONSUMER RIGHTS  
SUBCHAPTER A. CLIENT-IDENTIFYING  
INFORMATION**

**25 TAC §§414.1 - 414.17**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§414.1 - 414.17 of Chapter 414, Subchapter A, concerning client-identifying information. New §§414.1 - 414.8 of Chapter 414, Subchapter A, concerning protected health information, which would replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register*.

The repeals would allow for the adoption of new sections governing the same matters.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to cost or revenue of the state or local governments.

Cathy Campbell, director, Legal Services, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected as a result of the adoption of the new rules is the protection of rights of individuals receiving mental health, mental retardation, and chemical dependency services from a facility, local authority, community center, or its respective contract provider with regard to use and disclosure of their protected health information (PHI) in compliance with federal and state privacy laws. It is anticipated that there would be no economic cost to persons required to comply with the rules as proposed for repeal.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses or microbusinesses.

Written comments on the proposed repeals may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These rules are proposed for repeal under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority, and §533.009, which requires the board to adopt rules governing the exchange of patient and client records without the patient's or client's consent among department facilities, local mental health or mental retardation authorities, community centers, other designated providers, and subcontractees of mental health and mental retardation services.

These proposed rules would affect the Texas Health and Safety Code, §532.015 and §533.009.

§414.1. *Purpose.*

§414.2. *Application.*

§414.3. *Definitions.*

§414.4. *Statutes and Federal Regulations Governing Disclosure.*

§414.5. *General Provisions for Release of Client-Identifying Information.*

§414.6. *Notice of Federal Confidentiality Requirements for Clients Receiving Chemical Dependency Services.*

§414.7. *When Consent for Disclosure Is Not Required: Clients Receiving MHMR Services.*

§414.8. *When Consent for Disclosure Is Not Required: Clients Receiving Chemical Dependency Services.*

§414.9. *Form of Consent: Clients Receiving MHMR and Chemical Dependency Services.*

§414.10. *Who Can Give Consent for Disclosure: Clients Receiving MHMR Services.*

§414.11. *Who Can Give Consent for Disclosure: Clients Receiving Chemical Dependency Services.*

§414.12. *Disclosure to a Client of Information Contained in His or Her Records.*

§414.13. *Notice Upon Disclosure of Information Concerning Clients Receiving Chemical Dependency Services.*

§414.14. *Depositions, Subpoenas, and Subpoenas Duces Tecum - Facility and SOCS Staff Compliance.*

§414.15. *Exhibits.*

§414.16. *References.*

§414.17. *Distribution.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300491

Andrew Hardin

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 206-5216



## 25 TAC §§414.1 - 414.8

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§414.1 - 414.8 of Chapter 414, Subchapter A, concerning protected health information. The repeals of existing §§414.1 - 414.17 of Chapter 414, Subchapter A, concerning client-identifying information, which the new sections would replace, are contemporaneously proposed in this issue of the *Texas Register*.

The proposed new rules would require facilities, local authorities, community centers, and their respective contract providers to comply with all applicable federal and state statutes, rules and regulations governing privacy of protected health information and lists 19 applicable federal and state statutes, rules and regulations. The proposed new rules would also require the Notice of Privacy Practice of each facility, local authority, and community center to include information regarding permitted disclosures under Texas Health and Safety Code, §533.009. Additionally, the new rules would require each facility, local authority, and community center to include in its Notice of Privacy Practice a statement that identifies it as a part of the TDMHMR service delivery system and a statement that individuals may file a complaint with TDMHMR Consumer Services and Rights Protection/Ombudsman Office by calling 1-800-252-8154 or writing to P.O. Box 12668, Austin, TX 78711.

The proposed new rules also reference TDMHMR's "Interpretative Guidance on Laws Pertaining to Privacy of Mental Health and Mental Retardation Records for TDMHMR, its Contractors, and Consumers," which is an interpretation of the applicable federal and state statutes, rules and regulations listed in these rules. The new rules require TDMHMR Central Office and all facilities to comply with the interpretative guidance. Although the new rules do not require local authorities and community centers to comply with the interpretative guidance, TDMHMR notes that it will use this guidance in determining whether TDMHMR contractors (e.g., local authorities) and community centers are in compliance with applicable federal and state statutes, rules and regulations governing privacy of protected health information.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenue of the state or local governments because the new rules merely require compliance with existing state and federal statutes as well as recently adopted federal regulations (i.e., 45 CFR Parts 160 and 164).

Cathy Campbell, director, Legal Services, has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit expected is the protection of rights of individuals receiving mental health, mental retardation, and chemical dependency services from a facility, local authority, community center, or its respective contract provider with regard to use and disclosure of their protected health information (PHI) in compliance with federal and state privacy laws. It is not anticipated that there will be any additional economic cost to persons required to comply with the proposed rules because they do not impose additional requirements on such persons.

It is not anticipated that the proposed new rules will affect a local economy because the rules do not contain requirements related to employment or a local economy.

It is anticipated that the proposed new rules will not have an adverse economic effect on small businesses or microbusinesses because the rules do not impose requirements on small businesses or microbusinesses that are additional to those contained in existing state and federal statutes or recently adopted federal regulations.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 9:00 a.m., on Friday, February 21, 2003, in TDMHMR Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing



impaired should contact the TDMHMR Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Sharayla Jones, at least 72 hours prior to the hearing at (512) 206-5283 or at the TDY phone number of Texas Relay, 1-800-735-2988.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These rules are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority, and §533.009, which requires the board to adopt rules governing the exchange of patient and client records without the patient's or client's consent among department facilities, local mental health or mental retardation authorities, community centers, other designated providers, and subcontractees of mental health and mental retardation services.

These proposed rules would affect the Texas Health and Safety Code, §532.015 and §533.009.

§414.1. Purpose.

The purpose of this subchapter is to require facilities, local authorities, community centers, their respective contract providers, and TDMHMR Central Office to comply with all applicable privacy laws, rules, and regulations.

§414.2. Application.

This subchapter applies to:

- (1) all facilities of the Texas Department of Mental Health and Mental Retardation (TDMHMR);
- (2) TDMHMR Central Office;
- (3) all local authorities; and
- (4) all community centers.

§414.3. Definitions.

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

- (1) Community center--A center established under the Texas Health and Safety Code, Title 7, Chapter 534, Subchapter A.
- (2) Contract provider--A person, entity, or organization that contracts with a facility, local authority, or community center to provide mental health or mental retardation services, or alcohol or drug abuse treatment.
- (3) Facility--A state mental health facility or a state mental retardation facility.
- (4) Individual--A person who, voluntarily or involuntarily, is seeking or receiving, or has sought or received mental health or mental retardation services, or alcohol or drug abuse treatment from or through a facility, a local authority, a community center, or its respective contract providers, or TDMHMR Central Office.
- (5) Local authority--An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).
- (6) More stringent--In accordance with 45 CFR 160.202, a state law that meets one or more of the following criteria:

(A) with respect to a use or disclosure, the law prohibits or restricts a use or disclosure where the use or disclosure would be

permitted under the federal regulation, except if the disclosure is to the U.S. Department of Health and Human Services or to the individual;

(B) with respect to the rights of an individual regarding access to or amendment of protected health information, the law permits greater rights of access or amendment;

(C) with respect to information to be provided to an individual about a use, a disclosure, rights, and remedies, the law provides a greater amount of information;

(D) with respect to consent or authorization for use or disclosure of protected health information, the law narrows the scope or duration of the consent or authorization, increases privacy protections, or reduces the coercive effect of obtaining the consent or authorization;  
or

(E) with respect to recordkeeping or accounting of disclosures, the law provides for the retention or reporting of more detailed information or for a longer duration.

(7) Notice of Privacy Practices--Pursuant to 45 CFR §164.501, a written notice developed and distributed by a covered entity, as defined in 45 CFR §160.103, that describes:

(A) the uses and disclosures of protected health information that may be made by the entity; and

(B) individuals' rights and the entity's legal duties with respect to protected health information.

(8) Protected health information or PHI--

(A) Any information that identifies or could be used to identify an individual, whether oral or recorded in any form, that relates to:

(i) the past, present, or future physical or mental health or condition of the individual;

(ii) the provision of health care to the individual; or

(iii) the payment for the provision of health care to the individual.

(B) The term includes, but is not limited to:

(i) an individual's name, address, date of birth, or Social Security number;

(ii) an individual's medical record or case number

(iii) a photograph or recording of an individual;

(iv) statements made by an individual, either orally or in writing, while seeking or receiving services from or through a facility, a local authority, a community center, or its respective contract providers, or TDMHMR Central Office;

(v) any acknowledgment that an individual is seeking or receiving or has sought or received services from or through a facility, a local authority, a community center, or its respective contract providers, or TDMHMR Central Office;

(vi) direct identifiers of relatives, employers, or household members of an individual; and

(vii) any information by which the identity of an individual can be determined either directly or by reference to other publicly available information.

(C) The term does not include:

(i) health information that has been de-identified in accordance with 45 CFR §164.514(b); and

(ii) employment records held by an entity as an employer.

(9) State mental health facility--A state hospital or a state center with an inpatient component that is operated by TDMHMR.

(10) State mental retardation facility--A state school or a state center with a mental retardation residential component that is operated by TDMHMR.

§414.4. Requirements.

(a) TDMHMR Central Office and each facility, local authority, and community center shall comply with all applicable federal and state statutes, rules and regulations pertaining to privacy of protected health information (PHI) including, but not limited to, the federal and state statutes, rules and regulations described in §414.5 of this title (relating to Regulations and Statutes Governing Confidentiality of Protected Health Information).

(1) As set forth in 45 CFR Part 160 Subpart B, where a provision of 45 CFR Part 160 or 164 is contrary to a provision of state law, the federal regulation preempts the state law unless the provision of state law:

(A) is more stringent (as defined) than the provision of the federal regulation;

(B) provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention; or

(C) requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of providers or persons.

(2) TDMHMR's "Interpretative Guidance on Laws Pertaining to Privacy of Mental Health and Mental Retardation Records for TDMHMR, its Contractors, and Consumers," referenced as Exhibit A in §414.6 of this title (relating to Exhibits), provides an interpretation of the applicable federal and state statutes, rules and regulations described in §414.5 of this title (relating to Regulations and Statutes Governing Confidentiality of Protected Health Information), applying the preemption provisions described in paragraph (1) of this subsection. TDMHMR Central Office and all facilities must comply with the "Interpretative Guidance on Laws Pertaining to Privacy of Mental Health and Mental Retardation Records for TDMHMR, its Contractors, and Consumers."

(b) Information to be included in Notice of Privacy Practice.

(1) Each facility, local authority, and community center shall include in its Notice of Privacy Practice a statement that disclosures may be made between facilities, local authorities, community centers, their respective contract providers, and TDMHMR Central Office for the purpose of treatment, payment, or health care operations without the individual's consent as permitted by Texas Health and Safety Code, §533.009.

(2) TDMHMR Central Office and each facility, local authority, and community center shall include in its Notice of Privacy Practice a statement:

(A) that identifies it as a part of the TDMHMR service delivery system; and

(B) that individuals may file a complaint with TDMHMR Consumer Services and Rights Protection/Ombudsman Office by calling 1-800-252-8154 or writing to P.O. Box 12668, Austin, TX 78711.

(c) Each facility, local authority, and community center is responsible for ensuring that contracts with its contract providers require compliance with subsection (a) of this section.

§414.5. Regulations and Statutes Governing Confidentiality of Protected Health Information.

(a) Federal regulations. The following federal regulations pertain to privacy of protected health information (PHI):

(1) Code of Federal Regulations, Title 45, Parts 160 and 164, Federal Standards for Privacy of Individually Identifiable Health Information (i.e., Federal Privacy Rule), promulgated by the Secretary of the United States Department of Health and Human Services;

(2) Code of Federal Regulations, Title 42, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, promulgated by the Secretary of the United States Department of Health and Human Services;

(3) Code of Federal Regulations, Title 34, Part 99, governing the disclosure of educational records of school-age children, promulgated by the Secretary of the United States Department of Education; and

(4) Code of Federal Regulations, Title 42, Part 51, Subpart D, and Code of Federal Regulations, Title 45, §1386.22, governing access to PHI by advocates for individuals with mental illness and mental retardation, promulgated by the Secretary of the United States Department of Health and Human Services.

(b) Federal statutes.

(1) The Health Insurance Portability and Accountability Act (HIPAA), 42 USC §1320d *et seq.*, provides the statutory authority for the United States Department of Health and Human Services to promulgate the Federal Privacy Rule.

(2) 42 USC §10805(a)(4) (Protection and Advocacy for Mentally Ill Individuals) and 42 USC §15043(a)(2)(I) (Protection and Advocacy of Individual Rights) provide the authority for access of PHI by Advocacy, Inc.

(3) 42 USC §290dd-2 provides the statutory authority to promulgate the federal regulations on confidentiality of alcohol and drug abuse patient records, referenced in subsection (a)(2) of this section.

(c) State statutes.

(1) Texas Health and Safety Code, Chapter 181, governing uses and disclosures of PHI in the State of Texas, applies portions of 45 CFR Parts 160 and 164 (Federal Privacy Rule) to most entities and persons not covered by HIPAA.

(2) Texas Open Records Act, Texas Government Code, Chapter 552, provides that all information collected, assembled, or maintained in any form by governmental bodies, and agencies operating in part or whole with state funds, in connection with the transaction of official business is public information; however, the act does set out certain exceptions. One such exception is information deemed confidential by law, such as PHI.

(3) Texas Health and Safety Code, §576.005 and Chapter 611, govern the confidentiality of PHI that relates to MHMR services.

(4) Texas Health and Safety Code, Chapter 81, Subchapter F, governs the confidentiality of information related to HIV/AIDS test results.

(5) The provisions for disclosure of PHI that relates to mental retardation services are contained in the Persons with Mental Retardation Act, Texas Health and Safety Code, Chapter 595. The provisions

described in §576.005 and Chapters 595 and 611 of Texas Health and Safety Code should be interpreted together in reaching a determination regarding the use or disclosure of PHI that relates to mental retardation services.

(6) Texas Human Resources Code, Chapter 48, establishes authority for the Texas Department of Protective and Regulatory Services (TDPRS) to have access to PHI necessary to conduct investigations into allegations of abuse, neglect, and exploitation of individuals.

(7) Texas Medical Practice Act, Texas Occupations Code, Chapter 159, governs physician-patient communication.

(8) Texas Health and Safety Code, §533.009, governs the exchange of PHI between facilities, local authorities, community centers, and their respective contract providers.

(9) Texas Health and Safety Code, §595.005(c), governs the disclosure of educational records of individuals receiving mental retardation services.

(10) Texas Government Code, Chapter 559, provides that persons have a right to be informed about information that a state governmental body collects about them, and to have incorrect information that is possessed about them by a state governmental body corrected.

(11) Texas Family Code, Chapter 32, governs consent to treatment of a child by a non-parent or the child.

(12) Texas Health and Safety Code, Chapter 241, Subchapter G, governs the disclosure of PHI in hospitals licensed under the chapter.

#### §414.6. Exhibit.

This subchapter references Exhibit A -- "Interpretative Guidance on Laws Pertaining to Privacy of Mental Health and Mental Retardation Records for TDMHMR, its Contractors, and Consumers," copies of which are available by contacting TDMHMR, Policy Development, P.O. Box 12668, Austin, TX 78711-2668.

#### §414.7. References.

Reference is made to the following state and federal statutes, rules, and regulations:

- (1) 45 CFR Parts 160 and 164, and §1386.22;
- (2) 42 CFR Part 2 and Part 51, Subpart D;
- (3) 34 CFR Part 99;
- (4) 42 USC §290dd-2, §1320d *et seq.*, §10805(a)(4), and §15043(a)(2)(I);
- (5) Texas Health and Safety Code:
  - (A) Chapter 81, Subchapter F;
  - (B) Chapter 241, Subchapter G;
  - (C) Chapter 534, Subchapter A;
  - (D) Chapters 181; 595; and 611; and
  - (E) §533.009, §533.035(a), §576.005, and §595.005(c);
- (6) Texas Government Code, Chapters 552 and 559;
- (7) Texas Human Resources Code, Chapter 48;
- (8) Texas Occupations Code, Chapter 159; and
- (9) Texas Family Code, Chapter 32.

#### §414.8. Distribution.

- (a) This subchapter shall be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management, and program staff of TDMHMR Central Office;

(3) CEOs of all facilities, local authorities, and community centers; and

(4) advocacy organizations.

(b) The CEO of each facility, local authority, and community center shall disseminate the information contained in this subchapter to all appropriate staff members and contract providers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Andrew Hardin

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 206-5216

## **TITLE 30. ENVIRONMENTAL QUALITY**

### **PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

#### **CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES**

The Texas Commission on Environmental Quality (commission) proposes amendments to §§114.21, 114.260, and 114.452 and corresponding revisions to the state implementation plan (SIP). The amendments and revised SIP narrative will be submitted to the United States Environmental Protection Agency (EPA) as proposed revisions to the SIP.

#### **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES**

The statutory citation, "Texas Dealer Law, Article 6686, Vernon's Civil Statutes, Title 43, Texas Administrative Code" referenced in §114.21(d) has been repealed by legislative action and recodified in Texas Transportation Code, §503.001 with some changes to the terms used in the original citation. Therefore, the current citation as referenced in §114.21(d) to define the terms "wholesale dealer" and "retail dealer" is no longer valid. In addition, when the statutory language was recodified in the Texas Transportation Code, some terms were combined and their definitions broadened, which will allow the proposed revisions in §114.21(d) to simply reference the term "dealer" instead of the previous two specific terms.

Existing §114.21(e)(2) requires that certain signed statements be retained by certain sellers of vehicles, but does not specify the length of time. Because the documents pertain to the possible need to fix the emissions systems on the sold vehicles, and because there are mechanisms in place to require testing of the emissions systems in ozone nonattainment areas on a periodic

basis, the commission believes that the records should be retained for only two years.

The Federal Clean Air Act (FCAA) Amendments of 1990 (42 United States Code (USC), §§7401 *et seq.*) required each state to submit a revision to its SIP by November 25, 1994, establishing enforceable criteria and procedures for making conformity determinations for metropolitan transportation plans, transportation improvement programs, and projects funded by the Federal Highway Administration or the Federal Transit Administration. Final rules regarding conformity requirements were published by EPA November 24, 1993. The Texas SIP revision which incorporated conformity requirements was adopted October 19, 1994, and was approved by EPA November 8, 1995. EPA has amended the federal transportation conformity rule five times: August 7, 1995; November 14, 1995; August 15, 1997; April 10, 2000; and August 6, 2002. The commission previously incorporated the federal changes up to and including the 1997 amendment. The commission is now updating its rule to incorporate the latest federal amendments.

The Houston/Galveston ozone nonattainment area (HGA) is classified as Severe-17 under 42 USC, §§7401 *et seq.* Therefore, the area is required to attain the one-hour ozone standard of 0.12 parts per million (ppm) by November 15, 2007. Division 6, Lawn Service Equipment Operating Restrictions, of Subchapter I, adopted by the commission in 2000, was part of the HGA Post-1996 Rate-of-Progress (ROP)/Attainment Demonstration SIP that was designed to meet the one-hour ozone standard. Implementation of this control strategy is necessary in order for the HGA nonattainment area to comply with the requirements of the FCAA and achieve attainment for ozone. However, the commission believes that for two reasons the lawn service equipment operating restrictions should be amended to allow those in the lawn and garden industry more time to submit their emission reduction plans.

First, the commission believes that, due to flaws in the Nonroad Assessment Tool and Estimator (NATE) model, the lawn care industry does not have sufficient time to create an emission reduction plan before the current May 31, 2003 deadline. The NATE model was designed to aid the lawn and garden industry in development of emission reduction plans. However, programming flaws were discovered after the NATE model was made available to the public. These flaws have been corrected, and the program is now back on the commission web site. Second, the commission is seeking to delay the compliance requirements associated with the lawn and garden rules until 2004 to provide commission staff with the time needed to reexamine the need for the rules as part of the mid-course review of the entire HGA SIP. If it is determined that these rules are not needed or can be replaced by more effective emission reduction strategies, the new deadline would reduce the expenditure of unnecessary resources in planning for compliance. Because the proposed amendment to §114.452 only concerns the date by which emission reduction plans must be submitted to the commission, no changes in the amount of emission benefits that were originally estimated to be achieved by the lawn and garden rules are anticipated.

#### SECTION BY SECTION DISCUSSION

The proposed amendment to §114.21(c)(2) changes the name of the agency to its new name. The proposed amendment to §114.21(d) replaces the terms "wholesale dealers" and "retail dealers" with the term "dealer" and identifies the statutory citation defining this term as "Texas Transportation Code, §503.001." The proposed amendment makes reformatting and

textual revisions that appropriately reflect the new broader term. This proposed revision is necessary because the current statutory citation is no longer valid. The "Texas Dealer Law, Article 6686, Vernon's Texas Civil Statutes, Title 43, Texas Administrative Code" was repealed by legislative action and the regulatory language was recodified with changes in Texas Transportation Code, §503.001. In the proposed amendment to §114.21(e)(2), a period of two years is added for the retention of certain records, rather than the current indefinite period. Because the documents pertain to the possible need to fix the emissions systems on the sold vehicles, and because there are mechanisms in place to require testing of the emissions systems in ozone nonattainment areas on a periodic basis, the commission believes that the records should be retained for only two years.

The proposed amendment to §114.260(c) incorporates the date (August 6, 2002) that EPA last amended the federal transportation conformity rule. The changes to federal regulations that are incorporated into the rule include the following. 40 Code of Federal Regulations (CFR) §93.102 was amended by adding as paragraph (d) a grace period for new nonattainment areas. 40 CFR §93.102 implements an FCAA amendment, enacted October 27, 2000, that provides a one-year grace period before conformity is required in areas that are designated nonattainment for a given air quality standard for the first time. 40 CFR §93.104(e)(2), relating to the frequency of conformity determinations, was amended to change the point by which a conformity determination must be made following a state's submission of a control strategy implementation plan or maintenance plan for the first time (an "initial" SIP submission). 40 CFR §93.104(e)(2) requires conformity to be determined within 18 months of EPA's affirmative finding that the SIP's motor vehicle emission budgets are adequate. Prior to this action, the conformity rule required a new conformity determination within 18 months of the submission of an initial SIP. In order to take advantage of these positive changes and to provide consistency between state and federal conformity requirements, the commission is proposing to adopt all of the current federal rules with the exception of 40 CFR §93.105, which is met through the remainder of the state conformity rule. The commission is proposing to remove the reference in the rule to 40 CFR §93.102(d) because this reference was originally included in the rule to acknowledge that the grace period at that time had been invalidated by a court challenge. However, the new 40 CFR §93.102(d) is now authorized by congressional action and the commission is proposing to adopt by reference the grace period which it provides.

The proposed amendments to §114.260(d) correct typographical errors, change the language to be consistent with current agency style and format, and update the name of the agency and the title of the Strategic Assessment Division director. The proposed amendments to §114.260(e) clarify that compliance with the rule must begin upon the date of EPA approval of the SIP and rule revisions under FCAA, §176(c)(4)(C) and remove outdated references to previous adoption dates. The commission notes however, that the one-year conformity grace period currently applies as a statutory matter for all newly designated nonattainment areas, since this grace period was required as a matter of law once the FCAA was amended, and therefore does not require EPA approval before it is effective.

The proposed amendments to §114.452 include changes to make the text consistent with the current agency style and format for rules and to correct typographical errors. The proposed amendment to §114.452(c) changes the deadline to

submit an emission reduction plan from May 31, 2003 to May 31, 2004. The affected area would still include the following counties within the HGA nonattainment area: Brazoria, Fort Bend, Galveston, Harris, and Montgomery. The effective date of the lawn and garden rules would remain April 1, 2005. The intent of this amendment is to change the deadline by which emission reduction plans must be submitted to the commission. The proposed amendment to §114.452(c) would also change the deadline for plan approval from May 31, 2004 to March 31, 2005 to account for the later submission deadline but still provide for approval prior to the compliance date. Proposed §114.452(c) would state that commercial operators or persons not exempt under subsection (b) of this section who submit an emissions reduction plan by May 31, 2004, which is approved by the executive director and the EPA no later than March 31, 2005, are exempt from operating hour restrictions upon implementation of these rules in 2005, and are permitted to operate during the restricted hours. In addition to changing the submission deadline the commission also proposes to delete the sentence which states that the executive director may allow plans to be submitted after May 31, 2003. This change is made in order to resolve the conflict between this date and the proposed new deadline of May 31, 2004.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Yia Hang, Analyst in the Strategic Planning and Appropriations Section, has determined that, for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for the agency or any other unit of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments would revise sections relating to air pollution from mobile sources by: simplifying language and updating textual references that are no longer valid; defining a document retention period for vehicle sales by certain sellers; extending a submission deadline for emission reduction plans to be developed by lawn and garden companies; providing a one-year grace period for new nonattainment areas to demonstrate conformity to a SIP's motor vehicle emission budgets; and incorporating changes to federal rules which include changing the timing that conformity is required from 18 months following state submission of an initial SIP to 18 months following EPA finding that the motor vehicle emission budget is adequate for conformity. The proposed amendments would simplify language and update textual references that are no longer valid in rule sections relating to vehicle transactions under motor vehicle anti-tampering requirements for pollution control equipment. The proposed amendments would replace the terms "wholesale dealers" and "retail dealers" with the general term "dealer," update statutory references and name changes, and correct insubstantial formatting and typographical errors. No fiscal implications are anticipated as a result of the administration or enforcement of the proposed changes.

Under current rules, commercial vehicle auctions and federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles are exempt from restrictions on selling vehicles not in compliance with pollution control requirements if they provide buyers with written statements informing the buyers of the liabilities of operating vehicles prior to the restoration of all pollution control systems or devices. Sellers are required to retain copies of these signed statements, but current rules did not specify a length of time for document

retention. The proposed amendments would require that the statements be retained for two years. The commission does not know how many vehicles have been sold by federal, state, or local governments which had defective pollution control equipment, nor how many of these entities had been retaining such documents, but it assumes that this proposed revision may potentially result in reduced document storage costs to those units of government or their agents who sell vehicles with defective pollution control equipment, though these costs are not considered significant.

The proposed amendments also extend the deadline by which owners and operators of lawn and garden companies in the HGA ozone nonattainment area must submit their emission reduction plans. The proposed deadline extension would affect owners and operators in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties. Submitting an emission reduction plan enables a lawn care company to be eligible for exemption from restrictions on the hours of operation for the lawn care industry. The proposed amendments would change the submission deadline from May 31, 2003 to May 31, 2004. The commission believes that the lawn care industry did not receive sufficient time to create emission reduction plans and that more time is needed to examine the need for the rule. Because the proposed amendments merely extend the deadline for plans, no fiscal implications are anticipated, though there may be a delay in any costs to those lawn care industry owners or operators who contract for assistance in developing their plans. No changes are anticipated to the amount of previously projected emission benefits achieved by the lawn and garden rules as a result of the deadline extension.

The proposed amendments would also incorporate by reference two amendments to the federal transportation conformity rule, which ensures that transportation spending in nonattainment areas is in compliance with the SIP. The federal amendments provide state and local governments with additional time to demonstrate conformity of transportation planning activities with the SIP. The first federal rule change incorporates an amendment to the FCAA, enacted on October 27, 2000, giving new nonattainment areas a one-year grace period before conformity applies. The second federal rule change incorporates a decision by the United States Court of Appeals for the D.C. Circuit Court by changing the time frame for conforming to the standard. The requirement would change from 18 months following state submission of an initial SIP to 18 months following a finding by the EPA that the motor vehicle emissions budget is adequate for conformity.

The one-year grace period for areas designated nonattainment for the first time is in effect by statute. The revised 18-month conformity trigger would allow metropolitan planning organizations in nonattainment areas up to an additional three months to demonstrate conformity. Currently, Texas has six metropolitan areas that are projected to exceed the new eight-hour ozone standard: Austin, San Antonio, Longview-Tyler, Dallas-Forth Worth, Beaumont-Port Arthur, and Houston-Galveston. Four of these areas have the potential to be newly designated nonattainment (Austin, San Antonio, Longview-Tyler, and the Dallas perimeter). However, no significant fiscal implications are anticipated for units of state and local governments as the grace period is already a matter of law and an additional three months for the 18-month conformity trigger will not increase the cost of transportation planning requirements.

#### PUBLIC BENEFITS AND COSTS

Ms. Hang also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed amendments will be: the clarification and simplification of regulatory language; increased flexibility with a more sufficient amount of time to create emission reduction plans; and overall state compliance with federal rules.

No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed amendments, though there may be cost savings for those businesses or individuals who sell abandoned, confiscated, or seized vehicles or participate in commercial vehicle auctions due to potentially reduced document storage costs. In addition, owners and operators of lawn care businesses in the HGA ozone nonattainment area who contract for assistance in developing their emission reduction plans may experience a delay in any costs associated with developing their plans due to the proposed extension of the deadline for submitting their plans.

The proposed changes would revise sections relating to air pollution from mobile sources by: updating a statutory citation and textual references that are no longer valid; defining a document retention period for vehicle sales by certain sellers; extending a submission deadline for emission reduction plans to be developed by lawn and garden companies; and providing a one-year grace period for new nonattainment areas to reach conformity with federal transportation rules.

Under current rules, commercial vehicle auctions and federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles are exempt from restrictions on selling vehicles not in compliance with pollution control requirements if they provide buyers with written statements informing the buyers of the liabilities of operating vehicles prior to the restoration of all pollution control systems or devices. Sellers are required to retain copies of these signed statements, but current rules did not specify a length of time for document retention. The proposed amendments would require that the statements be retained for two years. The commission does not know how many vehicles have been sold by agents for federal, state, local governments which had defective pollution control equipment, nor how many of these agents had been retaining such documents, but assumes that this proposed revision may potentially result in reduced document storage costs to those who sell vehicles with defective pollution control equipment, though these costs are not considered significant.

The proposed amendments also extend the deadline by which owners and operators of lawn and garden companies in the HGA ozone nonattainment area must submit their emission reduction plans. The proposed deadline extension would affect owners and operators in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties. Submitting an emission reduction plan enables a lawn care company to be eligible for exemption from restrictions on the hours of operation for the lawn care industry. The proposed amendments would change the submission deadline from May 31, 2003 to May 31, 2004. The commission believes that the lawn care industry did not receive sufficient time to create emission reduction plans and that more time is needed to examine the need for the rule. Because the proposed amendments merely extend the deadline for plans, no fiscal implications are anticipated, though there may be a delay in any costs to those lawn care industry owners or operators who contract for assistance in developing their plans. No changes are anticipated to the amount of previously projected emission benefits achieved

by the lawn and garden rules as a result of the deadline extension.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed amendments, and any fiscal implications to any small or micro-business resulting from the implementation of the proposed amendments may be positive, though not considered significant.

Under current rules, commercial vehicle auctions and federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles are exempt from restrictions on selling vehicles not in compliance with pollution control requirements if they provide buyers with written statements informing the buyers of the liabilities of operating vehicles prior to the restoration of all pollution control systems or devices. Sellers are required to retain copies of these signed statements, but current rules did not specify a length of time for document retention. The proposed amendments would require that the statements be retained for two years. The commission does not know how many vehicles have been sold by small or micro-businesses which had defective pollution control equipment, nor how many of these entities had been retaining such documents, but assumes that this proposed revision may potentially result in reduced document storage costs to those small or micro-businesses that sell vehicles with defective pollution control equipment, though these costs are not considered significant.

The proposed amendments also extend the deadline by which owners and operators of lawn and garden companies in the HGA ozone nonattainment area must submit their emission reduction plans. The proposed deadline extension would affect owners and operators in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties. Submitting an emission reduction plan enables a lawn care company to be eligible for exemption from restrictions on the hours of operation for the lawn care industry. The proposed amendments would change the submission deadline from May 31, 2003 to May 31, 2004. The commission believes that the lawn care industry did not receive sufficient time to create emission reduction plans and that more time is needed to examine the need for the rules. The commission does not know how many lawn care industry small or micro-businesses are in the lawn care industry, but because the proposed amendments merely extend the deadline for plans, no fiscal implications are anticipated, though there may be a delay in any costs to those lawn care industry owners or operators who contract for assistance in developing their plans. No changes are anticipated to the amount of previously projected emission benefits achieved by the lawn and garden rules as a result of the deadline extension.

#### 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 amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments do not meet

the definition of a "major environmental rule." 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 proposed amended sections would make clarifications regarding the anti-tampering rules, adopt by reference federal changes to the transportation conformity rules, and extend the deadline for filing an emission reduction plan for compliance with the lawn and garden rules. These proposed amendments would not require additional emission controls or new capital expenses.

In addition, 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 proposed amendments to Chapter 114 are not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rules do not meet any of the four applicability requirements. The commission invites public comment regarding the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the proposed rules. Promulgation and enforcement of the rules will not burden private real property. The amended sections will not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and has determined that the proposed amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. If adopted, the amendments will update definitions related to motor vehicle dealers to correspond to changes made in statute, will set a retention period for certain records, will incorporate updates to federal rules on transportation conformity, and will delay by one year the deadline

by which lawn and garden companies must submit emission reduction plans to the commission. No new contaminants will be authorized by these proposed amendments, although the submittal of emission reduction plans will be delayed on the use of lawn and garden equipment in the HGA nonattainment area. Interested persons may submit comments on the consistency of the proposed amendments with the CMP during the public comment period.

#### ANNOUNCEMENT OF HEARINGS

Public hearings on this proposal will be held in Houston on February 27, 2003, at 2:00 p.m. at the City Hall Annex, Council Agenda Briefing Room, 900 Bagby (between McKinney and Walker), and in Austin on February 28, 2003, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Room 2210, 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes before the hearings and will answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-008-114-AI. Comments must be received by 5:00 p.m., February 28, 2003. For further information or questions concerning this proposal, please contact Joseph Thomas, Office of Environmental Policy, Analysis, and Assessment, (512) 239-4580.

### SUBCHAPTER B. MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

#### 30 TAC §114.21

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which provides the commission the authority to coordinate with federal, state, and local transportation

planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendment implements TWC, §§5.103 and 5.105 and TCAA, §§382.002, 382.011, 382.012, 382.019, and 382.208.

§114.21. Exemptions.

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

(c) Motor vehicles are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions apply:

(1) (No change.)

(2) the motor vehicles were granted an exemption from the provisions of §114.20(a) and (b) of this title by the commission [~~the Texas Natural Resource Conservation Commission (commission)~~] or its predecessor agency prior to June 1, 2000.

(A) - (B) (No change.)

(d) The following vehicle transactions involving a "dealer" [~~"wholesale dealers" and "retail dealers"~~] as defined in Texas Transportation Code, §503.001 [~~the Texas Dealer Law, Article 6686, Vernon's Texas Civil Statutes, Title 43, Texas Administrative Code~~], are exempt from the requirements of §114.20(c) of this title:

(1) sales or transfers from one [~~vehicle wholesale~~] dealer to another; and

~~[(2) sales or transfers from a vehicle wholesale dealer to a vehicle retail dealer;]~~

~~[(2) [(3)] sales, transfers, or trade-ins from an individual to a [vehicle wholesale or retail] dealer. [;]]~~

~~[(4) sales or transfers from one retail dealer to another retail dealer; and]~~

~~[(5) sales or transfers from a retail dealer to a wholesale dealer.]~~

(e) Federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles and any commercial vehicle auction facilities are exempt from the provisions of §114.20(c) of this title if the following conditions are met.

(1) (No change.)

(2) All potential buyers of the vehicle must be informed that deficiencies may be present in the vehicle pollution control systems on the vehicle. The buyer must also be informed of the liabilities to the buyer under §114.20 of this title and §114.50 of this title (relating to Vehicle Emissions Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle as originally equipped. The seller of the vehicle shall provide to the buyer a written acknowledgment of the receipt of this information which must be signed by the buyer prior to completion of the sales transaction. The seller shall retain a copy of this signed acknowledgment for two years and shall make it available, upon request.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300517

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 239-0348

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SUBCHAPTER G. TRANSPORTATION  
PLANNING

30 TAC §114.260

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendment implements TWC, §§5.103 and 5.105 and TCAA, §§382.002, 382.011, 382.012, 382.019, and 382.208.

§114.260. *Transportation Conformity.*

(a) Purpose. The purpose of this section is to implement the requirements set forth in Title 40 [of the] Code of Federal Regulations ([40] CFR) Part 93, Subpart A (relating to Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 United States Code or the Federal Transit Laws), which are the regulations developed by the EPA under the FCAA Amendments of 1990, §176(c). It includes policy, criteria, and procedures to demonstrate and assure conformity of transportation planning activities with the state implementation plan [~~State Implementation Plan~~] (SIP).

(b) (No change.)

(c) CFR incorporation. The Transportation Conformity Rules, as specified in 40 CFR Part 93, Subpart A, (62 FR 43780) dated August 15, 1997 and amended through August 6, 2002, are incorporated by reference with the exception of [~~§93.102(d) and~~] §93.105. The requirements of §93.105 are addressed in this section.

(d) Consultation. Under 40 CFR [;] §93.105, regarding consultation, the following procedures shall be undertaken in nonattainment and maintenance areas before making conformity determinations and before adopting applicable SIP revisions.



(1) General factors.

(A) For the purposes of this subsection, concerning consultation, the affected agencies shall include:

(i) - (v) (No change.)

(vi) local publicly owned ~~[publicly owned]~~ transit services in nonattainment or maintenance areas (the designated recipient of FTA §5307 (formerly §9 funds);

(vii) Texas Commission on Environmental Quality (TCEQ or commission) ~~[Texas Natural Resource Conservation Commission (commission)]~~;

(viii) (No change.)

(B) All correspondence with the affected agencies in subparagraph (A) of this paragraph shall be addressed to the following designated points of contact:

(i) - (ii) (No change.)

(iii) TxDOT: director ~~[Director]~~ of Transportation Planning and Programming or designee;

(iv) TxDOT: director ~~[Director]~~ of Environmental Affairs Division or designee;

(v) FHWA: administrator ~~[Administrator]~~ of Texas Division or designee;

(vi) FTA: director ~~[Director]~~ of Office of Program Development or designee - FTA Region 6;

(vii) EPA: regional administrator ~~[Regional Administrator]~~ or designee - EPA Region 6;

(viii) TxDOT District: district engineer ~~[District Engineer]~~ or designee;

(ix) local publicly owned ~~[publicly owned]~~ transit services (the designated recipient of FTA §5307 (formerly §9) funds): general manager ~~[General Manager]~~ or designee;

(x) local air quality agencies (recipients of FCAA, §105 funds): director ~~[Director]~~ or designee; and

(xi) (No change.)

(2) Roles and responsibilities of affected agencies.

(A) The MPO, in cooperation with TxDOT and publicly owned transit services, shall consult with the agencies in paragraph (1)(A) of this subsection in the development of Metropolitan Transportation Plans (MTPs), Transportation Improvement Programs (TIPs), projects, technical analyses, travel demand or other modeling, and data collection. Specifically, the MPOs shall:

(i) allow the commission's Strategic Assessment Division director ~~[Air Quality Planning and Assessment Division Director]~~, or a designated representative, to be a voting member of technical committees on surface transportation and air quality in each nonattainment and maintenance area in order to consult directly with the particular committee during the development of the transportation plans, programs, and projects;

(ii) send information on time and location, an agenda, and supporting materials (including preliminary versions of MTPs and TIPs) for all regularly scheduled meetings on surface transportation or air quality to each of the agencies specified in paragraph (1)(B) of this subsection. This information shall be provided in accordance with the locally adopted public involvement process as required by 23 CFR ~~[Part 450]~~ §450.316(b)(1);

(iii) after preparation of final draft versions of MTPs and TIPs, and before adoption and approval by the affected governing body, ensure that the agencies specified in paragraph (1)(B) of this subsection receive a copy, and that they are included in the local area's public participation process as required by the Metropolitan Planning Rule, 23 CFR ~~[§]~~ §450.316(b)(1). Upon approval of MTPs and TIPs, MPOs shall distribute final approved copies of the documents to the agencies specified in paragraph (1)(B) of this subsection;

(iv) for the purposes of regional emissions analysis, initiate a consultation process with the affected agencies specified in paragraph (1)(A) of this subsection during the development stage of new or revised MTPs and TIPs to determine which transportation projects should be considered regionally significant and which projects should be considered to have a significant change in design concept and scope from the effective MTP and TIP. Regionally significant projects will include, at a minimum, all facilities classified as principal arterial or higher, or fixed guideway systems or extensions that offer an alternative to regional highway travel. Also, these include minor arterials included in the travel demand modeling process which serve significant interregional and intraregional travel, and connect rural population centers not already served by a principal arterial, or connect with intermodal transportation terminals not already served by a principal arterial. A significant change in design concept and scope is defined as a revision of a project in the MTP or TIP that would significantly affect model speeds, vehicle miles traveled, or network connections. In addition to new facilities, examples include changes in the number of through lanes or length of project (more than one mile), access control, addition of major intermodal terminal facilities (such as new international bridges, park- and-ride lots, and transfer terminals), addition/deletion of interchanges, or changing between free and toll facilities. When a significant change in the design and scope of a project is proposed, the MPO shall document the rationale for the change and give the affected agencies specified in paragraph (1)(A) of this subsection a 30-day opportunity to comment on the ~~[their]~~ rationale. The MPO shall consider the views of each agency that comments, and respond in writing before any final action on these issues. If the MPO receives no comments within 30 days, the MPO may assume concurrence by the agencies specified in paragraph (1)(A) of this subsection;

(v) include in the TIP a list of projects exempted from the requirements of a conformity determination under 40 CFR ~~[Part 93]~~ §93.126 and §93.127. The MPO shall consult with the affected agencies specified in paragraph (1)(A) of this subsection in determining if a project on the list has potentially adverse emissions for any reason, including whether or not the exempt project will interfere with implementation of an adopted transportation control measure (TCM). The MPO shall respond in writing to all comments within 30 days on final MTP and TIP documents. In addition, if no comments are received as part of the subsequent public involvement process for the TIP, the MPO may proceed with implementation of the exempt project; ~~[ ]~~

(vi) notify the affected agencies specified in paragraph (1)(A) of this subsection in writing of any MTP or TIP revisions or amendments which add or delete the exempt projects identified in 40 CFR~~[§]~~ §93.126;

(vii) as required by 40 CFR ~~[§]~~ §93.116 and §93.123, and in cooperation with TxDOT, make a preliminary identification of those projects located at sites in PM<sub>10</sub> nonattainment and maintenance areas that require quantitative PM<sub>10</sub> hot spot ~~[Hot Spot]~~ analyses. After these projects have been identified, the MPO shall submit a list of these projects and sufficient data to the agencies specified in paragraph (1)(A) of this subsection for review and comment;

(viii) before adoption of any new or substantially different methods or assumptions used in the hot spot [~~Hot Spot~~] or regional emissions analysis [~~Regional Emissions Analysis~~], provide an opportunity for the agencies specified in paragraph (1)(A) of this subsection to review and comment;

(ix) - (xii) (No change.)

(B) The commission, as the lead air quality planning agency, shall work in consultation with the agencies specified in paragraph (1)(A) of this subsection in developing applicable transportation-related [~~transportation related~~] SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. Specifically, the commission shall:

(i) set agendas and schedule meetings to seek advice and comments from all agencies specified in paragraph (1)(A) of this subsection during preparation of applicable transportation-related [~~transportation related~~] SIP revisions;

(ii) schedule public hearings in order to gather public input on the applicable transportation-related SIP revisions in accordance with 40 CFR [;] §51.102 and notify the agencies specified in paragraph (1)(B) of this subsection of the hearings;

(iii) provide copies of final documents, including applicable adopted or approved transportation-related [~~transportation related~~] SIP revisions and supporting information, to all agencies specified in paragraph (1)(B) of this subsection; [~~and~~]

(iv) after consultation with the MPO regarding TCMs, distribute to all agencies specified in paragraph (1) (B) of this subsection and other interested persons the list of TCMs proposed for inclusion in the SIP. In consultation with the agencies specified in paragraph (1)(A) of this subsection, the commission shall determine whether past obstacles to implementation of TCMs have been identified and are being overcome, and determine whether the MPOs and the implementing agencies are giving maximum priority to approval or funding for TCMs. Also, the commission shall consider, in consultation with the affected agencies, whether delays in TCM implementation necessitate a SIP revision to remove TCMs or to substitute TCMs or other emission reduction measures; and [;]

(v) consult with the applicable agencies specified in paragraph (1)(A) of this subsection, in order to cooperatively choose conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR [;] §93.109(g)(2)(iii).

(C) Any group, entity, or individual planning to construct a regionally significant transportation project which is not an FHWA-FTA project (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered) must disclose project plans to the MPO on a regular basis and disclose any changes to those plans immediately. This requirement also applies to recipients of funds designated under Title 23 United States Code [~~U.S.C.~~] or the Federal Transit Laws.

(3) General procedures.

(A) - (B) (No change.)

(C) For the purposes of evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot spot [~~Hot Spot~~] and regional emissions analyses [~~Regional Emissions Analyses~~], agencies specified in paragraph (1)(A) of this subsection shall participate in a working group identified as the Technical Working Group for Mobile Source Emissions [~~(TWG)~~]. The frequency of meetings and agendas for them will be cooperatively determined by the agencies specified in paragraph (1)(A) of this

subsection. The function of this working group may be delegated to an existing group with similar composition and purpose.

(D) The commission, affected MPOs, affected local air quality agencies, and TxDOT shall cooperatively evaluate events which will trigger the need for new conformity determinations. New conformity determinations may be triggered by events established in 40 CFR [;] §93.104 as well as other events, including emergency relief projects that require substantial functional, locational, and capacity changes, or in the event of any other unforeseeable circumstances.

(E) The MPO and its governing body, or TxDOT if applicable, shall make conformity determinations for all MTPs, TIPs, regionally significant projects, and all other events as required by 40 CFR [;] Part 93, Subpart A and this section. Upon completion of the transportation conformity determination review process (including consultation, public participation, and all other requirements of this section), FHWA and FTA will issue a joint conformity finding, indicating the transportation conformity status of the document(s) under review. The effective date of the conformity determination for an area is the date of the joint conformity finding made by FHWA-FTA.

(4) Conflict resolution.

(A) (No change.)

(B) In the event that the MPO or TxDOT determines that every effort has been made to address the commission's concerns, and that no further progress is possible, the MPO or TxDOT shall notify the TCEQ [~~commission~~] executive director in writing to this effect. This subparagraph shall be cited by the MPO or TxDOT in any notification of a conflict which may require action by the Governor, or his or her delegate under subparagraph (C) of this paragraph.

(C) (No change.)

(5) Public comment on conformity determinations. Consistent with the requirements of 23 CFR [;] Part 450, concerning public involvement, the agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment. This process shall, at a minimum, provide reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and before taking formal action on conformity determinations for all MTPs and TIPs, as required by 23 CFR §450.316(b) and this section. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR §7.95. In addition, these agencies shall address in writing any public comment claiming that a non-FHWA/FTA funded, regionally significant project has not been properly represented in the conformity determination for an MTP or TIP. Finally, these agencies shall provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

(6) In formulating an enforcement policy regarding a violation [~~of a rule~~] of this subsection (relating to the consultation process) the commission may consider any good-faith [~~good faith~~] effort made by the consulting agencies to comply.

(e) Compliance date. Compliance with this section shall begin [~~Effective date.~~ The revisions to this section adopted by the commission on November 18, 1998, and filed with the Secretary of State on November 23, 1998, shall be in effect] on the date of EPA approval of the transportation conformity SIP associated with this rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300518

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 239-0348



## SUBCHAPTER I. NON-ROAD ENGINES

### DIVISION 6. LAWN SERVICE EQUIPMENT OPERATING RESTRICTIONS

#### 30 TAC §114.452

##### STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendment implements TWC, §5.103 and §5.105 and TCAA, §§382.002, 382.011, 382.012, 382.019, and 382.208.

##### §114.452. Control Requirements.

(a) No handheld or non-handheld [;] lawn and garden service equipment powered by spark-ignition engines of 25 horsepower (hp) and below shall be started or operated between the hours of 6:00 a.m. and noon, during the time period from April 1 to October 31, in the counties listed in §114.459 of this title (relating to Affected Counties and Compliance Dates), except as specified in subsections (b) and (c) of this section.

(b) The following uses of lawn and garden service equipment powered by spark-ignition engines of 25 hp and below are exempt from the requirements of this division:

- (1) (No change.)
- (2) any use by a noncommercial [~~non-commercial~~] operator; or
- (3) (No change.)

(c) Commercial operators or persons not exempt under subsection (b) of this section who submit an emissions reduction plan by May 31, 2004 [2003], (which is approved by the executive director and the EPA no later than March [May] 31, 2005 [2004]) are exempt from operating hour restrictions upon implementation of these rules in 2005, and are permitted to operate during the restricted hours. [The executive director may allow plans to be submitted after May 31, 2003.] In any event, a plan must be approved prior to the use of that plan for compliance with the requirements of this division. In order to be approved, the plan must demonstrate nitrogen oxide and volatile organic compound reductions equivalent to those required by the rules being requested for exemption, and must contain adequate enforcement provisions.

(d) Commercial operator is defined as any person who receives payment or compensation in exchange for operating lawn and garden service equipment powered by spark-ignition engines of 25 hp or below where the payment or compensation is required to be reported as income by the United States Internal Revenue Code. This term also includes any employees or contractors of any person as defined in the Texas Health and Safety Code [Clean Air Act], §382.003(10).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300519

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 239-0348



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER A. PRACTICE AND PROCEDURE

#### 34 TAC §9.103

The Comptroller of Public Accounts proposes new §9.103, concerning audits of school district taxable property value. This new section replaces 34 TAC §9.5071, concerning the same subject matter, which is being repealed in order that it can be adopted under Title 34, Part I, Chapter 9, Subchapter A. The new section is being proposed to make the rules easier to use and to make the audit process more efficient.

The new section sets forth how the Comptroller of Public Accounts shall provide procedures for audits and clerical error corrections of school districts' taxable property values as provided by Government Code, §403.302(h) in the manner required by law. It establishes filing deadlines for audit requests, including extensions, and specifies who may submit requests. The new section requires the use of model forms and affidavits, as well

as the submission of reports and other documents, with audit requests.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government. The proposed new rule would have no significant fiscal impact on small businesses.

Mr. LeBas also has determined that the proposed new rule would benefit the public by making the audit process more efficient and providing additional information to taxpayers regarding their tax responsibilities.

Comments on the section may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This new section is proposed under Tax Code, §111.002 and §111.0022, which provides the comptroller the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The new section implements Government Code, §403.302(h).

§9.103. Audits of School District Taxable Property Values.

(a) Definitions.

(1) Taxable value audit means an investigation or review made to determine if the certified property value study findings of a school district's taxable property value under Government Code, Chapter 403, should be changed to correct clerical errors in the comptroller's records, and to reflect changes in local tax rolls that occurred after the school district's most recent property value report to the comptroller for the property value study year that is the subject of the audit request.

(2) Recapitulation means one or more computer-generated summaries of appraisal roll information that:

(A) are designed for purposes other than this audit;

(B) are produced by an appraisal district or a taxing unit that collects for the school district; and

(C) on the effective date show certified values for each type of exemption, other value losses, each property category, and each land class matching the values shown in the amended *School District Report of Property Value* and *Report on Value Lost Because of the School Tax Limitation on Homesteads of the Elderly* submitted with the audit request.

(3) Property value study year means the year for which the comptroller certified the school district's final taxable value that is the subject of the taxable value audit.

(4) Effective date means the single date for which all values and other reported information subject to the taxable value audit are correct.

(b) Taxable value audit requestors.

(1) A school district may request an audit of its taxable value finding determined by the comptroller and certified to the commissioner of education under Government Code §403.302(g); or

(2) the commissioner of education may request an audit of any school district's taxable value finding determined by the comptroller and certified to the commissioner of education under Government Code §403.302(g).

(c) Taxable value audit request. A request for a taxable value audit by a school district must be made to the Manager of the Property Tax Division in writing on the Request for School District Taxable

Value Audit (form 50-302). A request for a taxable value audit from the commissioner of education must be made to the Manager of Property Tax Division in any written form and signed by the commissioner. At the time of submission, a school district request must include all documentation necessary for staff to complete the audit. A school district for which an audit is requested by the commissioner of education must submit all documentation that would be required in a school district request within 30 days of notification by the Property Tax Division that a request for audit was made. A complete request must:

(1) name the school district for which the taxable value audit is requested;

(2) be signed by the school superintendent;

(3) name one agent who may be the school superintendent or any person designated by the superintendent or the commissioner of education, as appropriate, who will be the primary point of contact for all correspondence and questions regarding the audit;

(4) state the property value study year in question;

(5) state one effective date for all of the values in the reports;

(6) include an amended *School District Report of Property Value*, signed by the authorized official or agent, that correctly incorporates each applicable correction, accompanied by a statement summarizing the reasons for the corrections;

(7) include an amended *Report on Value Lost Because of the School Tax Limitation on Homesteads of the Elderly*, signed by the chief appraiser or school district agent, that correctly incorporates each applicable correction, accompanied by a statement summarizing the reasons for the corrections;

(8) include for appraisal districts that store appraisal roll information electronically, a computer-generated recapitulation;

(9) include for appraisal districts in which a recapitulation is not available, an appraisal review board change order, correction, or supplement for each property changed since the date of the last School District Report of Property Value submitted to the comptroller, accompanied by the certification from the chief appraiser that communicated each change to the taxing unit, along with a copy of the tax record showing the original and amended value for each property changed for the tax year subject to the audit; and

(10) include a Chief Appraiser Affidavit of Value for School District Audit model form 50-303 (with the exception of audit requests filed after June 1 of the third year following the property value study year that pertain solely to final determinations in court cases).

(d) Number of requests and request deadline. Up to three separate taxable value audit requests pertaining to the same property value study year may be submitted at any time after the comptroller certifies final values to the commissioner of education, but must be filed before July 1 of the third year following certification. Requests will be timely if received by the comptroller's property tax division manager:

(1) by personal delivery on or before June 30;

(2) by United States mail if sent by regular first-class mail, properly addressed with postage prepaid and bearing a post office cancellation mark on or before June 30; or

(3) by express mail corporation in a properly addressed envelope or wrapper, showing a legible date to prove delivery to the express mail corporation on or before June 30.

(e) Deadline extension. The taxable value audit request deadline provided in subsection (d) of this section may be extended only to reflect:

(1) final determinations in court cases that occurred after June 1 of the third year following the property value study year for which the school district provides the final judgments with the audit request; or

(2) appraisal review board actions, and actions taken under Property Tax Code §25.25, that:

(A) occurred after June 1 of the third year following the property value study year;

(B) are submitted to the comptroller's property tax division by July 1 of the year following the property value study year in which the actions occurred as part of an audit request that meets all the requirements of this section; and

(C) total more than \$20 million or 2.0% of the most recent taxable value in the school district as determined under Government Code §403.302 or §403.303, for the property value study year in question, whichever is least.

(f) Incomplete requests. A request that omits any item listed in subsection (c) of this section is incomplete. If items described in subsection (c)(7)-(10) of this section are unavailable to the district, are not material to the corrections requested, and do not result in a materially incorrect taxable value for the district, staff may make corrections based on items in subsection (c) of this section that were provided by the district and may not make corrections for items not provided by the district.

(g) Additional information. Comptroller staff may request additional information from the school district, its appraisal district, or any other source as needed to complete the taxable value audit. If the school district, or its appraisal district does not provide the additional information within 30 days of the staff request, comptroller staff may deny any adjustments related to the additional information without notice. The 30-day period may be extended for an additional 30 days if the school district cannot obtain the information within the original 30 days for reasons outside the school district's control.

(h) Prior proceeding. In conducting a taxable value audit, comptroller staff shall consider whether the matter presented in the taxable value audit request has been finally resolved in a prior audit or audit request, property value study protest, or judicial proceeding. If so, the staff may base its taxable value audit finding on the result of that prior audit or audit request, property value study protest, or judicial proceeding.

(i) Audit conduct. The comptroller's primary goals in conducting the taxable value audit are to update the property value study and make the study more accurate. Consequently, comptroller staff may accept numerical documentation with nominal internal inconsistencies, reject numerical documentation that leads to unreasonable results, and otherwise exercise sound judgment in arriving at the most accurate total taxable value in the school district. Comptroller staff may conduct the taxable value audit by reviewing the required documentation submitted with the audit request, or may include a review of the relevant records by personal inspection at the tax office, appraisal office, or any other public office.

(j) Amending an audit request. An audit request may be amended at any time prior to the date of the issuance of the preliminary finding but may not be amended to change the effective date of the audit. A change in an effective date must be submitted as part of a new audit request.

(k) Withdrawal of audit request. An audit request may be withdrawn at any time before the comptroller issues a preliminary audit finding if the comptroller's property tax division manager determines that the withdrawal will not cause a significant adverse effect on the accuracy of the property value study. After the preliminary audit finding is issued, the audit request may be withdrawn only with the approval of the comptroller's hearing examiner.

(l) Taxable value certification and protest. After considering all the relevant information submitted by the school district and from other reliable sources, comptroller staff shall recalculate the school district's total taxable value and certify a preliminary taxable value audit finding to the commissioner of education. The total taxable value certified in the preliminary taxable value audit finding may be greater than, less than, or the same as the most recent total taxable value certified to the commissioner of education under Government Code §403.302 or §403.303, for the property value study year subject to the taxable value audit, but shall not affect the validity presumption used in that certification. A school district may protest the preliminary taxable value audit finding by following the procedures prescribed in §9.109.

(m) Audit request acceptance. The comptroller may not accept a taxable value audit request, or any part of an audit request, if the audit request:

(1) does not meet the requirements of this section;

(2) subject to subsection (f) of this section lacks any material item required in subsection (c) of this section or required by the model forms;

(3) raises an issue previously determined in a protest of preliminary findings of value;

(4) asks for corrections that duplicate corrections requested in a previous audit for which the comptroller has issued a final finding;  
or

(5) involves a property value study year for which the relevant comptroller records, computer programs, or property value study procedures do not exist or cannot accurately be replicated.

(n) Audit request resubmission. A taxable value audit request that was not accepted may be brought into compliance and resubmitted before the July 1 deadline of the third year following the property value study year in question.

(o) Effective date. This section applies to all taxable value audit requests submitted after June 30, 2003.

(p) The model forms in paragraph (1) and (2) of this subsection are adopted by reference by the Comptroller of Public Accounts. Copies of these forms are available for inspection at the office of the Texas Register or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

(1) Request for School District Taxable Value Audit (Form 50-302); and

(2) Chief Appraiser Affidavit of Value for School District Audit (Form 50-303).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300654

Martin Cherry

Deputy General Counsel for Taxation

Comptroller of Public Accounts

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 475-0387



## SUBCHAPTER J. PROCEDURES

### DIVISION 1. RULES OF PRACTICE AND PROCEDURE

#### 34 TAC §9.5071

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §9.5071, concerning audits of school district taxable property value. The section is being repealed in order to combine the information in this section into new rule 34 TAC §9.103. The new rule will make it easier for the persons effected by these rules to read and interpret them.

James LeBas, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government. The proposed repeal would have no significant fiscal impact on small businesses.

Mr. LeBas also has determined the proposed repeal, taken together with the proposed new rule, would benefit the public by making the audit process more efficient and providing them additional information regarding their tax responsibilities.

Comments on the section may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This repeal is proposed under Tax Code, §111.002 and §111.0022, which provides the comptroller the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The repeal implements the Government Code, §403.302 and §403.303.

*§9.5071. Audits of School District Taxable Property Values.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300658

Martin Cherry

Deputy General Counsel for Taxation

Comptroller of Public Accounts

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 475-0387

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

## PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

### CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

#### 37 TAC §§163.21, 163.35, 163.39, 163.40

The Texas Board of Criminal Justice, on behalf of the Texas Department of Criminal Justice-Community Justice Assistance Division (CJAD), proposes to amend §§163.21, 163.35, 163.39, and 163.40 of the Standards for Community Supervision and Corrections Departments (CSCDs).

The proposed amendment to §163.21, Administration, provides clarifications for administrative manuals for CSCDs, expands the requirements for citizen involvement and volunteer services, and adds new language requiring CSCDs to provide services for victims. Additionally, standards have been developed to address the CSCDs' responsibility in developing policies and procedures that address the safety and needs of victims; collaboration with victims, victim advocates, and sexual assault task forces; transfer procedures, and the operation of specialized caseloads.

The proposed amendment to §163.35, Supervision, expands and clarifies the language regarding the intrastate transfer process CSCDs must follow when transferring probationers to other jurisdictions within Texas.

The proposed amendment to §163.39, Residential Services, contains non-substantive changes for clarification purposes.

The proposed amendment to §163.40, Substance Abuse Treatment Standards provides clarifying language, adds requirements for cognitive-behavioral programs, and deletes references to physical plant requirements.

Brad Livingston, Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government. Mr. Livingston has also determined that there will be no economic impact on persons required to comply with the rules, and that the public benefit expected as a result of the proposed rule is quality programs that enhance treatment and services in the offender population.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code, §§509.003 and 509.006.

Cross Reference to Statutes: Texas Government Code §§509.003 and 509.006.

*§163.21. Administration.*

(a) CSCD Director. The district judge or judges shall appoint a CSCD director, who shall meet, at a minimum, the same eligibility criteria as a community supervision officer (CSO) as cited in the Texas Government Code §76.005, and §163.33 of this title (relating to CSOs).

It is the responsibility of the CSCD director to apply state, local, and other available resources to employ a sufficient number of officers and other employees to perform the professional and clerical work of the department as required by law, TDCJ-CJAD standards, and local community corrections needs as identified in the local community justice plan. The TDCJ-CJAD director is to be notified by the administrative judge of the appointment of a CSCD director.

(b) Administrative Manual. CSCD directors shall be responsible for the development of an administrative manual defining general purposes and functional objectives, incorporating all written policies and procedures, assuring that they are made available to all staff members. The operational section should give a detailed description of the procedures followed in performing the routine tasks of the department. The policies and procedures shall be reviewed by the CSCD director periodically and revised as necessary. The CSCD director shall provide the TDCJ-CJAD director with a copy of the CSCD's administrative manual for review when requested. These policies and procedures shall include, at a minimum: [; those administrative issues as provided in section 23 of the Guideline for the Organization, Management, and Operation of CSCDs; in the State of Texas. The policies and procedures shall be reviewed by the CSCD director periodically and revised as necessary. The CSCD director shall provide the TDCJ-CJAD director with a copy of the CSCD's administrative manual for review when requested.]

(1) Human Resources.

- (A) recruitment procedures;
- (B) promotional requirement and procedures;
- (C) EEOC/affirmative action provisions;
- (D) provisions of American with Disabilities Act;
- (E) provisions of Fair Labor Standards Act;
- (F) provisions of Family Medical Leave Act;
- (G) sexual harassment policy;
- (H) confidentiality of information;
- (I) organizational plan/chart;
- (J) salary scales;
- (K) benefits;
- (L) holidays and work schedules;
- (M) explanation of amount and limitations of leaves;
- (N) personnel records;
- (O) employee performance appraisals;
- (P) disciplinary procedures;
- (Q) grievance procedures;
- (R) probationary employment periods;
- (S) contract/temporary employees;
- (T) dress code;
- (U) pre-employment criminal record checks;
- (V) staff safety;
- (W) political participation;
- (X) travel/mileage reimbursement policy; and
- (Y) Immigration Reform and Control Act.

(2) Medical.

- (A) medical and psychological records management;
- (B) contagious disease policy including HIV-AIDS;
- (C) tuberculosis and other communicable diseases.

and

(3) Supervision.

- (A) Supervision Description;
- (B) assessment and remediation of literacy skills for offenders;
- (C) arrest and firearms policy and procedures; and
- (D) pre-sentencing investigation and reporting policy and procedures.

(4) Standards.

- (A) Code of ethics;
- (B) training and staff development;
- (C) job descriptions, qualifications, and responsibilities;
- (D) insurance and honesty bonds;
- (E) intrastate and interstate compact policies and procedures;
- (F) case classification and case management;
- (G) supervision of offenders/continuum of sanctions (policy and procedure);
- (H) internal case management audit procedures; and
- (I) violation of probation order procedures.

(c) - (i) (No change.)

(j) Citizen Involvement and Volunteers. If volunteers are used, the CSCD director shall ensure that suitable orientation and supervision is provided in the functions they will be expected to perform. CSCDS are encouraged to establish and maintain opportunities for effective volunteer participation in CSCD operations. If volunteers are used, the CSCD director shall: [that written policy, procedure, and practice exists for guiding the selection and utilization of citizen involvement.]

(1) ensure that written policy, procedure, and practice exists for guiding the selection and utilization of citizen involvement; and

(2) Require volunteers to acknowledge and comply with all departmental rules governing the confidentiality of information.

(k) Victim Services. The criminal justice system recognizes the many stakeholders affected by crime and wishes to acknowledge crime victims' interests and right to be informed, heard and protected by the system. With that goal in mind, standards are incorporated to facilitate the participation of crime victims within community supervision.

(1) Training. CSCD Victim Services Coordinators shall obtain not less than 8 documented hours of professional skill based training within the first biennium of appointment to the position of victim service coordinator. Training shall be specific to community supervision and should include:

- (A) Victims Rights;
- (B) Victim Sensitivity;
- (C) Confidentiality Issues; and

(D) Crime Victims Compensation.

(2) Policy and Procedures. Each CSCD shall adopt written policies and procedures regarding:

(A) Victim notification of offenders placed on community supervision; and

(B) Offender information that may be released to victims.

(3) Notification to victims would include the information specified in Texas Government Code Annotated, Section §76.016:

(A) The offender being placed on community supervision;

(B) The conditions of community supervision; and

(C) The date, time, and location of any hearing or proceeding that would modify the conditions of supervision or the offenders' placement on community supervision.

(4) Information that is public record may be released to the victim. This would include:

(A) Court ordered community supervision identifying the department with jurisdiction;

(B) A written copy of the conditions of supervision;

(C) The name of the supervising officer;

(D) Victim service coordinator contact information;

(E) Motion to revoke supervision being filed and the results of the motion;

(F) Information regarding the transfer of offender to another jurisdiction and contact information; and

(G) Information that the offender has been placed in residential confinement and release from confinement.

(5) Other information that may be released would include information that the victim would have knowledge of:

(A) Restitution not being paid; and

(B) Additional sanctions for non-compliance of the defendant.

§163.35. *Supervision.*

(a) Definitions. The following words and terms, when used in this section, shall be defined as follows and apply to both felonies and misdemeanors, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(b) System of Offender Supervision. CSCD directors shall develop a system of offender supervision that is based upon, but not limited to:

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

(c) Supervision Process. CSOs shall provide direct supervision for cases to include, but not be limited to, the following tasks.

(1) - (9) (No change.)

(10) Intrastate Transfers. ~~The standards strive to ensure public safety by recognizing the need of the sending and receiving jurisdictions to continue control and supervision over these offenders. [Courtesy Supervision. Except in cases of non-CSCD residential facility placements, courtesy supervision shall be requested if an offender will be in another jurisdiction for more than 30 days, except when good~~

~~cause can be shown. Only the court retaining jurisdiction over a defendant has the authority to modify or alter a condition of community supervision. CSCD directors shall ensure that CSOs providing direct supervision to offenders transferred from other Texas jurisdictions shall fully enforce the order of the court that placed the individual on community supervision. It is the responsibility of the offender to comply with the conditions of community supervision as imposed by the court. CSCD directors shall ensure that CSOs provide the same level of supervision to courtesy cases as they do for the offenders in their jurisdiction. When transferring a case for courtesy supervision, the documents necessary for transfer shall include, at a minimum, the transfer form, the court order placing the person on community supervision citing all conditions of community supervision, the offense report, criminal history, tracking number (TRN) and state identification (SID) number, the pre/post-sentence investigation report where legally mandated, and any assessments that have been completed. CSCD directors who decline to provide courtesy supervision to offenders from other jurisdictions shall immediately notify the original jurisdiction of the reasons for declining courtesy supervision. ]~~

~~(A) Except in cases of non-CSCD residential facility placements, supervision shall be transferred if an offender meeting the definition of direct supervision will be in another jurisdiction for more than 30 days, except when the designated representatives of the two CSCDs agree there is good cause for the original jurisdiction to maintain supervision. Only the court retaining jurisdiction over a defendant has the authority to modify or alter a condition of community supervision. CSCD directors shall ensure that community supervision officers providing direct supervision to offenders transferred from other Texas jurisdictions shall fully enforce the order of the court that placed an individual on community supervision. It is the responsibility of the offender to comply with the conditions of community supervision as imposed by the court. CSCD directors shall ensure that community supervision officers provide the same level of supervision to courtesy cases as they do for the offenders in their jurisdiction. The documents necessary for transfer shall include, only the transfer form, the court order placing the person on community supervision citing all conditions of community supervision, the offense report, criminal history, TRN and SID number (within 90 days of transfer to receiving jurisdiction), the pre/post-sentence investigation report where legally mandated, and any assessments that have been completed. CSCD directors who decline to provide courtesy supervision to offenders from other jurisdictions shall immediately notify, in writing, the original jurisdiction of the reasons for declining or closing supervision.~~

~~(B) Dual Supervision: The court retaining jurisdiction over a defendant may also order the defendant to report to the original jurisdiction as well as the jurisdiction where defendant resides and/or works.~~

(11) (No change.)

§163.39. *Residential Services.*

(a) General Administration.

(1) - (4) (No change.)

(5) Maximum Offender [Resident] Capacity and Facility Utilization. The maximum offender [resident] capacity of a CCF or CCC shall be defined as the total number of offenders who can be housed at the facility at any given time as delineated by the operating agency in the most current community justice plan and approved by the TDCJ-CJAD director. CCFs and CCCs funded through TDCJ-CJAD shall reach 90% capacity within the first six months of operation and maintain a minimum of 90% thereafter, utilizing appropriate and eligible placements only. Any revisions to the maximum and minimum offender [resident] capacities for the CCF or CCC shall be subject



to the approval by TDCJ-CJAD through the community justice plan amendment process.

(6) - (7) (No change.)

(b) Personnel.

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

(4) Residential Officer Certification. See §163.33 Community Supervision Officers (f).

(5) Residential Personnel Training. See §163.33 Community Supervision Officers (j); (1) Initial Training Requirements; (2) Defensive Driving.

(c) Building, Safety, Sanitation and Health Codes.

(1) Compliance. The CSCD director and Facility director ~~[and personnel]~~ shall ensure that facility's construction, maintenance, and operations complies with all applicable state, federal and local laws, building codes and regulations related to safety, sanitation and health. Records of compliance inspections, audits, or written reports by internal and external sources shall be kept on file for examination and review by TDCJ-CJAD and other governmental agencies and authorities for all time periods from project or program inception forward. The CSCD director and Facility director shall promptly notify the TDCJ-CJAD in writing of any circumstances wherein the facility or its operations do not maintain such compliance.

(2) (No change.)

(3) Sanitation. The facility ~~[audits operations]~~ shall conform with the applicable sanitation and health regulations and codes.

(4) Waste. The liquid and solid wastes related to the facility ~~[audits operations]~~ shall be collected, stored and disposed of in accordance with an approved plan by the ~~[appropriate]~~ regulatory authority, agency, or department.

(5) (No change.)

(6) Fires. The facility, its furnishings, fire protection equipment and alarm shall comply with the regulations of the fire authority having jurisdiction. Fire drills are to be conducted at least quarterly. There shall be a written evacuation plan to be used in the event of a fire. The plan is to be certified by an independent qualified governmental agency or department or individual trained in the application of national and state fire safety codes. Such plan shall be reviewed annually, updated if necessary, and reissued to the local fire jurisdiction. The facility shall have a qualified person conduct a fire inspection at least quarterly or at other intervals approved by the fire authority having jurisdiction. Fire safety equipment located at the facility shall be tested as specified by the manufacturer or the fire authority, whichever is more frequent. An annual inspection of the facility shall be secured from the fire authority having jurisdiction or other qualified person(s).

(7) Emergency Plans. There shall be written emergency plans for the facility and its operations, which include an evacuation plan, to be used in the event of a major flood, storm, or other emergencies. This plan is reviewed annually and updated, if necessary. Evacuation drills are to be conducted at least three times yearly ~~[monthly]~~. Each shift at least yearly ~~[every quarter]~~ must have conducted an evacuation drill when the majority of offenders are present. All facility personnel must be trained in the implementation of written emergency plans. The evacuation plan should specify preferred evacuation routes, subsequent dispositions and temporary housing of offenders, and provision for access to medical care or hospital transportation for injured offenders and/or staff. The facility's emergency plan(s) shall be distributed to local authorities such as law enforcement, state police, civil

defense, etc. to keep them informed of their roles in the event of an emergency. Such emergency plan(s) shall include the following:

(A) location of buildings/room floor plan;

(B) use of exit signs and directional arrows that are easily seen and red; and

(C) location(s) of publicly posted plan.

(d) Separate Inmate Housing. The CSCD director and Facility director shall ensure that a facility that is part of or attached to a detention facility or a correctional institution shall house facility offenders separately from the inmates. At no time shall CCF or CCC residents/offenders be co-mingled with inmates.

(e) Program and Service Areas.

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

(3) Other Physical Environment and Facilities Issues. There shall be written policy and procedures to ensure the following with respect to the CCF and CCC:

(A) Space shall be provided for janitor closets which are equipped with cleaning implements.

(B) There shall be storage areas in the facility for clothing, bedding, and cleaning supplies.

(C) There shall be clean, usable bedding, linen, and towels for new residents with provision for exchange or laundering on at least a weekly basis.

(D) On an emergency or indigent basis, the facility shall provide personal hygiene articles.

(E) There shall be adequate control of vermin and pests.

(F) There shall be timely trash and garbage removal.

(G) Sanitation and safety inspections of all internal and external areas and equipment shall be performed and documented on a routine basis to protect the health and safety of alloffenders, ~~[residents]~~ staff, and visitors.

(f) Supervision.

(1) Operations Manual. An operations manual shall be prepared for and used by each CCF and CCC which shall contain information and specify procedures and policies for offender census, contraband, supervision, physical plant inspection and emergency procedures, including detailed implementation instructions. Such operation manual shall be accessible to all employees and volunteers. The operations manual shall include, at a minimum, the matters set forth in the Guidelines for the Policies and Procedures of TDCJ-CJAD Funded Residential Facilities ~~[;]~~ dated October 31, 2001 ~~[2004]~~. The operations manual shall be submitted to the TDCJ-CJAD Director for review and approval, and such manual must have been approved by the TDCJ-CJAD director at least 60 days prior to acceptance of offenders into the facility. Offenders cannot be accepted into the facility until approval is granted by the TDCJ-CJAD. The CSCD director and Facility director shall ensure that the operations manual is reviewed at least every two years, and new or revised policies and procedures are made available, including all changes, prior to implementation to designated staff and volunteers. This manual shall be submitted to TDCJ-CJAD upon request or for auditing purposes.

(2) Staffing Availability. The CSCD director and Facility director shall ensure that the facility has the staff needed to provide coverage of designated security posts, surveillance of offenders and to perform ancillary functions. The facility shall have at least one staff

member, on duty, who is the same gender as the offender [~~resident~~] population.

(3) Activity Log. The CSCD director and Facility director shall ensure that CCF and CCC staff maintain an activity log and prepare shift reports that record, at a minimum, emergency situations, unusual situations, unusual incidents and record all absences of offenders from a facility.

(4) Use of Force. The CSCD director and Facility director shall ensure that a CCF and CCC has written policies, procedures, and practices that restrict the use of physical force to instances of self-protection, protection of offenders or others or prevention of property damage. In no event is the use of physical force against an offender justifiable as punishment. A written report shall be prepared following all uses of force, [~~force~~] and all such written reports shall be promptly submitted to the CSCD director and Facility director for review and follow-up. The application of restraining devices, aerosol sprays, chemical agents, etc. shall only be accomplished by an individual who is properly trained in the use of such devices and only in an emergency by any individual in self-protection, protection of others or other circumstances as described previously.

(5) Use of Firearms. The CSCD director and Facility director shall ensure that the possession of firearms by staff is banned and use of firearms is prohibited in or on facility property except in the execution of official duties by certified peace officers or other duly licensed law enforcement personnel.

(6) Access to Facility. The facility shall be secured to prevent unrestricted access thereto by the general public or others without proper authorization.

(7) Control of Contraband/Searches. There shall be policies defining facility shakedowns, strip searches, and pat searches of offenders [~~residents~~] to control contraband and provide for its disposal.

(8) Levels of Security. The CSCD director and Facility director must ensure that levels of security appropriate for the population served by the facility are maintained at all times. These levels of security must create, as a minimum, a monitored and structured environment in which offender's [~~resident's~~] interior and exterior movements and activities can be supervised by specific destination and time. The facility director or designee may, at [~~in~~] his or her discretion, grant offenders exterior movements. Exterior movements include, but are not limited to employment programs, community service restitution, support/treatment programs, and programmatic incentives. The following minimum requirements must be met for all exterior movements:

(A) the facility director or designee approves the exterior movement;

(B) a staff member orally advises the offender of the conditions and limitations of the exterior movement;

(C) the offender acknowledges in writing an understanding of the conditions and limitations of the exterior movement;

(D) exterior movements involving programmatic incentives may only be granted if the following additional requirements are met:

(i) the offender meets all established requirements for the programmatic incentive, as determined by the supervisor of the program, and submits a written request for the exterior movement;

(ii) the requested absence will not exceed 72 hours unless there are unusual circumstances;

(iii) the offender provides an itinerary for the absence including method of travel, departure and arrival times, and locations during the exterior movement;

(iv) the facility director or designee approves the itinerary and establishes the conditions of the exterior movement involving programmatic incentives; and

(v) a staff member shall make random announced or unannounced personal or telephone contacts with the offender to verify the location of the offender during the exterior movement.

(9) Emergency furloughs. The facility director or designee may, in his or her discretion, grant an emergency furlough to an offender for the purpose of allowing the offender to attend a funeral, visit a seriously ill person, obtain medical treatment, or attend to other exceptional business. Emergency furloughs may only be granted if the following conditions are met:

(A) the offender submits a written request for the emergency furlough;

(B) the facility director or designee verifies through an independent source including, but not limited to a physician, Red Cross representative, minister, rabbi, priest, or other spiritual leader that the presence of the offender is appropriate;

(C) the offender provides proposed itinerary including method of travel, departure and arrival times, and locations during the emergency furlough;

(D) the requested absence will not exceed 72 hours unless there are unusual circumstances;

(E) the court of original jurisdiction approves the travel if the offender will depart the State of Texas;

(F) the facility director or designee approves the itinerary and establishes the conditions of the emergency furlough; and

(G) the facility director or designee shall notify by sending an electronic or fax copy of the approved itinerary to the director of the CSCD of the court of the original/sending jurisdiction prior to the date that the emergency furlough is approved to begin. [;]

~~[(H) a staff member makes random announced and/or unannounced personal or telephone contacts with the offender to verify the location of the offender during the emergency furlough.]~~

(10) Supervision Process. See §163.35 (c) Supervision Process; (3) Case Classification; (5) Case Supervision or Treatment Plan; and (6) Reassessments.

(g) Client Abuse, Neglect, and Exploitation. The facility must protect the offenders [~~offender residents~~] from abuse, neglect and exploitation.

(h) Rules and Discipline. There shall be documentation of program rule violations and the disciplinary process.

(1) Rules of Conduct. All incoming offenders and staff shall receive written rules of conduct which specify acts prohibited within the facility and penalties that can be imposed for various degrees of violation.

(2) Limitations of Corrective Actions. Specific limits on corrective actions and summary punishment shall be established and strictly adhered to in an effort to reduce the potential of staff participating in abusive behavior towards participants. Limits shall include:

(A) no physical contact by staff shall be made on a offender [~~participant~~];

(B) no profanity, sexual, or racial comments shall be directed by staff at ~~offenders~~[~~participants~~] ;

(C) ~~offenders~~[~~program participants~~] shall not be utilized to impose corrective actions on other ~~offenders~~[~~participants~~] ;

(D) the severity of the corrective action shall be commensurate with the severity of the infraction; and

~~{(D) the severity of the corrective action imposed shall be commensurate with the participant's program status; }~~

(E) the duration of corrective action shall be limited to the minimum time necessary to achieve effectiveness.

~~{(E) the severity of the corrective action shall be commensurate with the severity of the infraction; and,}~~

~~{(F) the duration of corrective action shall be limited to the minimum time necessary to achieve effectiveness.}~~

(3) Grievance Procedure. A grievance procedure shall be available to all offenders in CCFs. Such grievance procedure shall include at least one level of appeal, and shall be evaluated at least annually to determine its efficiency and effectiveness.

(i) Incident Notification. Within 24 hours of occurrence, the CSCD director and Facility director shall notify and report by telephone or fax all serious or unusual events pertaining to the facilities operations, staff, and to: the judge or one of the judges supervising the department and the TDCJ Emergency Action Center (EAC) in Huntsville, Texas. Phone # (936) 437-1448; fax # (936) 437-1912, and if applicable, the CSCD director of the original/sending jurisdiction if the incident involves an offender from that sending jurisdiction. The EAC shall be responsible for notifying the TDCJ-CJAD Director and appropriate CJAD management staff. Such serious and unusual events for this purpose shall include, but are not limited to the following:

(1) the death of an offender or staff member while at the facility;

(2) any incident which results in life threatening or serious bodily injury to [a] an offender [~~resident~~] or staff member while at the facility or on assignment (including emergency furloughs or programmatic incentives) away from the facility;

(3) major disturbance or riot at the facility or in its vicinity; and

(4) any incident involving serious misconduct by facility staff, which may result in the filing of criminal charges or civil action.

(j) Offenders' Rights. Offenders shall be granted access to courts, counsel, and confidential contact with attorneys and their authorized representatives. Such contacts include, but are not limited to: telephone communications, uncensored correspondence, and visits.

(k) Offender Eligibility. A CSCD or other governmental entity that operates a residential facility, contracts for the operation of a residential facility, or contracts for beds/services, shall define a specific target population of offenders to be served. Placement of offenders in a CCF shall only be by an order of the court and shall meet minimum eligibility criteria as outlined in this section.

(1) CCFs shall accept only those offenders who are physically and mentally capable of participating in any program offered at the facility that requires strenuous physical activity, if participation in the program is required of ~~aloffenders in~~ [~~residents of~~] the facility : [-]

(A) unless otherwise prohibited by statute;

(B) if the offender matches the profile of offenders historically committed to county jail/prison from the jurisdiction; or the

offender has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of community supervision; and

(C) the local jurisdiction may house offenders convicted under Title 5, Texas Penal Code, and in accordance with statute, in its CCF if Title 5 offenders are included in the facility's program proposal within the community justice plan that is submitted by the jurisdiction's Community Justice Council and approved by the local judiciary. In currently operating facilities where the jurisdiction desires to add Title 5 offenders to their target population, a public meeting must be held, in accordance with the law and TDCJ-CJAD standards and policy, to advise the public of the types of offenders/offenses who will potentially be placed in the facility. Public support will be considered by TDCJ-CJAD for final approval of the change in offender population to be targeted. If a jurisdiction has documentation that this requirement was previously met, it can provide that documentation to TDCJ-CJAD for review and possible exemption from having an additional public meeting; and

(D) If a facility is approved to house Title 5 offenders, the CSCD director and the facility director shall comply with all applicable provisions contained in the Texas Government Code, Sec. §76.016 Victim Notification, the Texas Code of Criminal Procedure (TCCP) Chapter 56, Rights of Crime Victims, and TCCP Art. 42.21. Notice of Release of Family Violence Offenders.

(2) Offenders are eligible for placement into a Restitution Center:

(A) unless otherwise prohibited by statute;

(B) the offender must be employable; and

(C) prior to or within ten days after admission to the facility, the offender shall undergo a screening process to determine the offender's appropriateness for placement. The process shall be documented and maintained in the supervision case file.

~~{(2) Offenders are eligible for placement into a CCF: }~~

~~{(A) unless otherwise prohibited by statute;}~~

~~{(B) if the offender matches the profile of offenders historically committed to county jail/prison from the jurisdiction; or the offender has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of community supervision; and}~~

~~{(C) the local jurisdiction may house offenders convicted under Title 5, Texas Penal Code, and in accordance with statute, in its CCF if Title 5 offenders are included in the facility's program proposal within the community justice plan that is submitted by the jurisdiction's Community Justice Council and approved by the local judiciary. In currently operating facilities where the jurisdiction desires to add Title 5 offenders to their target population, a public meeting must be held, in accordance with the law and TDCJ-CJAD standards and policy, to advise the public of the types of offenders/offenses who will potentially be placed in the facility. Public support will be considered by TDCJ-CJAD for final approval of the change in offender population to be targeted. If a jurisdiction has documentation that this requirement was previously met, it can provide that documentation to TDCJ-CJAD for review and possible exemption from having an additional public meeting; and}~~

~~{(D) If a facility is approved to house Title 5 offenders, the CSCD director and the facility director shall comply with all applicable provisions contained in the Texas Government Code, Sec. §76.016 Victim Notification, the Texas Code of Criminal Procedure~~

(TCCP) Chapter 56, Rights of Crime Victims, and TCCP Art. 42.21, Notice of Release of Family Violence Offenders.]

(3) Offenders are eligible for placement into County Correctional Centers (CCC):

(A) if convicted of a misdemeanor and sentenced to a term of confinement in the county jail;

(B) in lieu of jail time as a condition of misdemeanor or felony community supervision;

(C) in lieu of jail time as a punishment for violation of conditions of community supervision; or,

(D) if required as a condition of community supervision to participate in a work program or counseling program through a CCC.

~~Offenders are eligible for placement into a Restitution Center: }~~

~~[(A) unless otherwise prohibited by statute; ]~~

~~[(B) the offender must be employable; and]~~

~~[(C) prior to or within ten days after admission to the facility, the offender shall undergo a screening process to determine the offender's appropriateness for placement. The process shall be documented and maintained in the supervision case file.]~~

(4) Offenders are eligible for placement into a Boot Camp:

(A) if prior to placement, or within ten days after admission, the offender undergoes a physical examination to determine any medical problems that may prevent the offender from satisfactorily participating in the program. The physical examination report shall be maintained in the offender's medical file; and

(B) if prior to placement, or within ten days after admission, the offender undergoes a psychological screening to determine any psychological problems that may prevent the offender from satisfactorily participating in the program. The psychological screening report shall be maintained in the offender's medical file.

~~Offenders are eligible for placement into County Correctional Centers (CCC): }~~

~~[(A) if convicted of a misdemeanor and sentenced to a term of confinement in the county jail; ]~~

~~[(B) in lieu of jail time as a condition of misdemeanor or felony community supervision; ]~~

~~[(C) in lieu of jail time as a punishment for violation of conditions of community supervision; or, ]~~

~~[(D) if required as a condition of community supervision to participate in a work program or counseling program through a CCC. ]~~

~~Offenders are eligible for placement into a Boot Camp: }~~

~~[(A) if prior to placement, or within ten days after admission, the offender undergoes a physical examination to determine any medical problems that may prevent the offender from satisfactorily participating in the program. The physical examination report shall be maintained in the offender's medical file; and ]~~

~~[(B) if prior to placement, or within ten days after admission, the offender undergoes a psychological screening to determine any psychological problems that may prevent the offender from satisfactorily participating in the program. The psychological screening report shall be maintained in the offender's medical file. ]~~

(l) Courtesy Supervision. CCFs or CCCs shall, on a space available basis, accept eligible adult offenders needing the residential services on courtesy supervision from other jurisdictions. CSCDs that manage CCFs or CCCs are responsible for the direct supervision of all offenders in the CCF or CCC while in the residential placement.

(m) Denying Admission or Continued Placement. If an offender is placed into a CCF or a CCC [county correctional center] as a condition of community supervision and the offender is an inappropriate placement, by statute or standard, or does not meet eligibility criteria of the facility as approved by the TDCJ-CJAD, the CSCD or Facility director who is responsible for the management of the CCF/CCC shall notify, in writing, the court of original jurisdiction of these circumstances. If a CCF or CCC facility has reached capacity at the time of the eligible offender's placement to that facility, such offender may be placed on a waiting list for that facility and returned to the court of original jurisdiction for further instructions or an alternative sanction.

(n) Food Service. The food preparation and dining area must provide space for meal service based on the population size and need.

(1) Dietary Allowances Meals shall be approved and reviewed annually by a registered dietician, [or] licensed nutritionist, or physician to ensure that they meet the nationally recommended allowances for basic nutrition.

(2) Special Diets. Each facility shall provide for special diets as prescribed by appropriate medical or dental personnel.

(3) Food Service Management. Food service operations shall be supervised by a staff member who is experienced in institutional food preparation or mass food management. All food services staff, including offenders assigned to work in the facility kitchen, shall meet all requirements established by the local health authorities.

(4) Exclusion as Discipline. The use of food as a disciplinary measure is prohibited.

(5) Meal Requirements. CSCD directors or Facility director shall ensure that at least three meals (including two hot meals) are provided during each 24-hour period. Variations may be allowed based on weekend and holiday food service demands, or in the event of emergency or security situations, provided basic nutritional goals are met.

(o) Health Care.

(1) Access To Care.

(A) Offenders shall have unimpeded access to health care and to a system for processing complaints regarding health care.

(B) The facility has a designated health authority with responsibility for health care pursuant to a written agreement, contract, or job description. The health authority may be a physician, health administrator, or health agency.

(C) Each CCF shall have a policy defining the level, if any, of financial responsibility to be incurred by the offender who receives the medical or dental services.

(2) Emergency Health Care.

(A) Twenty-four hour emergency health care is provided for offenders, which included arrangements for the following:

(i) On site emergency first aid and crisis intervention;

(ii) Emergency evacuation of the offender from the facility;

(iii) Use of an emergency vehicle;

(iv) Use of one or more designated hospital emergency rooms or other appropriate health facilities;

(v) Emergency on-call physician, dentist, and mental health professional services when the emergency health facility is not located in a nearby community; and

(vi) Security procedures providing for the immediate transfer of offenders, when appropriate.

(B) A training program for Direct Care personnel is established by a recognized health authority in cooperation with the Facility director that includes the following:

(i) Signs, symptoms, and action required in potential emergency situations;

(ii) Administration of first aid and cardiopulmonary resuscitation (CPR);

(iii) Methods of obtaining assistance;

(iv) Signs and symptoms of mental illness, retardation, and chemical dependency; and

(v) Procedures for patient transfers to appropriate medical facilities or health-care providers.

(C) First aid kits are available in designated areas of the facility. Contents and locations are approved by the health authority.

(3) Health Screening and Medical Examinations. Medical, dental and mental health screening exam is performed by health-trained or qualified health-care personnel on all offenders prior to placement or within 10 days of placement. The screening includes the following:

(A) Inquiry into:

(i) Current illness and health problems, including venereal diseases and other infectious diseases;

(ii) Dental problems;

(iii) Mental health problems, including suicide attempts or ideation;

(iv) Use of alcohol and other drugs, which includes types of drugs used, mode of use, amounts used, frequency of use, date or time of last use, and a history of problems that may have occurred after ceasing use (for example, convulsions); and

(v) Other health problems designated by the responsible physician.

(vi) tuberculosis screening of offenders shall be completed within seven (7) calendar days of admission into the residential facility and repeated annually thereafter.

(B) Observation of:

(i) Behavior, which includes state of consciousness, mental status, appearance, conduct, tremor and sweating;

(ii) Body deformities, ease of movement, and so forth; and

(iii) Conditions of skin, including trauma markings, bruises, lesions, jaundice, rashes and infestations, and needle marks or other indications of drug abuse.

(C) Medical examinations are conducted for any employee or offender suspected of having a communicable disease.

(4) Serious and Infectious Diseases.

(A) The facility provides for the management of serious and infectious diseases.

(B) CCF's and CCC's shall have policies and procedures to direct actions to be taken by employees concerning offenders who have been diagnosed with HIV, including, at a minimum, the following:

(i) When and where offenders are to be tested;

(ii) Appropriate safeguards for staff and offenders;

(iii) Staff and offender training;

(iv) Issues of confidentiality; and

(v) Counseling and support services.

(5) Dental Care. Access to dental care is made available to each offender.

(6) Medications.

(A) Policy and procedure direct the possession and use of controlled substances, prescribed medications, supplies, and over-the-counter drugs. Prescribed medications are administered according to the directions of the prescribing physician.

(B) If medications are distributed by facility staff, records are maintained and audited monthly, and include the date, time, and name of the offender [resident] receiving the medication, and the name of the staff distributing it.

(7) Female Offenders. If female offenders are housed, access to pregnancy management services is made available.

(8) Mental Health. Access to mental health services is made available to offenders.

(9) Suicide Prevention. There is a written suicide prevention and intervention program that is reviewed and approved by a qualified medical or mental health professional. All staff with offender supervision responsibilities are trained in the implementation of the suicide prevention program.

(10) Personnel.

(A) If treatment is provided to offenders by health-care personnel other than a physician, dentist, psychologist, optometrist, podiatrist, or other independent provider, such treatment is performed pursuant to written standing or direct orders by personnel authorized by law to give such orders.

(B) If the facility provides medical treatment, personnel who provide health-care services to offenders are qualified and appropriately licensed. Verification of current credentials and job descriptions are on file in the facility. Appropriate state and federal licensure, certification, or registration requirements, and restrictions apply.

(11) Informed Consent. If the facility provides medical treatment, offenders make medical decisions with informed consent. All informed consent standards in the jurisdiction are observed and documented for offender care.

(12) Participation in Research. Offenders do not participate in medical, pharmaceutical, or cosmetic experiments. This does not preclude individual treatment of an offender based on his or her need for a specific medical procedure that is not generally available.

(13) Notification. Individuals designated by the offender are notified in case of serious illness or injury.

(14) Health Records.

(A) If medical treatment is provided by the facility, accurate health records for offenders are maintained separately and confidentially.

(B) If medical treatment is provided by the facility, the method of recording entries in the records, the form and format of the records, and the procedures for their maintenance and safekeeping are approved by the health authority.

(C) If medical treatment is provided by the facility, for the offenders being transferred to other facilities, summaries or copies of the medical history record are forwarded to the receiving facility prior to or at arrival.

(p) Discharge.

(1) Victim Notifications. The CSCD director and Facility director shall ensure there are procedures, policies, and practices that comply with Texas Government Code §76.016, Texas Code of Criminal Procedure Art. 42.21 (a), and other applicable laws as to the notifications to be made to certain crime victims of offenders who are residents in its facilities or subject to its programs.

(2) Discharge. Discharge from residential facilities shall be based on the following criteria:

(A) the offender has made sufficient progress towards meeting the objectives of the supervision plan and program requirements;

(B) the offender has satisfied a sentence of confinement;

(C) the offender has satisfied a period of placement as a condition of community supervision;

(D) the offender has demonstrated non-compliance with program criteria or court order;

(E) the offender manifests a non-emergency medical problem that prohibits participation and/or completion of the residential program requirements;

(F) the offender displays symptoms of a psychological disorder that prohibits participation and/or completion of the residential program requirements; or

(G) the offender is identified as inappropriate or ineligible for participation in the residential program as defined by facility eligibility criteria, statute, or standard.

(3) Discharge Report. The CSCD director and Facility director shall ensure that a report is prepared at the termination of program participation that reviews the offender's performance. A copy of the report shall be provided to the receiving CSCD supervision officer.

(q) Basic Services and Programs. Each facility shall, at a minimum, provide programs in the following areas which will include, but not be limited to:

(1) education programs;

(2) rehabilitation programs based on the mission of the facility;

(3) community service restitution/work detail;

(4) recreational programs; and

(5) cognitive based programs.

~~[(5) basic life skills programs.]~~

(r) Mail, Telephone, and Visitation. The CSCD director and Facility director shall have written policies which govern the facility's

mail, telephone, and visitation privileges for offenders, including mail inspection, public phone use, and routine and special visits. The policies shall address compelling circumstances in which an offender's mail both incoming and outgoing may be opened, but not read, to inspect for contraband.

(s) Religious Programs.

(1) The CSCD director and Facility director shall have written policies that govern religious programs for offenders. The policies shall provide that offenders have the opportunity to voluntarily practice the requirements of their religious faith, have access to worship/religious services, and the use or contact with community religious resources, when appropriate.

(2) Under Texas Civil Practice & Remedies Code, chapter 110, a CSCD or CCF may not substantially burden an offender's free exercise of religion except with the least restrictive measures in furtherance of a compelling interest. Pursuant to Texas Government Code §76.018, there is a presumption that a policy or practice that applies to an offender in the custody of a CCF is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The presumption may be rebutted with evidence provided by the offender.

§163.40. Substance Abuse Treatment.

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

(1) Admission - The administrative process and procedure performed to accept an offender into a treatment program or facility.

(2) Assessment -- a process using a structured or semi-structured interview to determine the nature and extent of a client's chemical dependency.

(3) Chemical Dependency Counselor -- A qualified, credentialed counselor or counselor intern working under direct supervision.

(4) Continuum of Care -- A system which provides for the uninterrupted provision of essential services to offenders entering, exiting, and within the system.

(5) Counseling -- Face-to-face interactions between offenders and counselors to help offenders identify, understand, and resolve their personal issues and problems related to their substance abuse or chemical dependency. Counseling may take place in groups or in individual meetings.

(6) Counselor Intern -- A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or a registered clinical training institution who has been designated as a counselor. The activities of a counselor intern shall be performed under the direct supervision of a qualified, credentialed counselor in accordance with rules adopted by the Texas Commission on Alcohol and Drug Abuse.

(7) Detoxification -- Chemical dependency treatment designed to systematically reduce the amount of alcohol and other toxic chemicals in an offender's body, manage withdrawal symptoms, and encourage the offender to continue ongoing treatment for chemical dependency.

(8) Direct Care Staff -- The staff responsible for providing treatment, care, supervision, or other offender services that involve a significant amount of direct contact. (Clerical support staff are not considered direct care staff.)

(9) Discharge -- The time when an offender leaves a program or facility and will no longer be receiving chemical dependency treatment from that program or facility.

(10) Discharge Summary -- A recapitulation of the offender's progress and participation while in either primary, residential, or outpatient treatment.

(11) Education -- Educational instruction; a planned, structured presentation of information which is related to substance abuse or chemical dependency.

(12) Emergency -- A situation requiring immediate attention and action to treat or prevent physical, emotional, or mental threat, harm, injury, or illness.

(13) Facility -- The physical location of the treatment program operated by, for, or with funding from the TDCJ-CJAD. Some locations may be locked facilities for in-patient treatment; other programs may be offered at locations as outpatient treatment.

(14) Grievance -- A formal complaint limited to matters affecting the complaining offender personally and limited to matters for which the facility/program has the authority to remedy through the grievance process.

(15) Primary Counselor -- An individual working directly with and being responsible for the treatment of the offender.

(16) Qualified, Credentialed Counselor (QCC) -- A licensed chemical dependency counselor (LCDC) or one of the following professionals:

(A) licensed professional counselor (LPC);

(B) licensed master social worker (LMSW);

(C) licensed marriage and family therapist (LMFT);

(D) licensed psychologist;

(E) licensed physician (MD or DO);

(F) certified addictions registered nurse (CARN);

(G) licensed psychological associate; and

(H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with specialty in psycho-mental health (APN-P/MH).

(17) Screening Instrument -- a written device administered to an offender to determine the possible existence of chemical dependency.

(18) Senior Counselor/Unit Manager/Unit Supervisor -- A supervisory staff member who directs, monitors, and oversees the work performance of subordinate staff members.

(19) Special Needs Populations -- Offenders who have significant problems in the areas of mental health, diminished intellectual capacity, or medical needs.

(20) Treatment -- A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(21) Use of Force -- Graduated levels of use of physical strength or weapons necessary to gain physical compliance and control of an offender whose actions otherwise pose a danger to self or others.

{(2) Chemical Dependency Counselor--A qualified, credentialed counselor or counselor intern working under direct supervision. }

{(3) Continuum of Care--A system which provides for the uninterrupted provision of essential services to offenders entering, exiting, and within the system. }

{(4) Counseling--Face-to-face interactions between offenders and counselors to help offenders identify, understand, and resolve their personal issues and problems related to their substance abuse or chemical dependency. Counseling may take place in groups or in individual meetings. }

{(5) Counselor Intern--A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or a registered clinical training institution who has been designated as a counselor by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified, credentialed counselor in accordance with rules adopted by the Texas Commission on Alcohol and Drug Abuse. }

{(6) Detoxification--Chemical dependency treatment designed to systematically reduce the amount of alcohol and other toxic chemicals in an offender's body; manage withdrawal symptoms; and encourage the offender to continue ongoing treatment for chemical dependency. }

{(7) Direct Care Staff--The staff responsible for providing treatment, care, supervision, or other offender services that involve a significant amount of direct contact. (Clerical support staff are not considered direct care staff.) }

{(8) Discharge--The time when an offender leaves a program or facility and will no longer be receiving chemical dependency treatment from that program or facility. }

{(9) Discharge Summary--A recapitulation of the offender's progress and participation while in either primary, residential, or outpatient treatment. }

{(10) Education--Educational instruction; a planned, structured presentation of information which is related to substance abuse or chemical dependency. }

{(11) Emergency--A situation requiring immediate attention and action to treat or prevent physical, emotional, or mental threat, harm, injury, or illness. }

{(12) Facility--The physical location of the treatment program operated by, for, or with funding from the TDCJ-CJAD. Some locations may be locked facilities for in-patient treatment; other programs may be offered at locations as outpatient treatment. }

{(13) Grievance--A formal complaint limited to matters affecting the complaining offender personally and limited to matters for which the facility/program has the authority to remedy through the grievance process. }

{(14) Primary Counselor--An individual working directly with and being responsible for the treatment of the offender. }

{(15) Qualified, Credentialed Counselor (QCC)--A licensed chemical dependency counselor (LCDC) or one of the following professionals: }

{(A) licensed professional counselor (LPC); }

- ~~{(B) licensed master social worker (LMSW); }~~
- ~~{(C) licensed marriage and family therapist (LMFT); }~~
- ~~{(D) licensed psychologist; }~~
- ~~{(E) licensed physician (MD or DO);}~~
- ~~{(F) certified addictions registered nurse (CARN); }~~
- ~~{(G) licensed psychological associate; and }~~
- ~~{(H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with specialty in psycho-mental health (APN-P/MH).}~~

~~{(16) Senior Counselor/Unit Manager/Unit Supervisor—A supervisory staff member who directs, monitors, and oversees the work performance of subordinate staff members. }~~

~~{(17) Special Needs Populations—Offenders who have significant problems in the areas of mental health, diminished intellectual capacity, or medical needs. }~~

~~{(18) Treatment—A planned, structured, and organized program designed to initiate and promote a person’s chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency. }~~

~~{(19) Use of Force—Graduated levels of use of physical strength or weapons necessary to gain physical compliance and control of an offender whose actions otherwise pose a danger to self or others. }~~

(b) Compliance. Compliance with TDCJ-CJAD substance abuse treatment standards is required of all programs that provide substance abuse treatment and are funded or managed by TDCJ-CJAD. Programs and facilities providing only substance abuse education are not subject to these standards.

(c) Personnel & Staff Development/Accreditation. The employer shall ensure that employees acquire any credentials, licensing, certifications, or continuing education required to perform their duties. Personnel files for employees shall be maintained to display copies of required documents. Staff will be required to have criminal background checks performed annually. Programs that are not clinical training institutions as defined by the Texas Commission on Alcohol and Drug Abuse must inform all non-credentialed staff of this fact

(d) Admissions. There shall be documentation of specific admission criteria and procedures. Offenders are eligible for substance abuse treatment programs:

- (1) if the offender’s needs are met by the treatment services provided by the program,
- (2) if a court orders the offender into the program and the subsequent assessment indicates the need for treatment services; or
- (3) if the program allows readmissions and the offender meets the admission criteria. For offenders who are placed in treatment programs who do not meet admission criteria, a mechanism or procedure shall be developed for offender removal. A review and justification explaining the reason the offender does not meet admission criteria shall be required.

(e) Intake. There shall be written policies and procedures establishing an intake process for offenders entering a substance abuse treatment program.

(f) Initial Assessment Procedures. Acceptable and recognized assessment tools (tests and measurements) shall be used in all substance abuse treatment programs within ten (10) working days from date of admission. Assessment policies and procedures shall require the use of approved clinical measurements and screening tests. If the screening identifies a potential mental health problem, the facility shall obtain a mental health assessment and seek appropriate mental health services when resources for mental health assessments and services are available internally or through referral at no additional cost to the program. Assessment procedures shall include the following:

- (1) identification of strengths, abilities, needs and substance preferences of the offenders served;
- (2) summarization and evaluation of each offender to develop individual treatment plans;
  - ~~{(2) indication of desired outcomes and expectations of offenders served; }~~
  - (3) assessments completed by a Qualified Credentialed Counselor (QCC), or if the assessor is a Counselor Intern, then the documentation must be reviewed and signed by a QCC.
  - ~~{(3) summarization and evaluation of each offender to develop individual treatment plans; }~~
  - ~~{(4) specified time frames for initial and on-going assessments; and }~~
  - (5) assessments completed by a Qualified Credentialed Counselor (QCC), or if the assessor is not a QCC, then the documentation must be reviewed and signed by a QCC.

(g) Assessments. The assessment shall include:

- (1) a summary of the offender’s alcohol or drug abuse history including substances used, date of last use, date of first use, patterns and consequences of use, types of and responses to previous treatment, and periods of sobriety;
- (2) family information, including substance use and abuse by family members and supportive or dysfunctional relationships;
- (3) vocational and employment status, including skills or trades learned, work record, and current vocational plans;
- (4) health information, including medical conditions that present a problem or that might interfere with treatment;
- (5) emotional or behavioral problems, including a history of psychiatric treatment; ~~[and]~~
- (6) educational achievement level;
- ~~{(6) a diagnostic summary signed and dated by a Qualified Credentialed Counselor (QCC).}~~
- (7) intellectual functioning level; and
- (8) a diagnostic summary signed and dated by a Qualified Credentialed Counselor (QCC).

(h) Orientation. Each program shall establish written policies and procedures for the orientation process. Orientation shall be provided at the onset of treatment and in accordance with the level of treatment to be provided. The orientation shall relay information concerning program rules, the grievance procedure, and the steps necessary for offenders to complete treatment successfully ~~[be successful in treatment].~~

(i) Offender Rights. The offender’s basic rights shall be respected and protected, free from abuse, neglect, ~~[and]~~ exploitation, and discrimination. Each provider shall have written policy and procedure



to ensure protection of the offender's rights according to federal and state guidelines.

(j) Release of Information. There shall be written policies and procedures for protecting and releasing offender information that conforms to federal and state confidentiality laws. The staff shall follow written policies and procedures for responding to oral and written requests for offender-identifying information.

(k) Offender Records. There shall be written policies and procedures regarding the content of offender treatment records. Residential programs shall maintain separate individual treatment records for defendants. Case records, whether residential or outpatient, [records] shall include the following information at a minimum:

- (1) initial intake information form;
- (2) referral documentation;
- (3) case information from referral source, if applicable;
- (4) release of information forms;
- (5) relevant medical information;
- (6) case history and assessment including risk and needs assessment and Strategies for Case Supervision if required [assessment];
- (7) individual treatment plan;
- (8) evaluation and progress reports;
- (9) discharge summary; and
- (10) court order placing the offender into the program.

(l) Offender Records Review Policy. There shall be written policy and procedures to govern the access of offenders to their own substance abuse treatment records in accordance with Texas Health & Safety Code and 42 CFR part 2. This access does not apply to criminal justice records. Restrictions to access to treatment records shall be specified and explained to offenders upon request. Exceptions must involve the potential for harm to the offender or others.

(m) Treatment Planning and Review. Initial individual Treatment Plans will be completed within ten (10) working days from the date of an offender's admission to a CCF, CCC or any other substance abuse treatment program [developed in accordance with TDCJ CJAD Standard §163.35(e)(5) on the Case Supervision or Treatment Plan,] or through a similar process approved by the CSCD. Substance abuse treatment shall be based on needs identified through assessments and revised according to [remain focused on] the offender's success or lack of progress. Treatment plans [progress, and] shall be reviewed at timely intervals at a minimum of once each month or when major changes occur (e.g., change in phase) and shall ensure:

- (1) that the primary counselor meets with the offender as needed to review the treatment plan, evaluating goal progress and revisions; and
- (2) that all revised treatment plans be signed and dated by the counselor and the offender.

(n) Treatment Progress Notes. There shall be written policies and procedures to require all programs to record and maintain progress notes on all offender case records, to document counseling sessions, and to summarize significant events that occur throughout the treatment process. Progress notes shall be documented at a minimum of once each week.

(o) Changes in Treatment Levels. Each treatment program shall develop written criteria for an offender to advance or regress from

a level of treatment. An offender must meet the criteria for a change in the level of treatment before such a change or a discharge is implemented. Justification for level changes must be documented.

(p) Discharges from Treatment. Discharge from a program shall be based on the following criteria:

- (1) the offender has made sufficient progress towards meeting the objectives of the supervision plan and program requirements;
  - (2) the offender has satisfied a period of placement as a condition of community supervision;
  - (3) the offender has demonstrated non-compliance with the program criteria or court order;
  - (4) the offender manifests a medical problem that prohibits participation or completion of the program requirements;
  - (5) the offender displays symptoms of a psychological disorder that prohibits participation or completion of the program requirements; or
  - (6) the offender is identified as inappropriate or ineligible for participation in the program as defined by facility eligibility criteria, statute, or standard.
- ~~[(2) the offender has satisfied a sentence of confinement; ]~~  
~~[(3) the offender has satisfied a period of placement as a condition of community supervision;]~~  
~~[(4) the offender has demonstrated non-compliance with the program criteria or court order; ]~~  
~~[(5) the offender manifests a medical problem that prohibits participation or completion of the program requirements; ]~~  
~~[(6) the offender displays symptoms of a psychological disorder that prohibits participation or completion of the program requirements; or ]~~  
~~[(7) the offender is identified as inappropriate or ineligible for participation in the program as defined by facility eligibility criteria, statute, or standard;]~~

(q) Discharge Summary. A discharge summary shall be prepared by the primary counselor for each offender prior to leaving any substance abuse program. The discharge summary shall be sent to the defendant's supervision officer within seven (7) days of discharge and provide a summation of:

- (1) clinical problems at the onset of treatment and original diagnosis;
- (2) the problems or needs and strengths or weaknesses identified on the master treatment plan;
- (3) the goals and objectives established;
- (4) the course of treatment;
- (5) the outcomes achieved; and
- (6) a continuum of care plan/aftercare treatment plan, which must be prepared with the offender prior to discharge.

(r) General Program Services Provisions. Specific services shall be required of all substance abuse treatment programs. Written policy and procedures shall ensure the following:

- (1) All substance abuse services shall be delivered according to a written treatment plan;

(2) All programs shall employ a Qualified Credentialed Counselor as the Program Director, Clinical Director, Senior Counselor, or the counselor in a similar supervisory position;

(3) The program shall include culturally diverse curriculum applicable to the population served and shall be accomplished through demonstrated, appropriate counseling and instructional materials;

(4) Members of the offender treatment team shall demonstrate effective communications and coordination, as evidenced in staffing, treatment planning and case-management documentation;

(5) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication which provide for:

(A) conformity with state regulations; and

(B) documentation of the administration of medications, medication errors, and drug reactions.

(6) Chemical dependency education shall follow a course outline that identifies lecture topics and major points to be discussed;

(7) The program shall provide education about the health risks of tobacco products and nicotine addiction;

(8) The program shall provide HIV, Hepatitis B and C, and Tuberculosis education based on the Model Workplace Guidelines for Direct Service Providers developed by the Texas Department of Health;

(9) Offenders shall have access to HIV counseling and testing services directly or through referral;

(A) HIV services shall be voluntary, anonymous, and not limited by ability to pay.

(B) Counseling shall be based on the model protocol developed by the Texas Department of Health.

(C) In all TDCJ-CJAD funded facilities, testing, as well as pre- and post-test counseling, is to be provided by the medical department or contracted medical provider. In all facilities, service shall be provided either directly or through referral.

(10) The program shall make testing and information, for tuberculosis and sexually transmitted diseases available to all offenders, unless the program has access to test results obtained during the past year;

(A) Services may be made available directly or through referral.

(B) If an offender tests positive for tuberculosis or a sexually transmitted disease, the program shall refer the offender to an appropriate health care provider and take appropriate steps to protect offenders and staff.

(C) A community corrections facility shall report to the local health department the release of an offender who is receiving treatment for tuberculosis.

(11) The program shall:

(A) refer pregnant offenders who are not receiving prenatal care to an appropriate health care provider and monitor follow-through; and

(B) refer offenders to ancillary services necessary to meet treatment goals.

(s) Levels of Treatment. All CCFs providing substance abuse treatment shall designate in the current facility's Community Justice

Plan (CJP) program proposal levels of treatment to be provided as described in sections (t) through (x) below. Beginning in fiscal year 2004, level II and level III treatment programs must include a cognitive-behavioral component for medium and high-risk offenders. ~~[If the program utilizes a Modified Therapeutic Community modality of treatment, it shall include the following as minimal components:]~~

~~{(1) a structure board;}~~

~~{(2) encounter, counseling and family groups;}~~

~~{(3) utilization of a three phase process. (Offenders shall transition from Phase 1, to Phase 2 to Phase 3 by meeting objectives and program goals.)}~~

~~{(4) graduated treatment sanctions for incidents of non-compliance in coordination with the transitional treatment team; and}~~

~~{(5) other peer-support groups.}~~

(t) Level I (Detoxification).~~[Detoxification.]~~ Written policies and procedures shall ensure the following:

(1) All offenders admitted to Level I (Detoxification)~~[Detoxification]~~ programs shall need detoxification.

(2) Every offender shall have a completed medical history and physical.

(A) Residential offenders shall have a completed physical and medical history and a physical within 24 hours of admission. If the facility cannot meet this deadline because of exceptional circumstances, the circumstances shall be documented in the offender record. Until an offender's medical history and physical is complete, staff shall observe offenders closely (no less than every 15 minutes) and monitor vital signs (no less than once each hour).

(B) Outpatient offenders shall have the medical history and physical completed before admission.

(3) The program shall provide continuous supervision for offenders.

(A) In residential programs, direct care staff shall be awake and on site 24 hours a day.

(i) During day and evening hours, at least two awake staff shall be on duty for the first 12 offenders, with one more person on duty for each additional one to 16 offenders.

(ii) At night, at least one awake staff member shall be on duty for the first 12 offenders, with one more person on duty for each additional one to 16 offenders.

(B) In outpatient programs, direct care staff shall be awake and on site whenever an offender is on site. Offenders shall have access to on-call staff 24 hours a day.

(4) If the program accepts offenders with acute detoxification symptoms or a history of acute detoxification symptoms, the program shall have:

(A) a licensed vocational nurse or registered nurse on duty during all hours of operation;

(B) a physician on-call 24 hours a day.

(5) Level of observation shall be based on medical recommendations and program design, or not less than that described in (2) (A) above.

(6) A physician shall approve all medical policies, procedures, guidelines, tools, and forms, which shall include:

(A) screening instruments (including a medical risk assessment) and procedures;

(B) treatment protocol or standing orders for each chemical the program is prepared to address in detoxification; and

(C) emergency procedures.

(7) The clinical supervisor shall be a physician, physician assistant, advanced practice nurse, or registered nurse.

(8) The program shall:

(A) ensure continuous access to emergency medical care;

(B) provide offenders access to mental health evaluation and linkage with mental health services when indicated;

(C) use written procedures to encourage offenders to seek appropriate treatment after detoxification.

(9) Direct care staff shall complete detoxification training provided by a physician, physician assistant, advanced practice nurse, or registered nurse that includes instruction in the following areas:

(A) signs of withdrawal;

(B) pregnancy-related complications (if the program admits females of child-bearing age);

(C) observation and monitoring procedures;

(D) appropriate intervention; and

(E) complications requiring transfer.

(10) Staff shall assist each offender in developing an individualized post-detoxification plan that includes appropriate referrals.

(u) Level II (Relapse/Intensive Residential Treatment). [~~Relapse/Intensive Residential Treatment.~~] Written policies and procedures shall ensure the following:

(1) All offenders admitted to Level II (Relapse/Intensive Residential Treatment) [~~relapse intensive residential treatment~~] shall be medically stable, and able to participate in treatment.

(2) The program shall provide adequate staff for close supervision and individualized treatment with counselor caseloads not to exceed ten (10) offenders.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide all required program services, maintain an environment that is conducive to treatment, and ensure the safety and security of the offenders, according to the design of the facility and with the approval of the funding source.

(4) For programs ~~90~~ 45 days or less counselors shall complete a comprehensive offender assessment and individual treatment plan within five (5) working days of admission. All other programs shall complete a comprehensive offender assessment and individual treatment plan within ten (10) working days.

(5) The facility shall deliver not less than twenty (20) hours of structured activities per week for each offender, including:

(A) ten (10) hours of chemical dependency counseling with a cognitive-behavioral approach with no less than one hour of individual counseling;

(B) seven (7) hours additional education, counseling, life skills, or rehabilitation activities; and

(C) three (3) hours of structured social or recreational activities.

(6) Counseling and education schedules shall be submitted to the funding entity for approval.

(7) Each offender shall have an opportunity to participate in physical recreation at least weekly.

(8) Program staff shall offer chemical dependency education or services to identified significant others.

(9) The program shall provide each offender with opportunities to apply knowledge and practice skills in a structured, supportive environment. Cognitive-Behavioral Programs shall have a published curriculum identified by the authors to contain cognitive, social and behavioral elements. Anyone facilitating a cognitive curriculum must be trained in that specific curriculum. All staff must receive training on the principles of a cognitive behavioral model as it relates to their job duties. This curriculum shall be approved by TDCJ-CJAD and implemented as designed. Components of the cognitive program shall at minimum include:

(A) Ways to identify thinking patterns; and

(B) Social Skills Training Component.

(v) Level III (Community Residential Treatment). Written policies and procedures shall ensure the following:

(1) All offenders admitted to level III (Community Residential Treatment) shall be medically stable, able to function with limited supervision and support, and be able to participate in work release or community service/restitution programs.

(2) The program shall have adequate staff to meet treatment needs within the context of the program description, with counselor caseloads not to exceed sixteen (16) offenders.

(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide for the safety and security of the offenders, according to the design of the facility and with the approval of the funding.

(4) Counselors shall complete a comprehensive offender assessment and individualized treatment plan within ten (10) working days of admission for all offenders.

(5) The facility shall deliver no less than ten (10) hours of structured activities per week for each offender, including at least five (5) hours of chemical dependency counseling with a cognitive-behavioral approach.

(6) Counseling and education schedules shall be submitted to the funding entity for approval.

(7) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings. Cognitive-Behavioral Programs shall have a published curriculum identified by the authors to contain cognitive, social and behavioral elements. This curriculum shall be approved by TDCJ-CJAD and implemented as designed. Anyone facilitating a cognitive curriculum must be trained in that specific curriculum. All staff must receive training on the principles of a cognitive behavioral model as it relates to their job duties. Components of the cognitive program shall at minimum include:

(A) Ways to identify thinking patterns; and

(B) Social Skills Training Component.

{{(v) Primary Care Treatment. Written policies and procedures shall ensure the following:}}

{{(1) All offenders admitted to primary care treatment shall be medically stable, and able to participate in treatment.}}

{{(2) The program shall provide adequate staff for close supervision and individualized treatment with counselor caseloads not to exceed (16) offenders.}}

{{(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide all required services; maintain an environment that is conducive to treatment, and ensure the safety and security of the offenders; according to the design of the facility and with the approval of the funding source.}}

{{(4) Counselors shall complete a comprehensive offender assessment within ten working days of admission for all offenders admitted to a primary care treatment program, and an individualized treatment plan shall be completed for all offenders within ten working days of admission.}}

{{(5) Length of stay shall be offender-driven based upon:}}

{{(A) the offender's successful completion of treatment goals;}}

{{(B) medical and psychological appropriateness for the program;}}

{{(C) the offender's compliance with the programs rules and regulations.}}

{{(6) The facility shall deliver no less than twenty hours of structured activities per week for each offender, including:}}

{{(A) ten hours of chemical dependency counseling, with no less than one hour of individual counseling per month;}}

{{(B) seven hours additional education, counseling, life skills, or rehabilitation activities; and}}

{{(C) three hours of structured social or recreational activities.}}

{{(7) Counseling and education schedules shall be submitted to the funding entity for approval.}}

{{(8) Each offender shall have an opportunity to participate in physical recreation at least four hours per week.}}

{{(9) Program staff shall offer chemical dependency education or services to identified significant others.}}

{{(10) The program shall provide each offender with opportunities to apply knowledge and proactive skills in a structured, supportive environment.}}

(w) Level IV (Outpatient Treatment). Written policies and procedures shall ensure the following:

(1) All offenders admitted to Level IV (Outpatient) programs shall be medically stable, and have appropriate support systems in the community to live independently with minimal structure.

(2) The program shall have adequate staff to provide offenders support and guidance to ensure effective service delivery, safety, and security. Staffing patterns shall be submitted to the funding entity.

(3) The program shall set limits on counselor caseload size to ensure effective, individualized treatment and rehabilitation. Criteria

used to set the caseload size shall be documented and approved by the funding entity.

(4) Didactic groups shall not exceed 35 offenders in a group.

(5) Therapeutic groups shall not exceed 16 offenders in a group

(6) For offenders in supportive outpatient programs, counselors shall complete a comprehensive offender assessment within thirty (30) calendar days of admission for all offenders.

(7) For offenders in intensive outpatient programs, counselors shall complete a comprehensive offender assessment within ten (10) calendar days of admission for all offenders.

(8) Intensive outpatient programs shall deliver no less than ten (10) hours of structured activities per week for each offender, including at least five (5) hours of chemical dependency counseling.

(9) Supportive outpatient programs shall deliver no less than two (2) hours of structured activities per week for each offender, including at least one (1) hour of chemical dependency counseling.

(10) Counseling and education schedules shall be submitted to the funding entity for approval.

(11) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings.

(12) The outpatient treatment levels may be utilized for residents in the work release phase of any residential substance abuse treatment program.

{{(w) Community Residential Treatment. Written policies and procedures shall ensure the following:}}

{{(1) All offenders admitted to community residential treatment shall be medically stable, able to function with limited supervision and support, and be able to participate in work release or community service/restitution programs.}}

{{(2) The program shall have adequate staff to meet treatment needs within the context of the program description, with counselor caseloads not to exceed 16 offenders, or 20 for modified therapeutic community.}}

{{(3) There shall be direct care staff alert and on site during all hours of operation. There shall be an appropriate number of direct care staff to provide for the safety and security of the offenders; according to the design of the facility and with the approval of the funding.}}

{{(4) Counselors shall complete a comprehensive offender assessment and individualized treatment plan within ten working days of admission for all offenders.}}

{{(5) The facility shall deliver no less than ten hours of structured activities per week for each offender, including at least five hours of chemical dependency counseling and programming of no less than four hours of chemical dependency counseling and four hours of structured activities per week shall be provided in a modified therapeutic community program.}}

{{(6) Counseling and education schedules shall be submitted to the funding entity for approval.}}

{{(7) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings.}}

(x) Special Populations. Written policies and procedures shall ensure the following:

(1) Programs that address the special mental health, intellectual capacity, or medical needs of offenders must provide appropriate treatment either by program staff or through contracted services.

(2) Admission to a special needs program must be based on a documented mental health, intellectual capacity, or medical need.

(3) When the assessment process indicates that the offender has coexisting disabilities/disorders, the Treatment Plan shall specifically address those issues that might impact treatment, recovery, relapse, and/or recidivism.

(4) Personnel shall be available who are qualified in the treatment of coexisting disabilities/disorders.

(5) Within ninety-six (96) hours of admission to a special needs residential program, offenders shall be administered a medical and psychological evaluation.

(6) Within ten (10) days of admission to a residential program for special needs offenders, the program administrator or designee shall contact the Texas Council on Offenders with Mental Impairments (TCOMI) regarding the offender's status. As soon as discharge date is projected, TCOMI shall be notified in writing of plans for a continuum of care after discharge, regardless of whether or not the discharge is for successful completion of the program.

(7) Residential facilities providing services for special needs populations shall have procedures to provide access to health care services, including medical, dental, and mental health services, under the control of a designated health authority. When this authority is other than a physician, final medical judgments must rest with a single designated responsible physician licensed by the state.

(A) Services/treatment shall be directed toward maximizing the functioning and reducing the symptoms of offenders.

(B) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication which provide for:

(i) conformity with state regulations;

(ii) documentation of the rationale for use and goals of service/treatment consistent with the individual plan of treatment;

(iii) documentation of the administration of medications, medication errors, and drug reactions; and

(iv) procedures to follow in case of emergencies.

(8) There shall be procedures for documenting that the offender has been informed of medication management procedures.

(9) Offenders shall be actively involved in decisions related to their medications.

(10) Programs for special needs offenders must follow the same staffing for treatment levels as the levels for other offenders, except all residential programs shall maintain caseloads of no greater than sixteen (16) offenders for each counselor.

(11) Programs operating in residential facilities shall ensure that offenders will have no less than ten (10) days of appropriate medication for use after discharge.

{(x) Outpatient Treatment. Written policies and procedures shall ensure the following: }

{(1) All offenders admitted to outpatient programs shall be medically stable, and have appropriate support systems in the community to live independently with minimal structure. }

{(2) The program shall have adequate staff to provide offenders support and guidance to ensure effective service delivery, safety, and security. Staffing patterns shall be submitted to the funding entity. }

{(3) The program shall set limits on counselor caseload size to ensure effective, individualized treatment and rehabilitation. Criteria used to set the caseload size shall be documented and approved by the funding entity. }

{(4) Didactic groups shall not exceed 30 offenders in a group. }

{(5) Therapeutic groups shall not exceed 16 offenders in a group. }

{(6) For offenders in supportive outpatient programs, counselors shall complete a comprehensive offender assessment within 30 calendar days of admission for all offenders. }

{(7) For offenders in intensive outpatient programs, counselors shall complete a comprehensive offender assessment within ten calendar days of admission for all offenders. }

{(8) Intensive outpatient programs shall deliver no less than ten hours of structured activities per week for each offender, including at least five hours of chemical dependency counseling. }

{(9) Supportive outpatient programs shall deliver no less than two hours of structured activities per week for each offender, including at least one hour of chemical dependency counseling. }

{(10) Counseling and education schedules shall be submitted to the funding entity for approval. }

{(11) The program design and application shall include increasing levels of responsibility for offenders and frequent opportunities for offenders to apply knowledge and practice skills in structured and unstructured settings. }

{(12) The outpatient treatment levels may be utilized for residents in the work release phase of any residential substance abuse treatment program. }

{(y) Special Populations. Written policies and procedures shall ensure the following: }

{(1) Programs that address the special mental health, intellectual capacity, or medical needs of offenders must provide appropriate treatment either by program staff or through contracted services. }

{(2) Admission to a special needs program must be based on a documented mental health, intellectual capacity, or medical need. }

{(3) When the assessment process indicates that the offender has coexisting disabilities/disorders, the Treatment Plan shall specifically address those issues that might impact treatment, recovery, relapse, and/or recidivism. }

{(4) Personnel shall be available who are qualified in the treatment of coexisting disabilities/disorders. }

{(5) Within (96) hours of admission to a special needs residential program, offenders shall be administered a medical and psychological evaluation. }

{(6) Within ten days of admission to a residential program for special needs offenders, the program administrator or designee shall contact the Texas Council on Offenders with Mental Impairments

(TCOMI) regarding the offender's status. As soon as discharge date is projected, TCOMI shall be notified in writing of plans for a continuum of care after discharge, regardless of whether or not the discharge is for successful completion of the program.]

[(7) Residential facilities providing services for special needs populations shall have procedures to provide access to health care services, including medical, dental, and mental health services, under the control of a designated health authority. When this authority is other than a physician, final medical judgments must rest with a single designated responsible physician licensed by the state.]

[(A) Services/treatment shall be directed toward maximizing the functioning and reducing the symptoms of offenders.]

[(B) There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medication which provide for:]

[(i) conformity with state regulations;]

[(ii) documentation of the rationale for use and goals of service/treatment consistent with the individual plan of treatment;]

[(iii) documentation of the administration of medications, medication errors, and drug reactions; and]

[(iv) procedures to follow in case of emergencies.]

[(8) There shall be procedures for documenting that the offender has been informed of medication management procedures.]

[(9) Offenders shall be actively involved in decisions related to their medications.]

[(10) Programs for special needs offenders must follow the same staffing for treatment levels as the levels for other offenders, except all residential programs shall maintain caseloads of no greater than (16) offenders for each counselor.]

[(11) Programs operating in residential facilities shall ensure that offenders will have no less than ten (10) days of appropriate medication for use after discharge.]

[(z) Residential Physical Plant Requirements. Facilities (Physical Plants) providing substance abuse treatment to offenders shall have written policies and procedures to ensure the following:]

[(1) The physical plant shall be located either within one mile of public transportation or other means of available transportation.]

[(2) There must be documentation indicating that ventilation conforms with the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 62 and ASHRAE Standard 55 requiring 20 CFM per person minimum outside air and ventilation for each occupant or facility sleeping quarters. The facility/sleeping quarters must also meet Smoke Management Standards 92A, 92B and 204M established by the National Fire Prevention Association (NFPA). Consultation with trade associations specializing in the area of ventilation can provide alternative methods of mechanical ventilation if windows are absent or not operable. Documentation for meeting proper ventilation requirements can be obtained through a local public health agency, an engineering consultant, or a trade association such as the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc.]

[(3) There must be documentation that all sleeping quarters have lighting of at least (20) foot-candles in reading and grooming areas. Sleeping quarters shall be safe and provide the resident with adequate lighting which is conducive to reading and grooming.]

[(4) An adequate amount of floor space must be provided per resident in the facility's sleeping area to meet the safety and security requirements of the facility.]

[(5) In the sleeping area, each resident must be provided at a minimum: a bed, mattress, and pillow; supply of bed linen; and closet/locker space for the storage of personal items.]

[(6) Private counseling space with adequate furniture must be provided in the facility.]

[(7) Space and furnishings for activities such as group meetings and visits shall be provided in the facility.]

[(8) At a minimum, the facility shall have one operable toilet for every eight residents or increment thereof, or as approved by the funding entity. Urinals may be substituted for up to one-half of the toilets in male-populated facilities.]

[(9) At a minimum, the facility shall have one operable wash basin with temperature controlled hot and cold running water for every eight residents, or as approved by the funding agency.]

[(10) At a minimum, the facility shall have one operable shower or bathing facility with temperature controlled hot and cold running water for every twelve residents or as approved by funding entity. The water shall be thermostatically controlled to temperatures ranging from 100 to 108 degrees Fahrenheit to ensure the safety of residents.]

[(11) The facility shall have the ability to handle the laundry needs on a daily basis for all residents.]

[(12) Facilities of more than 200 residents shall be subdivided into units of not more than 60 residents. Each unit will be staffed with the number and variety of staff personnel required to provide the program services and custodial supervision needed based on contractual requirements. Units with 50 or fewer residents shall be permitted to conduct manageable, scaled programs based on decisions by facility management and contractual requirements. ]

[(13) Resident population shall not exceed the rated space of the facility. The original facility plan shall be examined to determine its rated bed capacity. If remodeled since original construction, the latest blueprints or plans for each resident housing shall be used.]

[(14) When males and females are housed in the same facility, there shall be separate sleeping quarters with adequate supervision.]

[(15) There shall be identifiable exits in each housing area and other high density areas to permit the prompt evacuation of residents and staff under emergency conditions as approved by the local or state fire inspector/marshall having jurisdiction.]

[(16) Where applicable, there shall be a separate day room (leisure time space) for each housing unit, and an outside recreation area shall be provided.]

[(17) There shall be a visiting room or area for contact visitation which is adequate to meet the needs and size of the facility.]

[(18) Space must be provided for administrative, custodial, professional, and clerical staff.]

[(19) Preventative maintenance of the physical plant which provides for emergency repairs or replacements in life threatening situations shall be documented and conducted on a timely and routine basis.]

[(20) There shall be documentation by a qualified source that the interior finishing material in resident living areas, exit areas,

and places of public assembly are in accordance with the local or state fire inspector/marshall having jurisdiction.}]

{(21) Exits in the facility must be in compliance with either state or local fire safety authorities.}]

{(aa) Special Physical Plant Provisions: There shall be written policy and procedures to ensure access for handicapped residents in a manner which provides for their safety and security. In accordance with the Americans with Disabilities Act (ADA); areas of the facility which are accessible to the public shall be also accessible to handicapped staff and visitors.}]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2003.

TRD-200300309

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-0422



### 37 TAC §163.36

The Texas Board of Criminal Justice, on behalf of the Texas Department of Criminal Justice-Community Justice Assistance Division (CJAD), proposes new rule §163.36, Mentally Impaired Offender Supervision, for the Standards for Community Supervision and Corrections Departments (CSCDs).

The new standard provides for caseloads relating to the supervision of Mentally Impaired Offenders. This standard addresses the development of policy and procedures, contact requirements, treatment referral process and coordination with other treatment providers, caseload size, violation procedures, collaboration with collateral sources, and transfer procedures.

Brad Livingston, Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government. Mr. Livingston has also determined that there will be no economic impact on persons required to comply with the rule, and that the public benefit expected as a result of the proposed rule is the increase in public safety due to improvements in continuity of care for offenders with mental impairments.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new rule is proposed under Texas Government Code, §509.003; Texas Health & Safety Code, §614.013.

Cross Reference to Statutes: Texas Government Code, §509.003; Texas Health & Safety Code, §614.013.

#### §163.36. Mentally Impaired Offender Supervision.

(a) A mentally impaired offender is defined as one with an Axis I or Axis II disorder as defined by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), that inhibits

their ability to comply with conditions of supervision, other than solely substance abuse dependence.

(b) CSCD Directors shall develop and implement policies and procedures for the effective supervision of mentally impaired offenders. Policies and procedures shall address at least the following and any other policies required by special grant conditions:

- (1) Contact standards;
- (2) Treatment referral process within and outside of jurisdiction;
- (3) Coordination of services with treatment providers;
- (4) Treatment participation requirements;
- (5) Recommend modified conditions of supervision based on offenders progress, risk factors or ability to comply;
- (6) Caseload size; and
- (7) Violation procedures.

(c) Community supervision officers shall collaborate with collateral sources, See TDCJ-CJAD §163.35 (c) 7, and coordinate services with agencies within and outside the criminal justice system to address the needs of the mentally impaired offender.

(d) Departments closing or transferring out of county supervision of a mentally impaired offender shall complete a supervision summary report within 14 days and forward the summary and all other pertinent treatment information to the criminal justice agency that assumes supervision of the offender.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200300310

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-0422



### 37 TAC §163.38

The Texas Board of Criminal Justice, on behalf of the Texas Department of Criminal Justice-Community Justice Assistance Division (CJAD), proposes new rule §163.38, Sex Offender Supervision, for the Standards for Community Supervision and Corrections Departments (CSCDs).

The proposed new rule is to provide standards for the supervision of the sex offender, a definition of a sex offender for supervision purposes, policy and procedure development in regards to contact standards, sex offender registration, DNA collection, violation procedures, treatment referral process, treatment participation requirements, team approach to supervision, sharing of information with appropriate agencies, and recommended caseload size.

Brad Livingston, Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Livingston has also determined that there will be no economic impact on persons required to comply with the rule, and that the public benefit expected as a result of the proposed rule is the increase in public safety due to improvements in continuity of care for sex offenders.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new rule is proposed under Texas Government Code, §509.003.

Cross Reference to Statutes: Texas Government Code, §509.003.

§163.38. Sex Offender Supervision.

(a) Definitions.

(1) "Jurisdictional authority" means a sentencing court, the Board of Pardons and Paroles, or a division of the Texas Department of Criminal Justice as applicable to the offender.

(2) "Sex offense" means a reportable offense under Art. 62.01(5), Code of Criminal Procedure.

(3) "Sex offender" means an offender who:

(A) has a current conviction or deferred adjudication for a sex offense;

(B) has a prior conviction or deferred adjudication for a sex offense and has been ordered by the jurisdictional authority to participate in sex offender supervision or treatment; or

(C) has been ordered by the jurisdictional authority to participate in sex offender supervision or treatment.

(b) CSCDs supervising sex offenders shall ensure consistency in the manner in which sex offenders are supervised throughout the department. Policies and procedures shall be developed that, at a minimum, include the following:

(1) Contact standards as per TDCJ-CJAD Standard §163.35 (c) (7);

(2) Sex offender registration as per TCCP, Chapter 62;

(3) DNA collection as per TCCP 42.12, Sec. 11 (a) (22);

(4) Violation procedures as per TDCJ-CJAD Standards §163.35 (c) (9);

(5) Victim services as per Texas Government Code Annotated 76.016;

(6) Treatment referral process as per TCCP 42.12, Sec. 13 B (c);

(7) Treatment participation requirements;

(8) Team approach to supervision;

(9) Sharing of information/documentation with the appropriate agency; and

(10) Specialized caseload size, if applicable.

(c) CSCDs shall develop policies and procedures that address the needs and safety of victims or potential victims. The policies may include collaborating with victims, victim advocates, or sexual assault task forces in the supervision and treatment of sex offenders.

(d) CSOs shall use a record keeping system to document all significant actions, decisions, services rendered and periodic evaluations in the offender's case file, including the offender's status regarding level of supervision, compliance with the conditions of community supervision, progress with the supervision plan, and responses to intervention.

(e) CSOs shall collaborate with collateral sources. Collateral sources may include treatment providers, polygraph examiners, significant others, sex offender registration personnel, sex offenders' families, local law enforcement, schools, Children's Protective Services, employers, chaperones, and victim service providers.

(f) CSOs shall recommend that conditions be tailored to the sex offender's identified risk.

(g) CSOs shall make face-to-face, field visits, and collateral contacts with the offender, family, community resources, or other persons pursuant to and consistent with a supervision plan and the level of supervision on which the offender is being supervised. Each CSCD director shall establish supervision contact and casework standards at a level appropriate for that jurisdiction, but in all cases, offenders at higher levels of supervision shall receive a higher level of contacts than offenders at lower levels of supervision. Supervision contacts shall be specified in the CSCDs written policies and procedures.

(h) CSCD directors shall work in conjunction with the local judiciary to specify written policies and procedures wherein CSOs may make recommendations to the courts regarding violations of conditions of community supervision, as well as when violations may be handled administratively. The availability of the continuum of sanctions or alternative to incarceration shall be considered by the community supervision officer and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

(i) CSOs shall timely transmit information regarding supervision and treatment at the time supervision is transferred.

(j) In addition to the above, CSCDs may operate specialized caseloads for sex offenders. In this event, CSCDs shall have a written policy that

(1) Establishes minimum qualifications for CSOs supervising sex offenders;

(2) Determines the minimum training requirements for CSOs supervising sex offenders; and

(3) Specifies the number of staff required for the increased level of supervision essential for the specialized supervision of sex offenders. The recommended CSO to offender ratio is one to 45.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2003.

TRD-200300311

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 463-0422

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CHAPTER 195. PAROLE



## 37 TAC §195.51

The Texas Board of Criminal Justice, on behalf of the Texas Department of Criminal Justice Parole Division, proposes new §195.51, concerning requirements for sex offender supervision. The purpose of the new rule is to enhance public safety by ensuring continuity in the supervision and treatment of sex offenders.

Brad Livingston, Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Livingston has also determined that the public benefit expected as a result of the proposed rule is enhanced public safety as described above. There will be no economic impact on persons required to comply with the rule and there is no effect on small businesses, or micro-businesses.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the public should be received within 30 days of the publication of this proposal.

The new rule is proposed under Texas Government Code §492.013, which grants general rulemaking authority to the Board of Criminal Justice, and §508.112, which gives the Parole Division responsibility for supervision of releasees.

Cross Reference to Statutes: Texas Government Code, Chapter 508.112.

### §195.51. Sex Offender Supervision.

The Parole Division shall supervise sex offenders in accordance with the requirements of Section 163.38 of this title (relating to Sex Offender Supervision).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300361

Carl Reynolds  
General Counsel

Texas Department of Criminal Justice

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## PART 11. TEXAS JUVENILE PROBATION COMMISSION

### CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

The Texas Juvenile Probation Commission proposes the repeal of Chapter 341, §§341.1 - 341.6, 341.13 - 341.17, 341.24 - 341.31, 341.38 - 341.42, 341.48 - 341.53, 341.58 - 341.62, 341.68, 341.75, 341.82 - 341.92, 341.98 - 341.109, 341.113, 341.114, 341.121 - 341.125, 341.132 - 341.143, 341.150, 341.157, 341.158, relating to standards for juvenile probation departments. The repeal is in an effort not to overlap with new

proposed standards in chapter 341, which provide structural and substantive changes from the current standards.

Erika Sipiora, Deputy General Counsel, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Sipiora has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the repeal.

Public comments on the repeal may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

## SUBCHAPTER A. DEFINITIONS

### 37 TAC §341.1

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

#### §341.1. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel  
Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

### 37 TAC §§341.2 - 341.6

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

#### §341.2. Administration.

#### §341.3. Fiscal Responsibilities.

- §341.4. *Policy and Procedures.*
- §341.5. *Facilities and Support Services.*
- §341.6. *Waiver to Standards.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

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Texas Juvenile Probation Commission

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## SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

### 37 TAC §§341.13 - 341.17

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

- §341.13. *Administrative Manual.*
- §341.14. *Identification.*
- §341.15. *Supervision.*
- §341.16. *Treatment and Safety.*
- §341.17. *Participation in Community Resource Coordination Groups.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel  
Texas Juvenile Probation Commission

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## SUBCHAPTER D. FISCAL OFFICER RESPONSIBILITIES

### 37 TAC §§341.24 - 341.31

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

- §341.24. *Accounting.*
- §341.25. *Interest on State Funds.*
- §341.26. *Purchasing.*
- §341.27. *Expenditure of State Funds.*
- §341.28. *Internal Controls.*
- §341.29. *Financial Reporting.*
- §341.30. *Refunds to the Commission.*
- §341.31. *Records Retention.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

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Texas Juvenile Probation Commission

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## SUBCHAPTER E. EMPLOYMENT OF JUVENILE PROBATION OFFICERS

### 37 TAC §§341.38 - 341.42

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

- §341.38. *Qualifications for Employment.*
- §341.39. *Exemption from Qualifications.*
- §341.40. *Criminal Records Check.*
- §341.41. *Disqualification from Employment.*
- §341.42. *Applicability.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

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Texas Juvenile Probation Commission

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## SUBCHAPTER F. CERTIFICATION OF JUVENILE PROBATION OFFICERS

### 37 TAC §§341.48 - 341.53

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.48. *Persons Who Must be Certified.*

§341.49. *Certification.*

§341.50. *Recertification.*

§341.51. *Transfer of Certification.*

§341.52. *Expiration of Certification While Under Certification Suspension Order.*

§341.53. *Applicability.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

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Texas Juvenile Probation Commission

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## SUBCHAPTER G. TRAINING OF JUVENILE PROBATION OFFICERS

### 37 TAC §§341.58 - 341.62

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.58. *Training Hours.*

§341.59. *Training Hours for Trainers.*

§341.60. *Certification Training.*

§341.61. *Recertification Training.*

§341.62. *Applicability.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710

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## SUBCHAPTER H. DUTIES OF CERTIFIED JUVENILE PROBATION OFFICERS

### 37 TAC §341.68

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.68. *Duties of Certified Juvenile Probation Officers.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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## SUBCHAPTER I. JUVENILE PROBATION OFFICER CODE OF ETHICS

### 37 TAC §341.75

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.75. *Code of Ethics.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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## SUBCHAPTER J. ENFORCEMENT PROCEDURES--CODE OF ETHICS

### 37 TAC §§341.82 - 341.92

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.82. *Request for Disciplinary Hearing.*

§341.83. *Notifications Made to the Commission.*

§341.84. *Effect of Request for Disciplinary Hearing.*

§341.85. *Procedure for Hearings.*

§341.86. *Notice.*

§341.87. *Right to Counsel.*

§341.88. *Disciplinary Hearing.*

§341.89. *Motion for Rehearing.*

§341.90. *Judicial Review.*

§341.91. *Record.*

§341.92. *Release of Information.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

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Texas Juvenile Probation Commission

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## SUBCHAPTER K. MANDATORY CERTIFICATION REVOCATION AND MANDATORY CERTIFICATION SUSPENSION

### 37 TAC §§341.98 - 341.109

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.98. *Duty to Notify.*

§341.99. *Effect of Notification.*

§341.100. *Procedure for Certification Revocation Hearings.*

§341.101. *Notice.*

§341.102. *Right to Counsel.*

§341.103. *Revocation Hearing.*

§341.104. *Motion for Rehearing.*

§341.105. *Judicial Review.*

§341.106. *Record.*

§341.107. *Release of Information.*

§341.108. *Applicability.*

§341.109. *Mandatory Suspension for Failure to Pay Child Support.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## SUBCHAPTER L. COMPLAINTS AGAINST JUVENILE BOARDS

### 37 TAC §§341.113, §341.114

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.113. *Notice of Complaint Procedures.*

§341.114. *Complaint Process.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710

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## SUBCHAPTER M. CASE MANAGEMENT STANDARDS

### 37 TAC §§341.121 - 341.125

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.121. *Definitions.*

§341.122. *Assessment.*

§341.123. *Case Planning and Review.*

§341.124. *Supervision.*

§341.125. *Exit Plan.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 424-6710

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## SUBCHAPTER N. DATA COLLECTION STANDARDS

### DIVISION 1. CASEWORKER SYSTEMS

#### 37 TAC §§341.132 - 341.137

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.132. *Definitions.*

§341.133. *Data Coordinator.*

§341.134. *TJPC Monthly Folder Extract.*

§341.135. *Other Reports.*

§341.136. *Accuracy of Data.*

§341.137. *Security of Data.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300405

Lisa A. Capers

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For further information, please call: (512) 424-6710

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## DIVISION 2. NON-CASEWORKER SYSTEMS

### 37 TAC §§341.138 - 341.143

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.138. *Definitions.*

§341.139. *Data Coordinator.*

§341.140. *TJPC Monthly Folder Extract.*

§341.141. *Other Report.*

§341.142. *Accuracy of Data.*

§341.143. *Security of Data.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER O. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

### 37 TAC §341.150

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.150. *TJPC Monthly Folder Extract.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER P. TEXAS JUVENILE PROBATION COMMISSION

### 37 TAC §341.157, §341.158

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§341.157. *Memoranda of Understanding--Coordinated Services for Multiproblem Children and Youth.*

§341.158. *Memoranda of Understanding--Service Delivery to Dysfunctional Families.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

The Texas Juvenile Probation Commission proposes new Chapter 341 §§341.1 - 341.4, 341.9, 341.10, 341.15, 341.16, 341.20 - 341.23, 341.28 - 341.30, 341.35 - 341.41, 341.47 - 341.56, 341.60, and 341.65 - 341.71, relating to standards for juvenile probation departments. The proposed standards provide structural and substantive changes from the current standards.

Erika Sipiora, Deputy General Counsel, has determined that for the first five year period the new sections are in effect, there will

be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation, with the following exception: §341.38(b) will have a fiscal impact of approximately \$340,557 per year statewide. The fiscal impact is derived by taking 71,734, the number of juveniles assigned last calendar year to progressive sanctions levels three through five, and dividing that number by four, the number of case plan reviews a juvenile probation officer can complete in an hour. That sum, 17,394, is then multiplied by \$18.99, the average hourly rate for juvenile probation officers.

Ms. Sipiora has also determined that for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcement will be the consistent standards to all counties across the State of Texas which will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the new sections.

Public comments on the proposed new sections may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

## SUBCHAPTER A. DEFINITIONS

### 37 TAC §341.1

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

#### §341.1. Definitions.

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

(1) Alleged Victim--A juvenile alleged as being a victim of abuse, exploitation or neglect.

(2) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department including the juvenile probation department of a multi-county judicial district.

(3) Commission--The Texas Juvenile Probation Commission.

(4) Juvenile Justice Program--A non-residential program operated for the benefit of juveniles referred to a juvenile probation department that is either directly administered by the juvenile probation department, or is operated under contract with a juvenile board. A juvenile justice program does not include any program operated in a facility that is licensed or operated by a state agency other than a facility registered with the Texas Juvenile Probation Commission.

(5) Referral--A referral to the juvenile court for conduct defined in Texas Family Code §51.03 that results in a face-to-face interview between the juvenile and the authorized staff of the juvenile probation department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

### 37 TAC §§341.2 - 341.4

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

#### §341.2. Administration.

##### (a) Local Juvenile Probation Services Administration.

(1) The juvenile board shall employ a chief administrative officer for each autonomous juvenile probation department.

(2) The juvenile board shall specify the responsibilities and functions of the juvenile probation department as well as the authority, responsibility, and function of the position of the chief administrative officer.

(3) When probation services for adult and juvenile offenders are provided by a single probation office, the juvenile board shall ensure that the juvenile probation department policies, programs, and procedures are clearly differentiated.

(b) Referral Ratio. The juvenile board shall employ at least one certified juvenile probation officer for each 100 referrals made to the juvenile probation department annually.

##### (c) Participation in Community Resource Coordination Groups.

(1) Juvenile boards shall participate in the system of community resource coordination groups and the procedures in the memorandum of understanding adopted in §349.69 of this title.

(2) The chair of the juvenile board, or the chair's designee shall serve as representative to the interagency dispute resolution process described in the memorandum of understanding.

(d) Notice of Complaint Procedures. The juvenile board shall post the sign provided by the Commission relating to complaint procedures in a public area of:

(1) the juvenile probation department; and

(2) any facility operated by the juvenile board, or operated by a private entity through contract with the juvenile board.

#### §341.3. Policy and Procedures.

(a) Personnel Policies. The juvenile board shall adopt written personnel policies. These personnel policies shall include but not be limited to:

(1) a salary scale for all juvenile probation officers; and

(2) the provision for juvenile probation officers to receive all applicable benefits and allowances given to county employees.

(b) Department Policies. The juvenile board shall adopt written department policies and procedures. These policies shall include but not be limited to:

(1) Deferred Prosecution. The deferred prosecution policy shall at a minimum include the following policies:

(A) The maximum supervision fee for deferred prosecution cases is \$15.00 per month.

(B) The monthly fee shall be determined after obtaining a financial statement from the parent or guardian.

(C) The fee schedule shall be based on total parent/guardian income.

(D) The chief administrative officer, or the chief administrative officer's designee shall approve in writing the fee assessed for each child including any waiver of deferred prosecution fees.

(E) A deferred prosecution fee shall not be imposed if the juvenile board does not adopt a fee schedule and rules for waiver of the deferred prosecution fee.

(2) Volunteers and Interns. If a juvenile probation department has or develops a volunteer or internship program, the juvenile board at a minimum shall adopt the following policies for the volunteer and internship program:

(A) a description of the authority, responsibility and accountability of volunteers and interns who work with the department;

(B) performance of a Texas criminal history background search (TCIC);

(C) performance of a local law enforcement sex offender registration records check in the city or county where the volunteer or intern resides;

(D) selection and termination criteria including disqualification based on criminal history;

(E) orientation and training requirements including training on reporting abuse, exploitation and neglect;

(F) a requirement that volunteers and interns meet minimum professional requirements; and

(G) a provision for a volunteer and intern sign in log.

(3) Experimentation. The policy shall at a minimum prohibit a department or juvenile justice program from using juveniles for medical, pharmaceutical, or cosmetic experiments.

#### §341.4. Waiver or Variance to Standards.

Unless expressly prohibited by another standard, the juvenile board, or chief administrative officer may make an application for waiver and the juvenile board may make an application for variance of any standard or standards adopted by the Commission in accordance with §349.2 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**SUBCHAPTER C. CHIEF ADMINISTRATIVE  
OFFICER RESPONSIBILITIES**

**37 TAC §341.9, §341.10**

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.9. Policy and Procedure Manual.

(a) The chief administrative officer shall maintain and enforce a policy and procedure manual for the juvenile probation department, which shall include the policies, procedures, and regulations of the juvenile probation department as adopted by the juvenile board.

(b) The chief administrative officer shall provide all employees with a copy of or access to the policy and procedure manual, review the manual on an annual basis and update it as necessary.

§341.10. Participation in Community Resource Coordination Groups.

The chief administrative officer or his/her designee shall serve as the liaison to the community resource coordination group in accordance with the memorandum of understanding adopted in §349.69 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**SUBCHAPTER D. TREATMENT AND SAFETY**

**37 TAC §341.15, §341.16**

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.15. Treatment and Safety.

(a) Serious Incidents. The chief administrative officer or his/her designee shall report to the Commission within 24 hours the escape, death, attempted suicide, and any serious injury, including youth on youth assaults, that require medical treatment by a physician

or physician's assistant, that occurs in a juvenile justice program or juvenile probation department.

(b) Abuse, Exploitation and Neglect.

(1) Reporting.

(A) Any employee, volunteer or intern of a juvenile probation department or juvenile justice program shall report to the Commission and local law enforcement any allegation of abuse, exploitation or neglect of a juvenile that occurs in or involves an employee, volunteer or intern of a juvenile justice program, juvenile probation department, pre-adjudication secure detention facility, short-term juvenile detention facility, post-adjudication secure correctional facility, or juvenile justice alternative education program.

(B) Any allegation of abuse, exploitation or neglect involving a juvenile under the jurisdiction of the juvenile court that is not alleged to have occurred in a juvenile justice program or facility under the jurisdiction of the juvenile board shall be reported as required in Texas Family Code §261.101.

(2) A report of the alleged abuse, exploitation or neglect under subsection (1)(A) of this section shall be made within 24 hours from the time the allegation is made.

(3) Internal Investigation.

(A) An internal investigation shall be conducted for all allegations of abuse, exploitation or neglect in the juvenile probation department or any juvenile justice program.

(B) All employees, volunteers and interns shall fully cooperate with any investigation of alleged abuse, exploitation or neglect.

(C) Until the conclusion of the internal investigation, any person alleged to be a perpetrator of abuse, exploitation or neglect shall be placed on administrative leave or reassigned to a position having no contact with the alleged victim's family, and individuals under supervision by the juvenile probation department, participating in a juvenile justice program or under the jurisdiction of the juvenile court.

(D) At the conclusion of the internal investigation, the chief administrative officer shall take appropriate measures to provide for the safety of the juveniles.

(E) The chief administrative officer or his/her designee shall submit a copy of the internal investigation to the Commission within five calendar days following the completion of the internal investigation.

(4) In the event the chief administrative officer is alleged to be a perpetrator of abuse, exploitation or neglect, the juvenile board shall:

(A) conduct the internal investigation or appoint an individual who is not an employee of the juvenile probation department to conduct the internal investigation;

(B) until the conclusion of the internal investigation place the chief administrative officer on administrative leave, or ensure the chief administrative officer has no contact with the alleged victim's family and individuals under supervision by the juvenile probation department, participating in a juvenile justice program or under the jurisdiction of the juvenile court; and

(C) submit a copy of the internal investigation to the Commission within five calendar days following the completion of the internal investigation.

(c) Treatment and Safety. The chief administrative officer shall ensure that juveniles under supervision of the juvenile probation



department or participating in a juvenile justice program shall not be subjected to abuse, exploitation or neglect as defined in Chapter 261, Texas Family Code.

§341.16. Testing.

The chief administrative officer shall make available testing for sexually transmitted diseases including HIV for any juvenile designated as a victim by the Commission in an investigation conducted under Chapter 349 of this title, if the Commission determines the victim was sexually abused in a manner by which HIV or any other sexually transmitted disease may be transmitted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER E. EMPLOYMENT OF CERTIFIED JUVENILE PROBATION OFFICERS

### 37 TAC §§341.20 - 341.23

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.20. Qualifications for Employment.

(a) Certified juvenile probation officer qualifications for employment shall adhere to the Texas Human Resources Code §141.061(a) and any additional standards promulgated by the Commission.

(b) One Year of Graduate Study Defined. The phrase "one year of graduate study," in Texas Human Resources Code §141.061(a)(3)(A), means at least 18 post-graduate credit hours earned in a behavioral science field with certification from the school of enrollment attesting that the student has an acceptable scholastic standing.

(c) Internships. Internships may be counted toward meeting one year's experience, where the duties performed were related to the field of juvenile justice.

§341.21. Exemption from Qualifications.

(a) The juvenile board, or chief administrative officer shall apply to the Commission for exemption of the requirements of one year of experience or graduate study prior to the employment of any individual who is hired for the position of juvenile probation officer who does not meet the experience or education requirements under Texas Human Resources Code §141.061. If the chief administrative officer makes a request for exemption under this section, the chief administrative officer shall in writing notify the juvenile board of the request simultaneous with the request's submission to the Commission.

(b) The exemption request shall be made using the form provided by the Commission. The exemption request shall document that diligent efforts were made to employ a juvenile probation officer with one year of experience or graduate study and state why, in the requestor's opinion, the efforts were unsuccessful.

§341.22. Criminal Records Check.

Prior to employing a person as a certified juvenile probation officer, supervisor of juvenile probation officers, or chief administrative officer, the chief administrative officer, juvenile board, or either's designee shall initiate a criminal history check in accordance with the following guidelines.

(1) The following criminal history checks shall be conducted:

(A) a Texas criminal history background search (TCIC);

(B) a local law enforcement sex offender registration records check in the city or county where the applicant resides; and

(C) a Federal Bureau of Investigation fingerprint based criminal history background search (NCIC).

(2) In addition to the requirements of paragraph (1) of this section, if the applicant currently resides in one of the following states, or resided in one of the following states within the 10 years prior to the date the employment application was made, a state criminal history background search and state sex offender registration check shall also be conducted where available:

(A) Hawaii;

(B) Kansas;

(C) Kentucky;

(D) Louisiana;

(E) Maine;

(F) Massachusetts;

(G) New Hampshire;

(H) Rhode Island;

(I) Tennessee;

(J) Vermont; and

(K) the District of Columbia;

(3) An Internet based criminal background search shall not be used to conduct the background searches required under paragraph (1)(A) or (1)(C) of this section.

(4) A copy of the returned criminal history checks shall be retained in the department's records.

(5) Continued employment as a juvenile probation officer, supervisor of juvenile probation officers, or as the chief administrative officer shall be contingent upon the completion and return of criminal history checks that show the individual has no disqualifying criminal history in accordance with §341.23 of this chapter.

§341.23. Disqualification from Employment.

(a) Disqualifying Criminal History. A person with the following criminal history shall be disqualified from employment as a juvenile probation officer, supervisor of juvenile probation officers or chief administrative officer:

(1) a felony conviction against the laws of this state, another state, or the United States within the past 10 years;

(2) a deferred adjudication for a felony against the laws of this state, another state, or the United States within the past 10 years;

(3) current felony probation or parole;

(4) a jailable misdemeanor conviction against the laws of this state, another state or the United States within the past 5 years;

(5) a deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United States within the past 5 years;

(6) current misdemeanor probation or parole; or

(7) registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(b) Revocation or Suspension.

(1) Revocation. An individual whose certification has been revoked by the Commission shall never qualify for employment as a juvenile probation officer, supervisor of juvenile probation officers or chief administrative officer.

(2) Suspension.

(A) An individual whose certification is currently under a suspension order issued under §349.27(d)(2) of this title shall not qualify for employment as a juvenile probation officer, supervisor of juvenile probation officers or chief administrative officer so long as the suspension order remains in effect.

(B) An individual whose certification is currently under a suspension order issued under §349.31 of this title shall not qualify for employment as a juvenile probation officer until the Commission receives an order issued under Texas Family Code §232.013 staying or vacating the license suspension.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER F. REQUIREMENTS FOR JUVENILE PROBATION OFFICERS

### 37 TAC §§341.28 - 341.30

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

#### §341.28. Persons Who Must be Certified.

The chief administrative officer and any person hired as a juvenile probation officer, or as a supervisor of juvenile probation officers shall obtain and maintain an active juvenile probation officer certification from the Commission in accordance with Chapter 349 of this title.

#### §341.29. Duties of Certified Juvenile Probation Officers.

(a) In addition to any duties, responsibilities or powers granted by Title III of the Texas Family Code, the following duties and responsibilities shall be performed only by certified juvenile probation officers:

(1) dispositional recommendations in formal court proceedings;

(2) final approval of written social history reports;

(3) acting as the primary supervising officer for all court ordered and deferred prosecution cases;

(4) writing and administering case plans in accordance with the Commission's case management standards; and

(5) if authorized by the juvenile board under Texas Family Code §53.01, conducting intake interviews, investigations, and making release decisions.

(b) An individual hired as a juvenile probation officer, who is not yet certified as a juvenile probation officer may perform the duties under (a) so long as the individual:

(1) has not worked for the probation department for more than 6 months from the individual's date of hire;

(2) has received training on each duty listed under (a); and

(3) has received training in recognizing and reporting abuse, exploitation and neglect.

#### §341.30. Code of Ethics.

The people of Texas expect of juvenile probation officers, supervisors of juvenile probation officers, and chief administrative officers unfailing honesty, respect for the dignity and individuality of human beings, and a commitment to professional and compassionate service. To this end the Commission subscribes to the following principles.

(1) Juvenile Probation Officers shall:

(A) respect the authority and follow the directives of the court, recognizing at all times that they are an extension of the court;

(B) respect and protect the civil and legal rights of all children and their parents;

(C) serve each case with concern for the child's welfare and with no purpose of personal gain;

(D) encourage relationships with colleagues of such character to promote mutual respect within the profession and improvement of its quality of service;

(E) respect the significance of all elements of the justice and human services systems and cultivate a professional cooperation with each segment;

(F) respect and consider the right of the public to be safeguarded from juvenile delinquency;

(G) be diligent in their responsibility to record and make available for review any and all case information which could contribute to sound decisions affecting a client or the public safety;

(H) report without reservation any corrupt or unethical behavior which could affect either a child or the integrity of the department;

(I) maintain the integrity of private information and not seek personal data beyond that needed to perform their responsibilities, nor reveal case information to anyone not having proper professional use for such;

(J) respect, serve and empathize with the victims of law violations allegedly committed by children; and

(K) abide by all federal, state, and local laws and Commission standards.

(2) Juvenile Probation Officers shall not:

(A) use their official position to secure privileges or advantages; make statements critical of colleagues or their departments unless these are verifiable and constructive in purpose;

(B) permit personal interest to impair in the least degree the objectivity which is to be maintained in their official capacity;

(C) use their official position to promote any partisan political purpose;

(D) accept any gift or favor of a nature to imply an obligation that is inconsistent with the free and objective exercise of professional responsibilities;

(E) make appointments, promotions or dismissals in furtherance of partisan political interests;

(F) maintain an inappropriate relationship with juveniles assigned to their caseload, supervised by the juvenile probation department, or coming under the jurisdiction of the juvenile court. An inappropriate relationship can include but is not limited to: bribery, solicitation or acceptance of gifts, favors, or services from juveniles or their families, and the appearance of an inappropriate relationship;

(G) not discriminate against any employee, prospective employee, child, child care provider, or parent on the basis of age, race, sex, creed, disability, or national origin;

(H) be designated as a perpetrator in a Commission abuse, exploitation and neglect investigation conducted under the authority of Texas Family Code Chapter 261, and Title 37 Texas Administrative Code Chapter 349; and

(I) interfere with or hinder a child abuse, exploitation and neglect internal investigation conducted under §341.15(b)(3) of this chapter or a Commission abuse, exploitation and neglect investigation conducted under the authority of Texas Family Code Chapter 261, and Title 37 Texas Administrative Code Chapter 349, or any criminal investigation conducted by a law enforcement agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER G. CASE MANAGEMENT STANDARDS

**37 TAC §§341.35 - 341.41**

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

### §341.35. Definitions.

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

(1) Case Plan--A written document that sets out actions and goals for a juvenile to follow while under the supervision of the juvenile court in order to make changes necessary to best meet the juvenile's status and circumstances over time. The case plan is developed for each adjudicated juvenile and addresses a juvenile's needs (e.g. educational, family, substance abuse, mental health, etc.), risks of re-offending, level of supervision, strengths and weaknesses, any appropriate intake information, strategies for juvenile supervision findings if any, preliminary investigation information, and victim impact statements utilizing all appropriate resources.

(2) Case Plan Review--A written document that reviews and measures the initial case plan's goals for progress, including the reassessment and reevaluation of the juvenile's status, circumstances and resources.

(3) Courtesy Supervision--A request from one Texas county (sending county) to another Texas County (receiving county) requesting supervision for an adjudicated juvenile who is or will be residing in the receiving county.

(4) Exit Plan--The exit plan is the written document developed for each juvenile that identifies the juvenile's needs for post-supervision reintegration and specifies the community resources available to meet those needs. The purpose of the exit plan is to facilitate a continuum of community services to the juvenile and the juvenile's family after probation supervision ends.

(5) Field Supervision--Supervision ordered by a juvenile court in accordance with Texas Family Code §54.04(d)(1)(A) where the child is placed on probation in the child's home or in the custody of a relative or another fit person.

(6) Formal Referral--Occurs and should be counted when all three of the following conditions exist:

(A) delinquent conduct, conduct indicating a need for supervision or violation of probation was allegedly committed;

(B) the juvenile probation department has jurisdiction and venue; and

(C) either a face-to-face contact occurs with the office or official designated by the juvenile board or written or verbal authorization to detain is given by the office or official designated by the juvenile board.

(7) Residential Placement--Supervision ordered by a juvenile court in accordance with Texas Family Code §54.04(d)(1)(B) where the juvenile is placed on probation outside the child's home in either a foster home, or a public or private institution or agency.

(8) Substitute Care Provider--A foster home, public or private institution or agency that provides residential services to juveniles.

(9) Supervision--Supervision involves the case management of a juvenile by the assigned juvenile probation officer or designee through contacts (face-to-face, telephone, office, home, collateral) with the juvenile, juvenile's family, and other case planning participants.

(10) TJPC Standard Screening Tool--An instrument provided by the Texas Juvenile Probation Commission to assist in identifying juveniles who may have mental health needs.

§341.36. Screening.

(a) TJPC Standard Screening Tool. The TJPC Standard Screening Tool shall be completed for all juveniles who receive a formal referral to the juvenile probation department. If the TJPC Standard Screening Tool has been completed within the previous two weeks and is contained in the juvenile's case record, the department is not required to complete an additional screening.

(b) Time of Screening.

(1) Referrals Without Detention. The TJPC Standard Screening Tool shall be administered no later than 14 calendar days from the first face-to-face contact between the juvenile and a juvenile probation officer.

(2) Referrals With Detention.

(A) The TJPC Standard Screening Tool shall be administered to each juvenile admitted into detention.

(B) The TJPC Standard Screening Tool shall be administered within 48 hours from the time the juvenile is admitted into detention.

(c) Administration of Instrument. The TJPC Standard Screening Tool shall be administered by an individual trained to administer the instrument.

(d) Reports to the Commission. The summary scores of all juveniles screened using the TJPC Standard Screening Tool and any other information required by the Commission shall be electronically reported to the Commission on a monthly basis under §341.49 of this chapter (CASEWORKER counties), §341.54 of this chapter (non-CASEWORKER counties), or through a separate database provided by the Commission.

§341.37. Case Planning.

In accordance with §341.38 or §341.39 of this chapter, a written case plan shall be developed and implemented for juveniles assigned to progressive sanctions levels three through five and any juvenile given determinate sentence probation under Texas Family Code §54.04(q).

§341.38. Field Supervision.

(a) Initial Case Plan. The initial case plans for juveniles placed on field supervision shall be:

(1) developed in consultation with the juvenile's parent, guardian or custodian, the juvenile and the supervising juvenile probation officer and any other interested parties;

(2) developed within 60 calendar days from the date of the juvenile's disposition;

(3) signed and dated by the juvenile, the juvenile's parent, guardian or custodian, supervising juvenile probation officer and any interested parties; and

(4) maintained in the juvenile's case file with copies provided to the juvenile and the juvenile's parent, guardian or custodian.

(b) Case Plan Review.

(1) Case plans shall be reviewed and updated:

(A) at least every six months;

(B) within 15 calendar days after a juvenile's probation is modified by a court order; and

(C) within 15 calendar days after acceptance of a juvenile's case from another county for courtesy supervision.

(2) The juvenile and at least one parent, guardian or custodian and the supervising juvenile probation officer shall participate in the review process.

(3) The case plan review shall document the following:

(A) appropriateness of the juvenile's current level of supervision and services;

(B) extent of the juvenile's compliance with the individualized case plan;

(C) extent of the juvenile's compliance with the conditions of probation;

(D) extent of progress toward the goals outlined in the case plan;

(E) a projection of a likely date the juvenile is expected to complete probation; and

(F) services assessed, offered or provided to the juvenile and family to address identified risks and needs.

(4) All case plan reviews shall be signed and dated by the juvenile, the juvenile's parent, guardian, or custodian and the juvenile's supervising juvenile probation officer.

(5) Copies of every case plan review shall be maintained in the juvenile's case file with copies provided to the juvenile and the juvenile's parent, guardian or custodian.

§341.39. Residential Placement.

(a) Initial Case Plan. The initial case plans for juveniles placed in residential placement shall:

(1) be developed and implemented within 30 calendar days of the juvenile's initial date of placement;

(2) be developed in consultation with the juvenile's parent, guardian or custodian, the juvenile, the substitute care provider and the supervising juvenile probation officer;

(3) contain specific behavioral goals using the nine domains outlined in Title 1 Part 15 Texas Administrative Code §351.13;

(4) be signed by the juvenile and the juvenile's parent, guardian or custodian and the juvenile's supervising probation officer; and

(5) be retained in the juvenile's case file with copies provided to the juvenile, the juvenile's parent, guardian or custodian and the substitute care provider.

(b) Case Plan Review.

(1) Case plans shall be reviewed and updated at least every 90 calendar days.

(2) The juvenile and at least one parent, guardian, or custodian shall participate in the case plan review with the substitute care provider and the juvenile's supervising juvenile probation officer.

(3) The case plan reviews shall measure the juvenile's progress toward meeting his/her goals using the six point scale outlined in Title 1 Part 15 Texas Administrative Code §351.13.

(4) The outcome of the substitute care provider's service delivery shall be assessed based on whether the child is progressing in fifty percent or more of identified goals.

(5) Case plan reviews shall be signed by the juvenile, the juvenile's parent, guardian, or custodian and the supervising juvenile probation officer.

(6) Copies of every case plan review shall be retained in the juvenile's case file.

§341.40. Level of Supervision.

(a) The juvenile probation department shall adopt written criteria the department will use to determine a juvenile's level of supervision, while under field supervision.

(b) The level of supervision shall be included in the juvenile's written case plan, written under §341.35 of this chapter.

(c) A minimum of one face-to-face-contact per month with the juvenile is mandatory unless otherwise noted in the case plan.

§341.41. Exit Plan.

(a) A written exit plan shall be developed prior to the juvenile's scheduled release from probation.

(b) An exit plan is to be provided at a date no later than the date the juvenile successfully completes probation, unless the juvenile was committed to the Texas Youth Commission.

(c) The written exit plan shall be developed in consultation with the juvenile, the juvenile's parent, guardian or custodian, and the supervising juvenile probation officer.

(d) The exit plan shall be signed and dated by the juvenile, the juvenile's parent, guardian or custodian and the supervising juvenile probation officer.

(e) The original exit plan shall be placed in the juvenile's case file.

(f) Copies of the exit plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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## SUBCHAPTER H. DATA COLLECTION STANDARDS

### DIVISION 1. CASEWORKER SYSTEMS

#### 37 TAC §§341.47 - 341.51

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.47. Definitions.

The following words or terms, when used during Division 1 of this subchapter shall have the following meanings unless the context clearly indicates otherwise.

(1) CASEWORKER--A personal computer-based tracking and case management system, developed and supported by the Commission, that provides juvenile probation officers a systematic method to track and manage juvenile offender caseloads.

(2) Data Coordinator--A person employed by a juvenile probation department who is designated by the juvenile board to serve and function as the primary contact with the Commission on all matters relating to data collection and reporting.

(3) TJPC Monthly Folder Extract--An automated process to extract and submit modified case records from the department's CASEWORKER system to the Commission. The extract created by CASEWORKER follows in accordance with the Electronic Data Interchange Specifications.

(4) Comprehensive Folder Edit--A report generated in CASEWORKER that performs an extensive edit of the folder information. This report identifies incorrectly entered data, unrecoverable files, and questionable data that impact the accuracy of the reports and programs.

(5) Electronic Data Interchange Specifications--Document developed by the Commission outlining the data fields and file structures that each department is required to follow in submitting the TJPC monthly folder extract. The Electronic Data Interchange Specifications are published in Subchapter I, §341.60 of this chapter.

§341.48. Data Coordinator.

(a) Training Requirements.

(1) The data coordinator shall have a thorough understanding of the Commission reporting requirements and shall be trained in CASEWORKER by the Commission.

(2) Within 90 days from date of a new designation as data coordinator, the new data coordinator shall attend CASEWORKER training provided by the Commission.

(b) Duties.

(1) The data coordinator is responsible for ensuring that all data submitted to the Commission by the local juvenile probation department is accurate, timely, and consistent with the Commission reporting requirements.

(2) The data coordinator shall ensure that the TJPC Monthly Folder Extract is received on or by the applicable due date.

§341.49. TJPC Monthly Folder Extract.

(a) The TJPC Monthly Folder Extract shall be sent to the Commission via the Internet.

(b) The extract is due to the Commission on the tenth day of each month following the reporting period.

§341.50. Accuracy of Data.

(a) Required Fields. The probation department shall fill in all applicable data fields for each referral in their CASEWORKER system to minimize missing information.

(b) Comprehensive Folder Edit. Probation departments shall run the Comprehensive Folder Edit on a monthly basis.

(c) Errors. Errors detected by the Comprehensive Folder Edit, a Commission monitoring visit, or the Commission Research and Planning Division upon analysis shall be corrected prior to the next submission of the TJPC Monthly Folder Extract.

§341.51. Security of Data.

(a) Passwords.

(1) Passwords shall be assigned by the CASEWORKER administrator or management information systems administrator for each individual user and should not be shared by employees or other persons.

(2) Each department shall have a limited number of employees that are authorized to delete information contained within CASEWORKER.

(3) Access to the department's CASEWORKER system shall be removed concurrent with the termination of the person's employment.

(b) Backup and Restoration.

(1) All juvenile probation departments shall adopt and follow a written policy for the backup and restoration procedures relating to data, requiring, at a minimum, a system backup once per week.

(2) Departments must maintain at least five generations (copies) of data backups.

(c) Off-Site Storage.

(1) All juvenile probation departments shall store a system backup off-site to be accessible in case of a disaster at the department (fire, tornado, etc).

(2) An updated backup for off-site storage must be run at a minimum of once a month, in addition to the five generations of backup.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**DIVISION 2. NON-CASEWORKER SYSTEMS**

**37 TAC §§341.52 - 341.56**

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.52. Definitions.

The following words or terms, when used in Division 2 of this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Data Coordinator--A person employed by a juvenile probation department who is designated by the juvenile board to serve and function as the primary contact with the Commission on all matters relating to data collection and reporting.

(2) TJPC Monthly Folder Extract--An automated process to gather data relating to all case files in the case management system designed to analyze crime and juvenile trends, program success, and profiling of juvenile offenders. The extract shall be submitted in the format specified by the TJPC Electronic Data Specifications.

(3) Electronic Data Interchange Specifications--Document developed by the Commission outlining the data fields and file structures that each department is required to follow in submitting the TJPC Monthly Folder Extract. The Electronic Data Interchange Specifications are published in Subchapter I, §341.60 of this chapter.

§341.53. Data Coordinator.

(a) Training Requirements. The data coordinator shall attend training, as required and deemed necessary by the Commission, relating to updates on statistical and research-based information and requirements.

(b) Duties.

(1) The data coordinator is responsible for ensuring that the data submitted to the Commission by the local juvenile probation department is accurate, timely, and consistent with the Commission reporting requirements.

(2) The data coordinator shall ensure that the TJPC Monthly Folder Extract is received on or by the applicable due date.

§341.54. TJPC Monthly Folder Extract.

(a) The TJPC Monthly Folder Extract data shall be sent to the Commission via the internet and shall include all data fields required by the TJPC Electronic Data Interchange Specifications.

(b) The extract is due to the Commission on the tenth day of each month following the reporting period.

§341.55. Accuracy of Data.

(a) Required Fields.

(1) Departments shall fill in all applicable fields as specified in the CASEWORKER Extract File Layout.

(2) If the Commission requires additional fields, each department shall update their case management system to include such information.

(b) Maintaining Accuracy.

(1) Each department shall have a written policy and procedure to maintain accuracy of data submitted and methods of correcting errors.

(2) Each department shall report data elements that are consistent with the Commission definitions.

(c) Errors. Errors detected by the department during daily operation, or by the Commission during the annual monitoring visit or by the Commission Research and Planning Division analysis shall be corrected prior to the next submission of the TJPC Monthly Folder Extract.

§341.56. Security of Data.

(a) Passwords.

(1) Department users shall be required to obtain a password to their case management system.

(2) Each department shall have a written policy and procedure to ensure secured access and to limit the number of employees that have access to delete information from the case management system.

(3) Access to the department case management system shall be terminated for people no longer employed by the department.

(b) Backup and Restoration. All juvenile probation departments shall adopt and follow a written policy for backup and restoration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER I. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

### 37 TAC §341.60

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.60. TJPC Monthly Folder Extract.

The TJPC Monthly Folder Extract data shall include all data fields required by TJPC Electronic Data Interchange Specifications found in the figure below.

Figure 1: 37 TAC §341.60

Figure 2: 37 TAC §341.60

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER J. RESTRAINTS

### 37 TAC §§341.65 - 341.71

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.65. Definitions.

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

(1) Approved Physical Restraint Technique ("physical restraint")--A professionally trained restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints. The approved physical restraint technique shall be approved for use by the Commission and adopted by the juvenile board.

(2) Approved Mechanical Restraint Devices ("mechanical restraint")--A professionally manufactured mechanical device to aid in the restriction of a person's bodily movement. The approved mechanical restraint shall be approved by the Commission and adopted by the juvenile board. The following are Commission approved mechanical restraint devices:

(A) Ankle Cuffs--Metal, cloth or leather band designed to be fastened around the ankle to restrain free movement of the legs;

(B) Anklets--Cloth or leather band designed to be fastened around the ankle or leg;

(C) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms;

(D) Plastic Cuffs--Plastic devices designed to be fastened around the wrist or legs to restrain free movement of hands, arms or legs;

(E) Waist Band--A cloth, leather, or metal band designed to be fastened around the waist used to secure the arms to the sides or front of the body; and

(F) Wristlets--A cloth or leather band designed to be fastened around the wrist or arm which may be secured to a waist belt.

(3) Restraints--Physical or mechanical restraint.

§341.66. Requirements.

The use of restraints shall be governed by the following criteria:

(1) restraints shall only be used by juvenile probation officers;

(2) prior to participating in any restraint juvenile probation officers shall be:

(A) certified in the use of the approved physical restraint technique; and

(B) trained in the use of all approved mechanical restraint devices;

(3) restraints shall only be used in instances of threat of imminent self-injury, injury to others, or serious property damage;

(4) restraints shall only be used as a last resort;

(5) only the amount force and type of restraint necessary to control the situation shall be used;

(6) restraints shall be implemented in such a way as to protect the health and safety of the juvenile and others; and

(7) restraints shall be terminated as soon as the juvenile's behavior indicates that the threat of imminent self-injury, injury to others, or serious property damage has subsided.

§341.67. Prohibitions.

Restraints that employ a technique listed below are prohibited:

(1) restraints used for punishment, discipline, retaliation, harassment, compliance, or intimidation;

(2) restraints that deprive the juvenile of basic human necessities including restroom privileges, water, food and clothing;

- (3) restraints that are intended to inflict pain;
- (4) restraints that put a juvenile face down with sustained or excessive pressure on the back or chest cavity;
- (5) restraints that put a juvenile face down with pressure on the neck or head;
- (6) restraints that obstruct the airway or impair the breathing of the juvenile;
- (7) restraints that restrict the juvenile's ability to communicate;
- (8) restraints that obstruct the view of the juvenile's face;
- (9) any technique that does not require the monitoring of the juvenile's respiration and other signs of physical distress during the restraint; and
- (10) percussive or electrical shocking devices.

§341.68. Documentation.

Documentation. Except as provided by §341.71(a) of this chapter, all restraints shall be fully documented and maintained. Written documentation regarding the use of restraints shall require at a minimum:

- (1) name of juvenile;
- (2) staff member(s) name and title(s) who administered the restraint;
- (3) date of the restraint;
- (4) duration of the restraint including notation of the time the restraint began and ended;
- (5) location of the restraint;
- (6) description of preceding activities;
- (7) behavior which prompted the restraint;
- (8) type of restraint applied;
- (9) efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
- (10) any injury that occurred during the restraint.

§341.69. Physical Restraint.

In addition to the requirements found in §341.66, §341.67, and §341.68 of this subchapter, juvenile probation officers shall be re-certified in the approved physical restraint technique at least every two years.

§341.70. Mechanical Restraint.

In addition to the requirements found in §341.66, §341.67, and §341.68 of this subchapter, the use of mechanical restraint, shall be governed by the following criteria:

- (1) Requirements.
  - (A) mechanical restraints shall only be used in a manner consistent with their intended use; and
  - (B) there shall be provisions for the inspection and maintenance of mechanical restraint devices.
- (2) Prohibitions.
  - (A) mechanical restraint devices shall not be altered from the manufacturer's design;
  - (B) a juvenile shall not be placed face down while restrained in any mechanical restraint for a period of time longer than necessary to apply the restraint devices;

(C) a mechanical restraint shall not secure a juvenile in a prone position with his or her arms and/or hands behind the juvenile's back and secured to the juvenile's legs;

(D) mechanical restraint devices shall not be secured so tightly as to interfere with circulation nor so loosely as to cause chafing of the skin;

(E) mechanical restraint devices shall not be secured to a stationary object;

(F) a juvenile in mechanical restraints shall not participate in any physical activity; and

(G) plastic cuffs shall only be used in emergency situations.

§341.71. Transporting.

(a) Mechanical restraints used during routine transportation in a vehicle, or the taking of a juvenile into custody are not required to be documented as a restraint.

(b) During transportation of a juvenile in a vehicle the juvenile may not be affixed to any part of the vehicle.

(c) During transportation in a vehicle a juvenile may not be secured to another juvenile.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 342. STANDARDS FOR HOUSING NON-TEXAS JUVENILES IN TEXAS CORRECTIONAL FACILITIES

### 37 TAC §§342.1 - 342.5

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Juvenile Probation Commission proposes the repeal of Chapter 342, §§342.1 - 342.5, relating to standards for housing out-of-state juveniles. The repeal is in an effort not to overlap with new proposed standards in Chapter 342 which provide structural and substantive changes from the current standards.

Erika Sipiora, Deputy General Counsel, has determined that for the first five year period the repeals are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Sipiora has also determined that for each year of the first five years the repeals are in effect, the public benefit expected as a result of the repeal will provide TJPC with a more accurate account in evaluating the effectiveness and services provided



within the juvenile probation system. There will be no impact on small business or individuals as a result of the repeals.

Public comments on the repeals may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711- 3547.

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these repeals.

§342.1. *Authority To House Out-of-State Juvenile Inmates.*

§342.2. *Contracts with Other States for Housing Non-Texas Juvenile Inmates.*

§342.3. *Coordination with Law Enforcement.*

§342.4. *Required Reporting.*

§342.5. *Registration and Standards Compliance.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

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Texas Juvenile Probation Commission

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## CHAPTER 342. STANDARDS FOR HOUSING NON-TEXAS JUVENILES IN TEXAS DETENTION AND CORRECTIONAL FACILITIES

### 37 TAC §§342.1 - 342.3

The Texas Juvenile Probation Commission proposes new Chapter 342, §§342.1 - 342.3, relating to standards for housing out-of-state juveniles. The proposed standards provide structural and substantive changes from the current standards.

Erika Sipiora, Deputy General Counsel, has determined that for the first five year period the new sections are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Sipiora has also determined that for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcement will be the consistent standards to all counties across the State of Texas which will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the new sections.

Public comments on the proposed new sections may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§342.1. *Authority To House Out-of-State Juvenile Inmates.*

The only entities other than the state authorized to operate a correctional facility in this state to house juvenile inmates convicted of offenses committed against the laws of another state or the United States are:

(1) a county juvenile board; or

(2) a private vendor operating a correctional facility under a contract with a county juvenile board.

§342.2. *Registration and Standards Compliance.*

(a) Prior to receiving out-of-state juvenile inmates, each facility shall:

(1) be registered with TJPC; and

(2) be in compliance with applicable TJPC standards.

(b) A facility housing out-of-state juvenile inmates shall identify the out-of-state populations served when registering the facility with the Texas Juvenile Probation Commission.

(c) The applicable TJPC standards apply to out-of-state inmates housed in either a pre-adjudication secure detention facility, or a post-adjudication secure correctional facility.

§342.3. *Contracts with Other States for Housing Non-Texas Juvenile Inmates.*

The facility administrator shall ensure that there is an annual contract with each out-of-state entity that sends juvenile inmates to the Texas facility. At a minimum, all contracts shall:

(1) require that all juvenile inmates confined pursuant to the contract be released within the jurisdiction of the sending entity;

(2) require that all juvenile inmate records concerning classification

(A) to include conduct records of:

(i) escape;

(ii) attempted escape; and

(iii) institutional violence

(B) be reviewed by the receiving entity prior to transfer of the offender;

(3) require that all appropriate medical information of juvenile inmates be provided by the sending entity prior to transfer, to include certification of tuberculosis screening or treatment;

(4) require the receiving entity to determine juvenile inmate custody level in accordance with comparable levels of custody for Texas juvenile inmates, and that custody level assignments do not exceed the construction security level availability.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 343. STANDARDS FOR JUVENILE PRE-ADJUDICATION SECURE DETENTION FACILITIES

The Texas Juvenile Probation Commission proposes the repeal of Chapter 343, §§343.1 - 343.18, 343.25, 343.30 - 343.35, 343.40 - 343.44, and 343.50 - 343.53, relating to standards for juvenile pre-adjudication secure detention facilities. The repeal is in an effort to provide structural and substantive changes from the current standards.

Luis Guerrero, Unit Coordinator-Field Services Division, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Guerrero, has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will provide Texas Juvenile Probation Commission with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the repeal.

Public comments on the repeal may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

### SUBCHAPTER A. DEFINITIONS

#### 37 TAC §343.1

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§343.1. *Definitions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. FACILITY STANDARDS

#### 37 TAC §§343.2 - 343.18

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§343.2. *Administration Organization and Management.*

§343.3. *Supervision.*

§343.4. *Personnel.*

§343.5. *Management Information Systems.*

§343.6. *Residents' Records.*

§343.7. *Physical Plant.*

§343.8. *Security and Control.*

§343.9. *Rules and Discipline.*

§343.10. *Food.*

§343.11. *Hygiene.*

§343.12. *Medical and Mental Health Services.*

§343.13. *Intake, Admission and Release.*

§343.14. *Communications.*

§343.15. *Residents' Rights.*

§343.16. *Programs.*

§343.17. *Volunteers and Interns.*

§343.18. *Waivers.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. HIRING JUVENILE DETENTION OFFICERS

#### 37 TAC §343.25

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§343.25. *Hiring Juvenile Detention Officers.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER D. JUVENILE DETENTION OFFICER CERTIFICATION

### 37 TAC §§343.30 - 343.35

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The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§343.30. *Persons Who Must be Certified.*

§343.31. *Certification.*

§343.32. *Recertification.*

§343.33. *Transfer of Certification.*

§343.34. *Expiration of Certification While Under Certification Suspension Order.*

§343.35. *Applicability.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER E. TRAINING

### 37 TAC §§343.40 - 343.44

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§343.40. *Training Hours.*

§343.41. *Training Hours for Trainers.*

§343.42. *Certification Training.*

§343.43. *Recertification Training.*

§343.44. *Applicability.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER F. CODE OF ETHICS AND ENFORCEMENT PROCEEDINGS

### 37 TAC §§343.50 - 343.53

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§343.50. *Code of Ethics.*

§343.51. *Enforcement Procedures-Code of Ethics.*

§343.52. *Mandatory Certification Revocation.*

§343.53. *Mandatory Suspension for Failure to Pay Child Support.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 343. STANDARDS FOR SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

The Texas Juvenile Probation Commission proposes new Chapter 343, §§343.1 - 343.17, 343.30 - 343.37, 343.45 - 343.52, and 343.60 - 343.68, relating to standards for juvenile pre-adjudication and post-adjudication secure facilities. The proposed standards provide structural and substantive changes from the current standards.

Luis Guerrero, Unit Coordinator-Field Services Division, has determined that for the first five year period the new sections are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Guerrero has also determined that for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcement will be consistent standards to all counties across the State of Texas which will provide Texas Juvenile Probation Commission with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the new sections.

Public comments on the proposed new sections may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

### SUBCHAPTER A. DEFINITIONS

#### 37 TAC §343.1

The new section is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the new section.

#### §343.1. *Definitions.*

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

(1) Alleged Victim--A juvenile alleged as being a victim of abuse, exploitation or neglect.

(2) Attempted Suicide--Any action a resident takes that could result in taking his or her own life voluntarily and intentionally while detained or placed in a secure facility.

(3) Chemical Agents--Oleorsin Capsicum (OC) pepper spray, or Orthochlorobenzalmalonoitrile (tear gas).

(4) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department or a multi-county juvenile judicial district.

(5) Commission--The Texas Juvenile Probation Commission.

(6) Common Activity Area--Area inside the facility to which residents have access and in which activities are conducted. This area includes but is not limited to dayrooms, covered recreation areas, recreation rooms, education rooms, counseling rooms, testing rooms, visitation areas, and medical or dental rooms.

(7) Contraband--Any item not issued to employees for the performance of their duties and which employees have not obtained supervisory approval to possess. Contraband also includes any item given to a resident by an employee or other individual, which a resident is not authorized to possess or use. Specific items of contraband include, but are not limited to:

(A) firearms;

(B) knives;

(C) ammunition;

(D) drugs;

(E) intoxicants;

(F) pornography; and

(G) any unauthorized written or verbal communication brought into or taken from an institution for a resident, former resident, associate of or family members of a resident.

(8) Design Capacity--The number of people that can safely occupy a building or space as determined by the original architectural design and any building modifications, licensing, accreditation, regulatory authorities, and building codes.

(9) Detention--The temporary secure custody of a juvenile, or other individual pending juvenile court disposition or transfer to another jurisdiction or agency.

(10) Facility Administrator--Individual designated by the policy board of a private secure facility, or by the Chief Administrative Officer or juvenile board, as the on-site program director or superintendent of a secure facility.

(11) Juvenile Detention Officer--A person whose primary responsibility is the supervision of the daily activities of residents in a secure facility. This may include the facility administrator, assistant facility administrator or a supervisor of juvenile detention officers. Other administrative, food services, janitorial, and auxiliary staff are not considered to be detention officers.

(12) Military Style Program--A post-adjudication secure correctional facility that features military-style discipline and structure as an integral part of its treatment and rehabilitation program.

(13) Multiple Occupancy Housing Unit--A unit designed and constructed for multiple occupancy sleeping which is self-contained and includes appropriate sleeping, sanitation and hygiene equipment or fixtures.

(14) Non-Program Hours--Time period when all scheduled resident activity for the entire resident population has ceased for the day.

(15) Physical Training Program--Any program that requires participants to engage in and perform structured physical training and activity. This does not include recreational team activities.

(16) Post-Adjudication Secure Correctional Facility ("Facility" or "Secure Facility")--A public secure facility administered by a juvenile board or a privately operated facility certified by the juvenile board that includes construction and fixtures designed to physically restrict the movements and activities of the residents, and is intended for the treatment and rehabilitation of youth who have been adjudicated. Subchapters A, B, D and E of this title apply to all post-adjudication secure correctional facilities. A Post-Adjudication Secure Correctional Facility does not include any non-secure residential program operating under the authority of a juvenile board.

(17) Pre-Adjudication Secure Detention Facility ("Facility" or "Secure Facility")--A public secure facility administered by a juvenile board or a privately operated facility certified by the juvenile board that includes construction and fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility and is used for the temporary placement of any juvenile or other individual who is accused of having committed an offense and is awaiting court action, an administrative hearing, or other transfer action. Subchapters A, B, C and E of this title apply to all pre-adjudication secure detention facilities. A secure detention facility does not include a short-term detention facility as defined by Texas Family Code §51.12(j).

(18) Primary Control Room--A restricted or secure area from which entrance into and exit from a secure facility is controlled. The primary control room also contains the emergency, monitoring, and communications systems and is staffed 24 hours each day that residents are in the facility.

(19) Professionals--The following persons are considered professionals:

(A) teachers certified as educators by the State Board for Education Certification including teachers certified by the State Board for Education Certification with provisional or emergency certifications;

(B) educational aides or paraprofessionals certified by the State Board for Education Certification;

(C) medical practitioners licensed or certified by:

(i) the Texas Board of Nurse Examiners;

(ii) the Texas Board of Medical Examiners;

(iii) the State Board of Physician Assistants; or

(iv) the Texas Department of Health;

(D) mental health professionals licensed or certified by:

(i) the Texas State Board of Examiners of Psychologists;

(ii) the Texas State Board of Examiners of Professional Counselors;

(iii) the Texas State Board of Examiners of Marriage and Family Therapists;

(iv) the Texas Department of Health;

(v) the Texas Commission on Alcohol and Drug Abuse;

(vi) the Texas State Board of Medical Examiners; or

(vii) the Texas Board of Social Worker Examiners provided the licensure is either as an advanced practitioner or advanced clinical practitioner.

(E) mental health professionals employed by the Texas Department of Mental Health and Mental Retardation or an entity that contracts as a service provider with the Texas Department of Mental Health and Mental Retardation.

(F) social workers licensed by the Texas Board of Social Worker Examiners;

(G) juvenile probation officers certified by the Texas Juvenile Probation Commission; and

(H) commissioned law enforcement personnel.

(20) Program Hours--Time period of no less than 10 hours when the resident population has scheduled activities and any shift changes that occur during the time period when the resident population has scheduled activities.

(21) Resident--A juvenile or other individual that has been admitted into or court-ordered to reside in a secure facility.

(22) Single Occupancy Housing Units--Units designed and constructed with separate and secure, individual resident sleeping quarters.

(23) TJPC Standard Screening Tool--An instrument approved by the Commission that screens the juvenile's needs in the area of mental health.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

### 37 TAC §§343.2 - 343.17

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the new sections.

#### §343.2. Administration and Management.

(a) Policies and Procedures. The juvenile board shall approve policies and procedures for a facility or approve the policies and procedures of a private provider operating a facility within its county under contract with the juvenile board and/or the county.

(b) Certification. The juvenile board's current facility certification and the Commission's facility registration shall be posted within the facility in a public area.

(c) Facility Administrator.

(1) There shall be a single facility administrator on-site that is designated to oversee the daily operations of the facility.

(2) A detention officer shall be designated to be in charge during the facility administrator's absence.

(d) Duties of Facility Administrator. The duties of the facility administrator shall include, but shall not be limited to the following:

(1) reviewing the facility's policy and procedure manual on an annual basis and maintaining documentation of this review;

(2) insuring that juvenile detention officers have a salary scale adopted by the juvenile board;

(3) insuring that juvenile detention officers employed by county operated facilities receive all applicable benefits and allowances given to other county employees;

(4) maintaining personnel records for each employee which shall include:

(A) proof of age;

(B) documentation of criminal background checks conducted under §343.15 of this chapter and §349.8 of this title;

(C) the application for employment;

(D) performance evaluations;

(E) training records; and

(F) documentation of promotion, demotion, termination and other personnel actions.

§343.3. Treatment and Safety.

(a) Serious Incidents. The facility administrator or designee shall report to the Commission within 24 hours, the death, attempted suicide, escape and any serious injury, including youth on youth assaults, that require medical treatment by a physician or physician's assistant that occurs in a facility.

(b) Abuse, Exploitation and Neglect.

(1) Any employee, volunteer or intern of a facility shall report to the Commission and local law enforcement any allegation of abuse, exploitation or neglect of a resident that occurs in or involves an employee, volunteer or intern of a juvenile justice program, juvenile probation department, juvenile justice alternative education program, pre-adjudication secure detention facility, post adjudication secure correctional facility or short-term detention facility.

(2) Any allegation of abuse, neglect or exploitation involving a juvenile under the jurisdiction of the juvenile court that is not alleged to have occurred in a juvenile justice program or facility under the jurisdiction of the juvenile board shall be reported as required in Texas Family Code Chapter 261.

(3) A report of the alleged abuse, exploitation or neglect under paragraph (1) of this subsection shall be made within 24 hours from the time the allegation is made.

(c) Internal Investigation.

(1) An internal investigation shall be conducted of all allegations of abuse, exploitation or neglect of a resident.

(2) All employees, volunteers and interns shall fully cooperate with any Commission investigation of alleged abuse, exploitation, or neglect of a resident.

(3) Until the conclusion of the internal investigation, any person alleged to be a perpetrator of abuse, exploitation or neglect shall be placed on administrative leave or reassigned to a position having no contact with residents in the facility, relatives of the alleged victim, participants in a juvenile justice program or individuals under the jurisdiction of the juvenile court.

(4) At the conclusion of the internal investigation, the facility administrator or designee shall take appropriate measures to provide for the safety of the residents.

(5) The facility administrator or designee shall submit a copy of the internal investigation to the Commission within five calendar days following the completion of the internal investigation.

(d) Juvenile Board. In the event the facility administrator is alleged to be a perpetrator of abuse, exploitation or neglect, the juvenile board shall:

(1) conduct the internal investigation or appoint an individual who is not an employee of the facility to conduct the internal investigation;

(2) until the conclusion of the internal investigation, place the facility administrator on administrative leave, or ensure the facility administrator has no contact with residents in the facility, relatives of the alleged victim, participants in a juvenile justice program or individuals under the jurisdiction of the juvenile court; and

(3) the juvenile board or their designee shall submit a copy of the internal investigation to the Commission within 5 calendar days following the completion of the internal investigation.

(e) Public Facilities. If the facility is operated by the juvenile board and the chief administrative officer is not the facility administrator, the chief administrative officer may perform the duties under subsection (d) of this section.

§343.4. Data Collection.

The facility administrator shall ensure that accurate annual statistics are gathered and recorded, including:

(1) total number of admissions;

(2) total days of care provided;

(3) residents' age;

(4) residents' gender;

(5) residents' race;

(6) referring/committing offense of residents;

(7) length of stay;

(8) average cost per resident per day;

(9) total number of physical restraints applied;

(10) total number of mechanical restraints applied;

(11) total number of room confinements;

(12) total number of resident related injuries to detention staff; and

(13) total number of incidents where chemical agents were applied.

§343.5. Physical Plant.

(a) Location.

(1) If the facility is located in the same building or on the grounds of any type of adult corrections facility, it shall be a separate, self-contained unit.

(2) All applicable federal and state laws pertaining to the separation of juveniles from adult inmates shall apply.

(b) Separate Operations.

(1) All pre-adjudication programs shall be operated separately from any post-adjudication programs.

(2) Where a pre-adjudication program and a post-adjudication program are located in the same building or on the same grounds, contact between the two populations shall be kept to a minimum.

(c) Exits. Facility exits shall be clear of obstruction, and properly marked for evacuation in the event of fire or other emergency.

(d) Storage. Storage of cleaning supplies and equipment shall not be accessible to residents.

(e) Fire Safety Plan. The facility shall adopt a fire safety plan.

(1) The fire safety plan shall:

(A) be approved in writing by the governmental fire authority having primary jurisdiction of the facility; and

(B) designate a facility staff person as the fire safety officer.

(2) The facility fire safety officer's duties shall include insuring the following:

(A) maintenance of a current fire drill log;

(B) proper disposal of combustible refuse;

(C) a posted plan for prompt evacuation of the facility;

(D) quarterly fire drills on all shifts; and

(E) procedures for the use and control of flammable, toxic, and caustic materials.

(f) Safety Codes. The facility shall conform to the provisions set forth in the Life Safety Code, National Fire Protection Association (NFPA), 101 and/or any applicable state and local fire safety codes. The Life Safety Code may be substituted with local government ordinances/codes only if said ordinances/codes are specifically written to include building occupancy for detention and correctional usage.

(1) A formalized facility Life Inspection/fire safety inspection shall be completed prior to the facility becoming operational.

(2) All subsequent facility Life Inspection/fire safety inspection shall be conducted at least annually.

(3) All inspection reports shall be reduced to written documentation which shall include:

(A) an enumeration of the specific code(s) used during the inspection;

(B) any corrective action required;

(C) the name and title of person conducting the inspection; and

(D) the date(s) of the inspection.

(g) Population. The population of the facility shall not exceed the design capacity of the facility.

(h) Lighting. There shall be lighting available for the residents.

(i) Natural Lighting. All housing areas located in facilities designed and constructed or placed into operation on or after the effective date of this standard shall provide natural light available from a source within 20 feet of the area.

(j) Facility design. All housing areas shall provide for the following:

(1) an operable shower or bath with hot and cold running water for at least every ten residents;

(2) fully functioning:

(A) heating systems;

(B) ventilation systems; and

(C) cooling systems;

(3) access to a drinking fountain;

(4) toilets shall be provided at a minimum ratio of one for every 12 juveniles in male facilities, and one for every eight juveniles in female facilities. For facilities constructed after March 1, 1996, the ratio shall be one toilet for every six juveniles.

(A) urinals may be substituted for up to one-half of the toilets in all male facilities;

(B) all housing units with five or more juveniles shall have a minimum of two toilets; and

(5) access to a washbasin with hot and cold running water.

(k) Confinement Rooms. Any room utilized for the confinement of residents from the general population under the provisions of these standards shall be equipped with:

(1) a toilet;

(2) a washbasin with running water; and

(3) a mattress.

(l) Disabled Residents. Rooms or housing units used by disabled residents shall be designed for their use and provide for their safety and security in accordance with state and federal law.

(m) Program and Services Areas. The facility shall be designed to provide space for:

(1) a room or area for visitation;

(2) religious activities;

(3) interviewing and counseling; and

(4) educational instruction.

(n) Personal Property. Space shall be provided for secure storage of the resident's personal property.

(o) Housing Units. The secure facility shall be constructed with housing units of no more than 24 residents each.

(p) Dining Area. The dining area shall provide a minimum of 15 square feet of floor space per diner.

(q) Alternate Power Source. In the event that regular power is interrupted, the facility shall have an alternate source of power to operate:

(1) lights;

(2) communications systems;

(3) fire detection and alarm systems; and

(4) electric door locks.

(r) Preventive Maintenance.

(1) Power systems shall be tested at least every two weeks, the results documented and any deficiencies corrected.

(2) All emergency equipment and systems shall be tested at least monthly, the results documented and any deficiencies corrected.

(s) Ventilation. Alternate means of ventilation shall be maintained in case regular power is interrupted.

(t) Access for Individuals with Disabilities. All parts of the facility that are accessible to the public shall be accessible to and usable by staff and visitors with physical disabilities in accordance with state and federal law.

(u) Secure Storage. There shall be a location for secure storage of restraining devices, and related security equipment. This equipment shall be readily accessible to authorized persons.

§343.6. Security and Control.

(a) Policies. Written policies and procedures for security and control of the facility shall include, but shall not be limited to, the following:

- (1) continued operations in the event of a work stoppage;
- (2) key control;
- (3) control of the use of:
  - (A) tools;
  - (B) medical equipment; and
  - (C) kitchen tools;

(4) provisions to prevent firearms from entering the secure area of the facility; and

(5) provisions for coordination with law enforcement authorities in the case of riot, rebellion, escape, or other situations requiring assistance from city, county, or state law enforcement agencies.

(b) Searches. Searches shall be conducted according to written policies limited to the following conditions:

(1) residents may be required to submit to a pat down/frisk search as necessary for facility security;

(2) residents may be required to submit to an oral cavity search to prevent concealment of contraband, to ensure the proper administration of medication, and as necessary for facility security;

(3) residents may be required to surrender their clothing and submit to a search as necessary for facility security;

(4) residents may be required to undergo an anal or genital body cavity search only if there is probable cause to believe that they are concealing contraband; and

(5) an anal or genital body cavity search shall be conducted only by a physician.

(c) Special Incidents.

(1) All special incidents including, but not limited to, riots, rebellion, the taking of hostages, escapes, and assaults shall be reported in writing to the facility administrator.

(2) A copy of the report shall be placed in the permanent file of the resident(s) involved in the incident.

(d) Perimeter Security.

(1) The facility shall be constructed so that residents remain within the premises and the general public is denied access without authorization.

(2) Perimeter security shall be maintained at all times.

(e) Protective Confinement.

(1) Protective confinement may be ordered when a resident is threatened by the group.

(2) This decision shall be approved in writing by the Facility Administrator or designee.

(3) While in protective confinement, a detention officer shall observe and record the resident's behavior at staggered intervals not to exceed every 15 minutes.

§343.7. Rules and Discipline.

(a) Prohibited Sanctions. The following sanctions shall be prohibited:

- (1) corporal punishment;
- (2) humiliating punishment;
- (3) one resident sanctioning another;
- (4) group punishment for the acts of an individual;
- (5) deprivation of food;
- (6) deprivation of clothing;
- (7) deprivation of sleep;
- (8) deprivation of medical services; and
- (9) physical exercises used for compliance intimidation or discipline (except for post-adjudication military style programs).

(b) Enforcement. Rule violations and corresponding staff actions shall be recorded in the resident's record.

(c) Law Violations. When a resident is alleged to have committed a felony or a class A or B misdemeanor while in the facility, the case shall be referred to a law enforcement agency for possible investigation and/or prosecution.

(d) Separation from the Group.

(1) Room Restriction.

(A) Room restriction may be used in increments of up to 60 minutes for behavior modification.

(B) During room restriction, a juvenile detention officer shall personally observe and record the resident's behavior in staggered intervals not to exceed 15 minutes.

(2) Room Confinement.

(A) Room confinement may be used when a resident is out of control, repeatedly refuses to comply with rules, or is a threat to himself or others.

(B) Room confinement may be utilized by a juvenile detention officer for up to 24 hours.

(C) The juvenile detention officer shall complete a disciplinary report for submission to the facility administrator or designee that describes the circumstances and the staff action taken in response to the violation.

(D) Confinement beyond 24 hours shall be approved in writing by the facility administrator or designee, and reauthorized in writing by the facility administrator or designee, if necessary, every 24 hours.

(E) During room confinement, a juvenile detention officer shall personally observe and record the resident's behavior in staggered intervals not to exceed 15 minutes.

§343.8. Food.

(a) Nutritional Requirements. Meals shall meet the dietary requirements of the United States Department of Agriculture school breakfast, lunch, and dinner dietary allowances.

(b) Menu Plans. The facility administrator or designee, shall plan and follow daily menus.

(c) Menu Content. Menus shall contain a variety of foods.

(d) Modified Diets. Modified diets shall be provided in the following circumstances:



- (1) upon the recommendation of a physician or dentist; or
- (2) when a resident's religious beliefs require it.

(e) Staff Meals. Facility staff on duty where residents are eating need not eat, but if they do, they shall eat the same food served to the residents unless:

- (1) a special diet has been ordered by staffs' physician or dentist; or
- (2) a special diet is required by staffs' religious beliefs.

(f) Daily Schedule.

- (1) Three meals shall be provided daily.
- (2) Two of the meals shall be hot.
- (3) No more than 14 hours may elapse between the evening meal and breakfast unless a snack is provided.
- (4) Residents shall be allowed no less than 10 minutes to eat.

§343.9. Hygiene.

(a) Bedding and Towels.

- (1) Clean bed linens shall be issued weekly; and
- (2) clean towels shall be issued daily.

(b) Housekeeping Plan. A written housekeeping plan shall be followed which promotes cleanliness, facility sanitation, and control of vermin and pests.

(c) Clothing.

- (1) Clean socks and underclothing shall be issued daily; and
- (2) other clean clothing shall be issued at least twice per week.

(d) Personal Hygiene. Residents shall be required to bathe or shower daily.

(e) Hygiene Plan. Residents shall be given appropriate instruction on hygiene and shall be required to comply with acceptable rules of personal cleanliness and oral hygiene.

§343.10. Health Care Services.

(a) Health Service Authority. The facility administrator shall designate a health service authority responsible for health care decisions within the facility. The health service authority shall be a physician, licensed nurse, or physician's assistant.

(b) Health Service Coordinator.

(1) The facility administrator or designee shall designate a staff member to coordinate health care delivery in the facility.

(2) The health service coordinator shall receive special training in health care and be familiar with local health care providers and facilities.

(c) Medical Referral. If a staff member believes any resident to be in need of immediate medical attention or if a resident requests treatment, the resident shall be referred for medical services.

(d) Medical Confinement. Medical confinement may be ordered as a health precaution at the direction of a medical professional.

(1) The reasons for the medical confinement of a resident shall be documented and a copy placed in the resident's file.

(2) During medical confinement, a juvenile detention officer shall personally observe and record the resident's behavior in staggered intervals not to exceed 15 minutes.

(e) Medical Release. Documentation of consent for medical treatment received in accordance with Texas Family Code §32.001, shall be maintained in applicable resident files.

(f) Medication. In accordance with Texas Human Resources Code §142.005, the juvenile board shall adopt a policy concerning the administration of medication to residents. The policy shall include which facility employees are authorized to administer medication to residents.

(g) Suicidal Youth.

(1) Prevention Plan.

(A) Each facility shall have a written suicide prevention plan developed in consultation with a mental health professional that addresses the following components:

(i) definitions of high risk and moderate risk for suicidal behavior;

(ii) screening methodology to assess and assign a resident's risk of suicide upon admission and upon any indication a resident previously screened may now be at moderate or high risk for suicidal behavior;

(iii) communication among facility staff, mental health professionals, the resident's juvenile probation officer, the resident and the resident's parent or guardian including communication regarding observations or indications a resident previously screened may now be at moderate or high risk for suicidal behavior;

(iv) level of supervision for residents assigned to moderate or high risk for suicidal behavior;

(v) policy and procedure for intervening in suicide attempts;

(vi) reporting of resident suicides and attempted suicides in accordance with any applicable state law, administrative standard, or local policy or ordinance;

(vii) training on the contents and implementation of the suicide prevention plan;

(viii) housing of residents assigned to moderate or high risk of suicidal behavior including the removal from the resident's presence of any dangerous objects; and

(ix) mortality reviews designed to review the facility's compliance and possible needed revisions to the suicide prevention plan following a resident's suicide.

(B) All juvenile detention officers shall be trained in the implementation of the suicide prevention plan.

(C) Review.

(i) The suicide prevention plan shall be reviewed on an annual basis in consultation with a mental health professional.

(ii) The suicide prevention plan shall be included in the facility administrator's review of the facility's policies and procedures in accordance with §343.2(d)(1) of this chapter.

(2) Level of Supervision.

(A) Moderate Risk for Suicidal Behavior. During non-program hours, or any time a resident classified as a moderate risk for suicidal behavior is confined or restricted from the general population:

(i) The resident shall be visually checked by a juvenile detention officer at staggered intervals not to exceed every 10 minutes.

(ii) The juvenile detention officer shall document each visual observation made with the time of the observation and a general description of the resident's behavior.

(B) High-Risk for Suicidal Behavior.

(i) Supervision. During non-program hours, or any time a resident classified as high risk for suicidal behavior is confined or restricted from the general population:

(I) The resident shall be under the continuous, uninterrupted visual supervision of a juvenile detention officer.

(II) The juvenile detention officer shall document physical observations of a high risk resident at staggered intervals not to exceed every 30 minutes.

(ii) Required Documentation. The following documentation shall be maintained for high-risk residents and shall be posted where it is immediately accessible to the juvenile detention officer providing supervision to the high-risk resident:

(I) the date and time the resident was classified as high risk;

(II) who classified the resident as high risk;

(III) a description of the resident's behavior that caused the resident's classification as high risk;

(IV) who has been assigned to supervise the resident;

(V) the location for the resident's supervision;

(VI) the date and time the resident was reclassified as no longer being high risk; and

(VII) the name of the mental health professional who reclassified the resident as no longer being high risk.

(C) A juvenile detention officer assigned to work in a facility's primary control room may not provide supervision under subparagraph (A) or (B) of this paragraph.

(D) Video and audio monitoring devices shall not substitute for supervision by a juvenile detention officer under subparagraph (A) or (B) of this paragraph.

(3) Mental Health Referral.

(A) The facility shall refer a resident classified as exhibiting a high-risk for suicidal behavior to a mental health professional as defined by §343.1(19)(D)(i), (ii), (iii), (vi), and (vii) or (E) of this chapter or mental health agency within 24 hours from the time the resident is classified as a high risk for suicidal behavior.

(B) The facility shall maintain written documentation that the referral under subparagraph (A) of this paragraph was made. The documentation shall include:

(i) who notified the mental health professional or mental health agency;

(ii) the date and time of the notification;

(iii) the method of notification; and

(iv) a brief description of the response provided by the mental health professional or mental health agency.

(C) Prior to being removed from a high risk for suicidal behavior designation/classification, a mental health professional as defined by §343.1(19)(D)(i), (ii), (iii), (vii) or (E) of this chapter shall conduct an assessment of the resident's suicide risk and issue a written recommendation which addresses the following:

(i) the need to re-classify the resident's suicide risk level;

(ii) the need for intervention strategies and/or services during the resident's period of incarceration within the facility; and

(iii) the need for additional assessment(s).

(D) The mental health professional's written recommendation shall be maintained in the resident's record.

(E) Only the facility administrator, or their designee may remove a resident from being designated/classified as being a high risk for suicidal behavior under paragraph (2)(B) of this subsection.

§343.11. Communications.

(a) Visitation.

(1) Written policies shall allow for regularly scheduled visitation and procedures for emergency visitation.

(2) The parents or guardians of the resident shall be provided a copy of the visitation schedule.

(3) A registry shall be maintained to document the name and relationship to the resident of all visitors.

(4) Attorneys and their representatives may visit residents at any time.

(b) Telephone.

(1) Written policies shall allow reasonable and fair access to telephones and detail the specific time, length, and other limitations on calls.

(2) The parents or guardians of the resident shall be provided a copy of the policy.

(c) Mail. Written policies governing correspondence shall include, but shall not be limited to:

(1) Limitations. A resident's rights to privacy and correspondence may not be limited except when:

(A) probable cause exists to suspect that the correspondence is part of an attempt to formulate, devise, or otherwise effectuate a plan to escape from the facility, or to violate state or federal laws. If such cause exists, then facility staff shall:

(i) ask the resident's permission to read the letter;

(ii) if permission is denied, request a search warrant prior to opening and reading the letter; and

(iii) if a search warrant request is denied, the correspondence shall be provided to the resident;

(B) correspondence with certain individuals is specifically forbidden by:

(i) the resident's juvenile court ordered rules of probation or parole;

(ii) the facility's rules of separation; or

(iii) a specific list of individuals furnished by a minor resident's parents or guardian indicating who they feel should not communicate with the resident.

(C) Such incoming correspondence as identified in subparagraph (B)(i) - (iii) of this paragraph shall be returned unopened to the sender.

(2) Withholding mail. When mail is withheld from the resident, the reasons shall be documented.

(3) Materials and Postage. Residents shall be furnished with writing materials and postage for no fewer than two letters per week.

(4) Legal Correspondence. Residents shall be furnished adequate postage for legal correspondence.

(5) Forwarding Mail. Provisions shall be made to forward mail when the resident is released or transferred.

(6) Inspection.

(A) Mail may be opened by staff only in the presence of the resident with inspection limited to searching for contraband.

(B) Money received in the mail shall be held for the resident in their personal property inventory, with receipt provided, or returned to the sender.

§343.12. Residents' Rights.

(a) Illegal Discrimination. Residents shall not be subjected to discrimination based on race, national origin, religion, sex, or disability.

(b) Supervision. Residents shall not be subjected to supervision and control by other residents.

(c) Legal Counsel. Residents have the right to confidential contact with attorneys through telephone, uncensored letters, and personal visits.

(d) Work. Residents may not be required to work unless the activity is related to general housekeeping or as required by a court order for community service restitution.

(e) Visitation and Communication. Residents have the right to receive visitors and to communicate and correspond subject only to the limitations necessary to maintain facility security and control.

(f) Use of Medication. Except upon the order of a physician, no stimulant, tranquilizer, or psychotropic drug shall be administered to residents.

(g) Experimentation. Participation by residents in medical, pharmaceutical, or cosmetic experiments is prohibited.

(h) Grievances. The facility shall have a written grievance procedure with at least one level of appeal.

(i) Religion. Residents may participate in religious services and religious counseling voluntarily, subject to the limitations necessary to maintain facility security and control.

(j) Treatment and Safety. Residents shall not be subjected to abuse, exploitation or neglect as defined in Chapter 261, Texas Family Code.

§343.13. Volunteers and Interns.

If a facility has or develops a volunteer or internship program, the juvenile board or board of a private facility shall adopt the following policies:

(1) a description of the authority, responsibility and accountability of volunteers and interns who work with the department;

(2) performance of a Texas criminal history background search (TCIC);

(3) performance of a local law enforcement sex offender registration records check in the city or county where the volunteer or intern resides;

(4) selection and termination criteria including disqualification based on criminal history;

(5) orientation and training requirements including training on recognizing and reporting abuse, exploitation and neglect;

(6) a requirement that volunteers and interns meet minimum applicable professional requirements; and

(7) a provision for a volunteer and intern registry.

§343.14. Waivers and Variances.

Unless expressly prohibited by another standard, the juvenile board, the chief administrative officer, or facility administrator, may make an application for waiver and the juvenile board may make an application for variance of any standard or standards adopted by the Commission in accordance with §349.2 of this title.

§343.15. Employment of Certified Juvenile Detention Officers.

(a) Qualifications for Employment.

(1) Certified Juvenile Detention Officers and Supervisors of Certified Juvenile Detention Officers. An applicant for the position of a certified juvenile detention officer, or supervisor of juvenile detention officers shall be at least 21 years of age.

(2) Facility Administrator. An applicant for the position of facility administrator shall:

(A) meet the qualifications for employment under the Texas Human Resources Code §141.061(a) and §341.20 of this title; or

(B) in accordance with §341.21 of this title, the juvenile board, or chief administrative officer shall apply to the Commission for an exemption of the one year of experience or graduate study prior to the employment of an individual who does not meet the experience or education requirements under Texas Human Resource Code §141.061.

(b) Criminal Records Check. Prior to employing a person as a certified juvenile detention officer, supervisor of juvenile detention officers, or facility administrator, the facility administrator, chief administrative officer, juvenile board or either's designee shall initiate a criminal history check in accordance with the following guidelines:

(1) The following criminal history checks shall be conducted:

(A) a Texas criminal history background search (TCIC);

(B) a local law enforcement sex offender registration records check in the city or county where the applicant resides; and

(C) a Federal Bureau of Investigation fingerprint based criminal history background search (NCIC).

(2) In addition to the requirements of paragraph (1) of this subsection, if the applicant currently resides in one of the following states, or resided in one of the following states within the 10 years prior to the date the employment application was made, a state criminal history background search and state sex offender registration check shall also be conducted where available:

(A) Hawaii;

(B) Kansas;

(C) Kentucky;

- (D) Louisiana;
- (E) Maine;
- (F) Massachusetts;
- (G) New Hampshire;
- (H) Rhode Island;
- (I) Tennessee;
- (J) Vermont; and
- (K) the District of Columbia.

(3) An Internet based criminal background search shall not be used to conduct the background searches required under paragraph (1)(A) or (C) of this subsection.

(4) A copy of the returned criminal history checks shall be retained in the facility's records.

(5) Continued employment as a juvenile detention officer, supervisor of juvenile detention officers or as the facility administrator shall be contingent upon the completion and return of criminal history checks that show the individual has no disqualifying criminal history in accordance with subsection (c)(1) of this section.

(c) Disqualification from Employment.

(1) Criminal History. A person with the following criminal history shall be disqualified from employment as a certified juvenile detention officer, supervisor of juvenile detention officers, or facility administrator:

- (A) a felony conviction against the laws of this state, another state, or the United States within the past 10 years;
- (B) a deferred adjudication for a felony offense against the laws of this State, another State, or the United States within the past 10 years;
- (C) current felony probation or parole;
- (D) a jailable misdemeanor conviction against the laws of this state, another state or the United States within the past 5 years;
- (E) a deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United States within the past 5 years;
- (F) current misdemeanor probation or parole; or
- (G) registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(H) Waiver/Variance. A waiver or variance under §349.2 of this title may not be requested for this section unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by a trial or appellate court.

(2) Revocation or Suspension.

(A) Revocation. An individual whose certification has been revoked by the Commission shall never qualify for employment as a certified juvenile detention officer, supervisor of detention officers or administrative officer.

(B) Suspension.

(i) An individual whose certification is currently under a suspension order issued under §349.27(d)(2) of this title shall not qualify for employment as a certified juvenile detention officer, supervisor of certified juvenile detention officers, or administrative officer so long as the suspension order remains in effect.

(ii) An individual whose certification is currently under a suspension order issued under §349.31(a) of this title shall not qualify for employment as a certified juvenile detention officer, supervisor of certified juvenile detention officers, or administrative officer until the Commission receives an order issued under Texas Family Code §232.013 staying or vacating the license suspension.

§343.16. Persons Who Must be Certified.

The facility administrator of a juvenile facility, and any person hired as a juvenile detention officer, or as a supervisor of juvenile detention officers shall obtain and maintain an active juvenile detention officer certification from the Commission in accordance with Chapter 349 of this title.

§343.17. Code of Ethics.

The people of Texas expect of juvenile detention officers, supervisors of juvenile detention officers, and facility administrators unfailing honesty, respect for the dignity and individuality of human beings, and a commitment to professional and compassionate service. To this end the Commission subscribes to the following principles.

(1) Juvenile detention officers shall:

- (A) respect the authority and follow the directives of the court;
- (B) respect and protect the civil and legal rights of all children and their parents/guardians;
- (C) serve each child with concern for the child's welfare and with no purpose of personal gain;
- (D) encourage relationships with colleagues of such character to promote mutual respect within the profession and improvement of its quality of service;
- (E) respect the significance of all elements of the justice and human services systems and cultivate a professional cooperation with each segment;
- (F) respect and consider the right of the public to be safeguarded from juvenile delinquency;
- (G) be diligent in their responsibility to record and make available for review any and all information which could contribute to sound decisions affecting a child or the public safety;
- (H) report without reservation any corrupt or unethical behavior which could affect either a child or the integrity of the facility;
- (I) maintain the integrity of private information and not seek personal data beyond that needed to perform their responsibilities, nor reveal case information to anyone not having proper professional use for such;
- (J) abide by all federal, state, and local laws and Commission standards.

(2) Juvenile detention officers shall not:

- (A) use official position to secure privileges or advantages;
- (B) make statements critical of colleagues or their facility unless these are verifiable and constructive in purpose;
- (C) permit personal interest to impair the objectivity which is to be maintained in their official capacity;
- (D) accept any gift or favor that implies an obligation that is inconsistent with the free and objective exercise of professional responsibilities;

(E) maintain an inappropriate relationship with juveniles residing in the facility or under the jurisdiction of the juvenile court. An inappropriate relationship can include but is not limited to: bribery, solicitation or acceptance of gifts, favors, or services from juveniles or their families, and the appearance of an inappropriate relationship;

(F) not discriminate against any employee, prospective employee, child, child care provider, or parent on the basis of age, race, sex, creed, disability, or national origin;

(G) engage in behaviors which misuse fiscal or business office practices or materials belonging to the facility including but not limited to: falsifying time sheets, theft or misuse of office supplies, use of facility property for personal use, and use of personal affects or funds belonging to a resident of the facility or child under the jurisdiction of the juvenile court;

(H) be designated as a perpetrator in a Commission abuse, exploitation and neglect investigation conducted under the authority of Texas Family Code Chapter 261, and Chapter 349 of this title;

(I) Interfere with or hinder an abuse, exploitation and neglect internal investigation conducted under §343.3(c) of this title or a Commission abuse, exploitation and neglect investigation conducted under the authority of Texas Family Code Chapter 261, and Chapter 349 of this title, or any criminal investigation conducted by a law enforcement agency; and

(J) Deliver into nor remove from the grounds of a juvenile detention any item or contraband and shall not exercise possession or control of any item of contraband while on juvenile detention facility grounds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 424-6710



## SUBCHAPTER C. PRE-ADJUDICATION SECURE DETENTION FACILITY STANDARDS

### 37 TAC §§343.30 - 343.37

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the new sections.

#### §343.30. *Intake, Admission and Release.*

(a) Intake. Anyone presented for admission to detention and in need of emergency medical care due to injury, illness or intoxication or in need of mental health intervention shall not be admitted into detention.

(1) The referring person shall be directed to a health care facility to have the individual evaluated and treated.

(2) Subsequent admission to detention is contingent upon written medical clearance provided by a medical or mental health professional.

#### (b) Intoxicated Individuals.

(1) Anyone admitted to detention shall be assessed to determine the need for detoxification from alcohol or other substances.

(2) Intoxicated individuals who have been medically cleared for admission should be placed under medical confinement in accordance with §343.10(d) of this chapter.

#### (c) Intake.

(1) An intake or other officer authorized by the court shall be on duty at the facility or on call 24 hours a day.

(2) Written policy shall state the conditions under which the intake officer may authorize the conditional release of an individual referred to the facility.

#### (d) Orientation.

(1) A detention officer shall orient each newly admitted resident to the facility.

(2) The orientation shall include, in the resident's primary language, an explanation of the following:

(A) facility's program rules;

(B) grievance policy and procedures; and

(C) the procedures to access medical care.

(3) When a literacy problem prevents a resident from understanding written rules, a staff member or translator shall assist the resident in understanding the rules.

(4) If the resident is not sufficiently fluent in English or Spanish, then arrangements shall be made to provide the resident with an orientation in the resident's primary language within 48 hours of admission.

(e) Personal Property. Written policy shall describe the procedures regarding the handling of residents' personal property held by the facility.

(f) Bedding. Each resident shall be provided suitable clean bedding including sheets, pillow and pillowcase, mattress, and blankets.

(g) Clothing. Clean clothing is to be provided upon admission.

(h) Personal Hygiene. Residents shall be required to surrender their clothing and to bathe or shower upon admission.

(i) Screening. The TJPC Standard Screening Tool shall be administered to each resident that is admitted into detention.

(1) The tool shall be administered within 48 hours from the time the resident is admitted into detention.

(2) A copy of the completed tool shall be provided to the supervising juvenile probation officer.

(j) Health Screening. Within one hour of admission, a health screening shall be conducted on each resident. Information obtained shall include, but is not limited to:

(1) mental health problems;

(2) suicide risk in accordance with §343.10(g)(1)(A)(ii) of this chapter;

(3) current state of health including:

(A) allergies;

(B) other chronic conditions;

(C) tuberculosis;

(D) sexually transmitted diseases; and

(E) other infectious diseases;

(4) current use of medication including type, dosage and prescribing physician;

(5) dental problems;

(6) vision problems;

(7) drug and alcohol use;

(8) physical disabilities; and

(9) evidence of physical trauma.

(k) Any finding of the health screening that indicates a significant potential health risk to the staff and residents shall be immediately reported to the facility administrator, and the affected resident shall be placed in medical confinement until proper medical clearance is obtained.

(l) Assessment Period. Upon entering the facility, residents shall be assigned to the general program as soon as possible after admittance.

(1) Written policy shall prohibit automatic room confinement for periods of time longer than necessary to assess the risks and needs of the residents.

(2) If a resident is confined in his or her room at admission for assessment purposes, juvenile detention officers shall document their assessment of the resident during this 24-hour period and retain this documentation in the resident's file.

(3) A juvenile detention officer shall, at staggered intervals not to exceed 15 minutes, personally observe and record the behavior of residents in room confinement during the assessment period.

(m) Release. Procedures for releasing residents shall include:

(1) verification of identity of the person receiving custody;

(2) verification of release authorization;

(3) signed release by resident for the return of personal property; and

(4) receipt signed by person receiving custody.

#### §343.31. Classification Plan.

Facilities with multiple housing units shall have a classification plan that groups residents according to at least the following:

(1) age;

(2) gender;

(3) offense;

(4) behavior; and

(5) any other special conditions.

#### §343.32. Supervision.

(a) Minimum Requirements. At least two juvenile detention officers shall be on duty at any time the facility has a resident. At least one of the officers shall be certified.

(b) Gender.

(1) If residents of both genders are housed within the facility, juvenile detention officers of both genders shall be on duty and available to the residents for every shift.

(2) Juvenile detention officers of one gender shall be the sole supervisors of residents of the same gender during showers, physical searches, pat downs, disrobing of suicidal youth, or during other times in which personal hygiene practices or needs would require the presence of a juvenile detention officer of the same gender.

(c) Ratios.

(1) Supervision Ratio.

(A) Unless the conditions under subparagraph (B) of this paragraph apply, the juvenile detention officer to resident ratio shall not be less than:

(i) 1 juvenile detention officer to every 12 residents during program hours;

(ii) 1 juvenile detention officer to every 24 residents during non-program hours.

(B) Multiple Occupancy Housing. For multiple occupancy housing units designed and operated after June 5, 2001, when residents are physically located in the designated multiple occupancy housing unit, the juvenile detention officer to resident ratio shall not be less than 1 juvenile detention officer to every 8 residents.

(2) Facility Wide Ratio. The facility wide juvenile detention officer to resident ratio shall not be less than:

(A) 1 juvenile detention officer to every 8 residents during program hours; and

(B) 1 juvenile detention officer to every 18 residents during non-program hours.

(3) An individual hired as a juvenile detention officer, who is not yet certified as a juvenile detention officer may count toward meeting the supervision ratio and the facility wide ratio under paragraphs (1) and (2) of this subsection so long as the individual:

(A) has not worked for the secure detention facility for more than 180 calendar days from the individual's date of hire;

(B) has been certified in:

(i) first aid;

(ii) cardio-pulmonary resuscitation; and

(iii) a TJPC approved physical restraint technique;

(C) has received training in recognizing and reporting abuse, exploitation and neglect; and

(D) has received training on the contents and implementation of the suicide prevention plan.

(4) Primary Control Room(s). A juvenile detention officer stationed in the facility's primary control room(s) shall not count toward meeting either the minimum requirements under subsection (a) of this section, the supervision ratio under paragraph (1) of this subsection or the facility wide ratio under paragraph (2) of this subsection.

(d) Level of Supervision.

(1) A resident shall be in the constant physical presence of a juvenile detention officer, with the following exceptions:

(A) Small Groups. No more than three residents may be supervised by a professional when the professional is working with the residents in a capacity that relates to the professional's licensure, certification, professional training or education.

(B) Small Therapeutic Groups. A juvenile detention officer shall provide constant visual supervision of any small group between four and eight residents when those residents are working with a licensed or certified mental health professional as defined by §343.1(19)(D) or (E) of this chapter.

(C) Visitation. Private visitation between one resident and an attorney, authorized visitor, or clergy does not require the constant physical presence of a juvenile detention officer.

(D) Shift Change. If residents are placed in their rooms during the facility's staff shift change, then a juvenile detention officer shall observe and document each resident's behavior in staggered intervals not to exceed 15 minutes.

(E) Non-program Hours.

(i) During non-program hours in single occupancy housing units, juvenile detention officers shall visually observe each resident in staggered intervals not to exceed 15 minutes.

(ii) Juvenile detention officers shall document each visual observation made. The documentation shall include the time of the observation and generally describe the resident's behavior.

(2) Multiple Occupancy Housing.

(A) For multiple occupancy housing units designed and operated after June 5, 2001, during both program and non-program hours, residents while physically located in a multiple occupancy housing unit, shall be under the constant visual observation of a juvenile detention officer.

(B) If juvenile detention officers supervise residents behind an architectural barrier, the barrier shall provide a complete and unobstructed view of the entire multiple occupancy housing unit. The barrier, with or without the assistance of an electronic device, shall allow for constant auditory monitoring of the unit.

(C) Juvenile detention officers shall document general observations of dorm activity in staggered intervals not to exceed 15 minutes.

(3) Video and audio monitoring devices shall not substitute for supervision or observation by juvenile detention officers.

§343.33. Records.

(a) Facility Records. The facility shall maintain:

(1) a dated and signed record of entries by the staff supervising the residents;

(2) a daily report of admissions and releases; and

(3) a single document to identify all residents in the facility and their housing assignments.

(b) Resident Records Maintenance. Resident records shall be maintained in accordance with:

(1) a uniform format for identifying and separating files; and

(2) procedures to ensure confidentiality of records.

(c) Admission Records. At the time of admission, the following information shall be documented in each resident's admission record:

(1) date and time of admission;

(2) name;

(3) nicknames and aliases;

(4) social security number;

(5) last known address;

(6) detention criteria as required by the Texas Family Code §53.02(b);

(7) referring offense;

(8) name of attorney;

(9) name, title, and signature of delivering individual;

(10) gender;

(11) race;

(12) date of birth;

(13) place of birth;

(14) citizenship;

(15) current education level;

(16) last school attended;

(17) name, relationship, address, and phone number of parents, guardian, or persons with whom the resident resides at admission, and;

(18) health assessment.

(d) Resident Record Contents. Each resident's record shall include at least the following:

(1) offense report, offense narrative, arrest warrant or directive to apprehend;

(2) inventory of cash and property surrendered signed by resident and detention officer;

(3) list of approved visitors;

(4) name of assigned probation officer;

(5) record of resident's notification of program rules and disciplinary policy;

(6) record of resident's notification of the facility's grievance procedures;

(7) behavioral record including any special incidents, discipline, or grievances;

(8) referrals to other agencies; and

(9) final release or transfer report.

§343.34. Sleeping Units.

(a) Single Occupancy Sleeping Units. Sleeping units shall be utilized as single occupancy, except for all juvenile detention units designed for multiple occupancy.

(1) Sleeping units shall have a minimum ceiling height of seven and one-half feet.

(2) Sleeping units shall have a minimum of 60 square feet of floor space.

(3) Residents held in sleeping units shall have access to

- (A) a toilet above floor level;
- (B) a washbasin;
- (C) drinking water;
- (D) running water; and
- (E) a bed above floor level.

(4) There shall be separate sleeping units for male and female residents.

(b) Multiple Occupancy Sleeping Units. The utilization of multiple occupancy sleeping units shall have prior written approval and authorization from the juvenile board. The following standards shall not apply to any multiple occupancy units designed and operating as such prior to June 5, 2001.

(1) The capacity of multiple occupancy sleeping units shall not exceed 25 percent of the design capacity of the facility.

(2) No more than eight residents shall be housed in each multiple occupancy sleeping unit.

(3) Separate units shall be provided for male and female residents.

(4) Multiple occupancy sleeping units shall have a minimum ceiling height of seven and one half feet.

(5) Multiple occupancy sleeping units shall have a minimum of thirty-five unencumbered square feet of floor space per resident.

(6) Multiple occupancy sleeping units shall have one bed above floor level for every resident assigned to the unit.

(7) Multiple occupancy sleeping units shall have within the unit, so that residents have access without having to be escorted out of the unit, to:

- (A) toilets (ratio of 1 toilet per 4 residents);
- (B) washbasins (ratio of 1 washbasin per 8 residents);
- (C) drinking water.

and

(8) Residents are not to be admitted to multiple occupancy sleeping units directly from the intake process. Classification, screening, and behavioral observation must occur for at least 72 hours before the decision is made to admit the resident to a multiple occupancy sleeping unit in accordance with §343.35(a)(1) - (3) of this chapter.

§343.35. Multiple Occupancy Sleeping Units.

Multiple Occupancy Sleeping Units. Written policy, procedure and practice of the following standards shall apply to all detention facilities that utilize multiple occupancy sleeping units.

(1) Classification Plan. Facilities with multiple occupancy sleeping units shall have a classification plan that determines how residents are grouped in units. Residents shall be classified for grouping by age and gender, at a minimum.

(2) Screening Plan. Residents shall be screened by personnel with appropriate credentials, as determined and approved by the juvenile board, prior to placement in a multiple occupancy sleeping unit. Residents with the following indicators shall not be allowed admittance to multiple occupancy sleeping units:

(A) Medical illness which may be contagious to other residents or to staff unless they wear protective clothing and/or masks,

or medical conditions which require treatment and/or equipment that would present a risk to residents or others;

(B) Mental illness, if the resident exhibits behavior dangerous to other residents or to staff;

(C) Mental retardation, if the resident exhibits behavior dangerous to other residents or to staff;

(D) Sex offenders who will not function appropriately in a group setting;

(E) Exploitive, victimizing behavior;

(F) Violent, explosive, assaultive behavior;

(G) Chronic detention rule violators;

(H) Resident likely to be exploited or victimized by others;

(I) Residents who have other special needs for single housing; or

(J) Any other behavior or condition that could impose a threat to the health and safety of others.

(3) Administrative Approval. The placement of any resident into a multiple occupancy sleeping unit shall be approved by the facility administrator or designee.

§343.36. Physical Plant.

(a) The facility shall provide space for an exercise area.

(b) Common Activity Area. The facility's total common activity area shall encompass no less than 100 square feet of floor space per resident.

§343.37. Programs.

(a) Education. The facility administrator shall ensure that there is an educational program that requires all residents to participate. The program shall include:

(1) courses of study that meet the requirements of the Texas Education Code;

(2) a minimum of 180 days of educational instruction or provide educational services that coincide with the local school district calendar;

(3) require coordination with the local education agency to provide appropriate special education services; and

(4) documentation of the notification to the local school district as required by the Texas Education Code §29.012.

(b) Reading Materials. Reading materials shall be available to all residents.

(c) Recreation.

(1) Recreational equipment and supplies shall be provided.

(2) The recreational schedule shall provide:

(A) at least one hour of organized physical activity per day; and

(B) at least one hour of open recreational activity per day.

(d) Work. Written policy requires that residents shall be responsible for cleaning their own rooms and other areas of the facility.

(1) Other work shall be voluntary and meet state and federal child labor laws unless it involves court-ordered community service restitution.



(2) Residents shall not be required to perform personal services for staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 424-6710



## SUBCHAPTER D. POST-ADJUDICATION SECURE CORRECTIONAL FACILITY STANDARDS

### 37 TAC §§343.45 - 343.52

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the new sections.

#### §343.45. Intake, Admission and Release.

(a) Intake. Anyone presented for admission to the facility and in need of emergency medical care due to injury, illness or intoxication or in need of emergency mental health intervention shall not be admitted into the facility.

(1) The referring person shall be directed to a health care facility to have the individual evaluated and treated.

(2) Subsequent admission to the facility is contingent upon written clearance provided by a medical or mental health professional.

#### (b) Intoxicated Individuals.

(1) Anyone admitted to the facility shall be assessed to determine the need for detoxification from alcohol or other substances.

(2) Intoxicated individuals who have been medically cleared for admission shall be placed under medical confinement in accordance with §343.10(d) of this chapter.

(c) Records. Prior to a resident's admission, the facility shall receive from the referring agency:

(1) a completed State of Texas common application form except when the facility is operated by the referring agency;

(2) a psychological evaluation completed within one year prior to the resident's admission date;

(3) a signed court order;

(4) an immunization record; and

(5) a medical examination that:

(A) was completed within 30 calendar days prior to the resident's admission date; and

(B) includes documentation that a tuberculosis test was administered and results were received.

(d) Screening. Within one hour of admission, a health screening shall be conducted on each resident. Information obtained shall include but is not limited to:

(1) mental health problems;

(2) suicide risk in accordance with §343.10(g)(1)(A)(ii) of this chapter;

(3) current state of health including:

(A) allergies;

(B) other chronic conditions;

(C) tuberculosis; and

(D) sexually transmitted and other infectious diseases.

(4) current use of medication including type, dosage, and prescribing physician;

(5) dental problems;

(6) vision problems;

(7) drug and alcohol use;

(8) physical disabilities;

(9) a copy of the completed TJPC standard screening tool;  
and

(10) evidence of physical trauma.

(e) Screening Results. Any finding of the health screening that indicates a significant potential health risk to the staff and residents shall be immediately reported to the facility administrator and the affected resident shall be placed in medical confinement until proper medical clearance is obtained.

#### (f) Orientation.

(1) A juvenile detention officer shall orient each newly admitted resident to the facility.

(2) The orientation shall include, in the resident's primary language, an explanation of the following:

(A) grievance policy and procedure;

(B) the procedures to access medical care; and

(C) facility's program rules.

(3) When a literacy problem prevents a resident from understanding written rules, a staff member or translator shall assist the resident in understanding the rules.

(4) If the resident is not sufficiently fluent in English or Spanish, then arrangements will be made to provide the resident with an orientation in their primary language within 48 hours of admission.

(g) Bedding. Each resident shall be provided suitable clean bedding, including sheets, pillow and pillowcase, mattress, and a blanket.

(h) Personal Property. Written policy shall describe the procedures regarding the handling of residents' personal property held by the facility.

(i) Release. Procedures for releasing juveniles shall include:

(1) verification of identity of person receiving custody;

(2) verification of release authorization;

(3) signed release by resident for return of personal property; and

(4) receipt signed by person receiving custody.

§343.46. Classification Plan.

(a) Classification Plan. Housing assignments shall be made according to a written classification plan that takes into account the following:

(1) age;

(2) gender;

(3) offense history;

(4) behavior; and

(5) any special conditions.

(b) Segregation. The classification plans shall require that residents assigned to progressive sanctions level 5 and below be physically segregated from residents assigned to progressive sanctions levels 6 and 7.

§343.47. Supervision.

(a) Minimum Requirements. At least two juvenile detention officers shall be on duty at any time the facility has a resident. At least one of the officers shall be certified.

(b) Gender.

(1) If residents of both genders are housed within the facility, juvenile detention officers of both genders shall be on duty and available to the residents for every shift.

(2) Juvenile detention officers of one gender shall be the sole supervisors of residents of the same gender during showers, physical searches, pat downs, disrobing of suicidal youth, or during other times in which personal hygiene practices or needs would require the presence of a detention officer of the same gender.

(c) Ratios.

(1) Supervision Ratio. The juvenile detention officer to resident ratio shall not be less than:

(A) 1 juvenile detention officer to every 12 residents during program hours;

(B) 1 juvenile detention officer to every 24 residents during non-program hours.

(2) Facility Wide Ratio. The facility wide juvenile detention officer to resident ratio shall not be less than:

(A) 1 juvenile detention officer to every 8 residents during program hours;

(B) 1 juvenile detention officer to every 20 residents during non-program hours; and

(C) A post-adjudication facility located in the same building as a pre-adjudication facility shall maintain a ratio of 1 juvenile detention officer to every 18 residents during non-program hours.

(3) An individual hired as a juvenile detention officer, who is not yet certified as a juvenile detention officer may count toward meeting the supervision ratio under paragraph (1) of this subsection and the facility wide ratio under paragraph (2) of this subsection so long as the individual:

(A) has not worked for the secure correctional facility for more than 180 calendar days from the individual's date of hire;

(B) has been certified in first aid, cardio-pulmonary resuscitation, and an approved physical restraint technique;

(C) has received training in recognizing and reporting abuse, exploitation and neglect; and

(D) has received training on the contents and implementation of the suicide prevention plan.

(4) Primary Control Room(s). A juvenile detention officer stationed in the facility's primary control room(s) shall not count toward meeting either the minimum requirements under subsection (a) of this section, the supervision ratio under paragraph (1) of this subsection or the facility-wide ratio under paragraph (2) of this subsection.

(d) Level of Supervision. A resident shall be in the constant physical presence of a juvenile detention officer, with the following exceptions:

(1) Small Groups. No more than 3 residents may be supervised by a professional when the professional is working with the residents in a capacity that relates to the professional's licensure, certification, professional training or education.

(2) Small Therapeutic Groups. A juvenile detention officer shall provide constant visual supervision of any small group between four and eight residents when those residents are working with a licensed or certified mental health professional as defined by §343.1(19)(D) or (E) of this chapter.

(3) Visitation. Private visitation between one resident and an attorney, authorized visitor, or clergy does not require the constant physical presence of a juvenile detention officer.

(4) Shift Change. If residents are placed in their rooms during the facility's staff shift change, then a detention officer shall observe and document each resident's behavior in staggered intervals not to exceed 15 minutes.

(5) Non-Program Hours.

(A) During non-program hours, juvenile detention officers shall visually observe each resident in staggered intervals not to exceed 15 minutes.

(B) Juvenile detention officers shall document each visual observation made. The documentation shall include the time of the observation and generally describe the resident's behavior.

(e) Technology. Video and audio monitoring devices shall not substitute for supervision and observation by detention officers.

§343.48. Records.

(a) Facility Records. The facility shall maintain:

(1) a dated and signed record of entries by the staff supervising the residents;

(2) a daily report of admissions and releases; and

(3) a single document to identify all residents in the facility and their housing assignments.

(b) Resident Records Maintenance. Resident records shall be maintained in accordance with:

(1) a uniform format for identifying and separating files; and

(2) procedures to ensure confidentiality of records.

(c) Admission Records. At the time of admission, the following information shall be documented in each resident's admission record:

- (1) date and time of admission;
  - (2) name;
  - (3) nicknames and aliases;
  - (4) social security number;
  - (5) last known address;
  - (6) adjudicated offense;
  - (7) name of attorney;
  - (8) name, title, and signature of delivering individual;
  - (9) court order;
  - (10) race;
  - (11) gender;
  - (12) date of birth;
  - (13) citizenship;
  - (14) place of birth;
  - (15) educational level;
  - (16) last school attended and school records;
  - (17) name, relationship, address, and phone number of parents, guardian, or persons with whom juvenile resides at the time of admission;
  - (18) health assessment;
  - (19) immunization records;
  - (20) documentation of any need for services for the disabled;
  - (21) medical evaluation;
  - (22) dental evaluation;
  - (23) psychological evaluation;
  - (24) signed release by a physician for juveniles placed in Military Style Programs; and
  - (25) a common application, except when the facility is operated by the referring agency.
- (d) Resident Record Contents. Each resident's record shall include at least the following:
- (1) delinquent history;
  - (2) inventory of cash and property surrendered signed by resident and juvenile detention officer;
  - (3) list of approved visitors;
  - (4) name of assigned probation officer;
  - (5) behavioral record including any special incidents, discipline or grievances;
  - (6) progress reports;
  - (7) record of resident's notification of the program rules and disciplinary policy;
  - (8) record of the resident's notification of the facility's grievance policy;
  - (9) individual program and treatment plan; and
  - (10) final release and transfer report.

§343.49. Sleeping Units.

(a) Floor space for sleeping areas in which residents are confined shall conform to the following minimum requirements:

(1) Single Occupancy: 60 total square feet.

(2) Multiple Occupancy: 35 unencumbered square feet of shared common area per resident.

(b) Each sleeping room shall have at a minimum the following facilities and conditions:

(1) access to toilet facilities that shall be available for use 24 hours a day;

(2) access to a washbasin with hot and cold running water;

(3) a bed above floor level; and

(4) bunk beds, if utilized, shall not exceed two levels.

§343.50. Physical Plant.

(a) Day Rooms

(1) Day rooms shall provide a minimum of 35 square feet of space per resident (exclusive of lavatories, showers, and toilets) for every resident using the day room at one time.

(2) Day rooms shall provide sufficient seating and writing surfaces for every resident using the day room at one time.

(b) Exercise Areas. The facility shall provide space for an indoor and outdoor exercise area.

§343.51. Rules and Discipline.

(a) Notification and Due Process.

(1) Residents sanctioned for major rules violations shall be given written notice of the rule violation and the sanction imposed at the time the sanction is imposed.

(2) The resident may request an informal appeal.

(3) If the resident is not satisfied after the informal appeal, the resident may request a disciplinary hearing.

(b) Disciplinary Hearing.

(1) Disciplinary hearings shall be conducted by an impartial person or panel of persons.

(2) Disciplinary hearings shall be conducted no later than seven calendar days, excluding weekends and holidays, from the date of request.

(3) Residents shall have an opportunity to make a statement, present evidence at the hearings, and request witnesses on their behalf.

(4) Record.

(A) A written record shall be made of the hearing's disposition.

(B) A copy of the hearing disposition shall be given to the resident.

(C) The disposition notice and the supporting documents shall be kept in the resident's file.

(5) When a resident is found not to have committed a rule violation:

(A) the disciplinary report shall be removed from the resident's file; and

(B) all privileges removed shall be restored.

(6) Appeal

(A) Residents shall have the right to appeal decisions of the disciplinary committee to the facility administrator or designee.

(B) Residents shall have no less than five but no more than 15 calendar days after receipt of the decision to submit an appeal.

(C) The appeal shall be decided within 30 calendar days of its receipt; and

(D) The resident shall be promptly notified in writing of the results.

§343.52. Programs.

(a) Education. The facility administrator shall ensure that there is an educational program that requires all residents to participate. The program shall:

(1) provide a minimum of 180 days of educational instruction or provide educational services that coincide with the local school district calendar;

(2) provide a minimum of four hours of educational instruction to each resident on every day that the local school district is normally in session;

(3) require coordination with the local education agency to provide appropriate special education services; and

(4) documentation of the notification to the local school district as required by the Texas Education Code §29.012.

(b) Reading Materials. Reading materials shall be available to all residents.

(c) Recreation. Recreational material, equipment, and supplies shall be provided for both indoor and outdoor activities. A recreational schedule shall provide:

(1) at least one hour of organized physical activity per day;

(2) at least one hour of open recreational activity per day;

and

(3) indoor and outdoor activity for all residents.

(d) Individualized Treatment Plan.

(1) The facility shall develop an individualized treatment plan in collaboration with the juvenile probation department in accordance with the following:

(A) The Individualized Treatment Plan shall:

(i) be developed and implemented within 30 calendar days of the resident's initial date of placement;

(ii) be developed in consultation with the resident's parent, guardian or custodian, the resident, and the supervising juvenile probation officer;

(iii) contain specific behavioral goals using the nine domains outlined in Title 1, Part 15, §351.13 of the Texas Administrative Code;

(iv) be signed by the resident and the resident's parent, guardian or custodian, the substitute care provider, and the resident's supervising probation officer; and

(v) be retained in the resident's record with copies provided to the resident, the resident's parent, guardian or custodian and the supervising juvenile probation department.

(B) Individualized Treatment Plan Review.

(i) Treatment plans shall be reviewed and updated every 90 calendar days.

(ii) The resident and at least one parent, guardian, or custodian shall participate in the treatment plan review with the substitute care provider and the resident's supervising juvenile probation officer.

(iii) The treatment plan reviews shall measure the resident's progress toward meeting his/her goals using the six-point scale outlined in Title 1, Part 15, §351.13 of the Texas Administrative Code.

(iv) The outcome of the substitute care provider's service delivery shall be assessed based on whether the juvenile is progressing in fifty percent or more of identified goals.

(v) Treatment plan reviews shall be signed by the resident, the resident's parent, guardian, or custodian and the supervising juvenile probation officer.

(vi) Copies of every treatment plan review shall be retained in the resident's record.

(e) Rehabilitative Services. The social services program shall provide:

(1) individual counseling;

(2) group counseling;

(3) substance abuse prevention education; and

(4) AIDS awareness.

(f) Physical Training Program.

(1) If a facility has a physical training program, the facility shall have a written physical training program plan. The plan shall include:

(A) an initial physical fitness screening tool;

(B) types of exercises; and

(C) exercise time limits.

(2) Before participating in the physical training program, the resident shall:

(A) have an initial physical fitness screening administered by the facility to determine the resident's ability to participate in the program; and

(B) have a signed release by a physician to participate in a program of strenuous physical exercise.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER E. RESTRAINTS

### 37 TAC §§343.60 - 343.68

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the new sections.

#### §343.60. Definitions.

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

(1) Approved Physical Restraint Technique ("physical restraint")--A professionally trained restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints. The approved physical restraint technique shall be approved for use by the Commission and adopted by the juvenile board.

(2) Approved Mechanical Restraint Devices ("mechanical restraint")--A professionally manufactured mechanical device to aid in the restriction of a person's bodily movement. The approved mechanical restraint shall be approved by the Commission and adopted by the juvenile board. The following are Commission approved mechanical restraint devices:

(A) Ankle Cuffs--Metal, cloth or leather band designed to be fastened around the ankle to restrain free movement of the legs;

(B) Anklets--Cloth or leather band designed to be fastened around the ankle or leg;

(C) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms;

(D) Plastic Cuffs--Plastic devices designed to be fastened around the wrist or legs to restrain free movement of hands, arms or legs;

(E) Restraint Chair--A professionally manufactured security restraining device that may utilize a combination of handcuffs, leg cuffs, and restraining straps in a specially designed upright contoured chair to provide effective containment of a resident;

(F) Waist Band--A cloth, leather, or metal band designed to be fastened around the waist used to secure the arms to the sides or front of the body; and

(G) Wristlets--A cloth or leather band designed to be fastened around the wrist or arm which may be secured to a waist belt.

(3) Chemical Restraint--The application of a chemical agent on a resident or residents.

(4) Four Point Restraint--The use of mechanical restraint devices, applied to each of a resident's wrists and ankles, used to secure a resident face up to a professionally manufactured bed.

(5) Physical Escort--Touching or holding a resident with a minimum use of force for the purpose of directing the resident's movement from one place to another. A physical escort is not considered a physical restraint.

(6) Protective Devices--Professionally manufactured devices used for the protection of residents or staff that do not restrict the movement of a resident. Protective devices are not considered mechanical restraint devices.

(7) Restraints--Physical, mechanical, or chemical restraint.

#### §343.61. Requirements.

The use of restraints in a facility shall be governed by the following criteria:

(1) restraints shall only be used by juvenile probation and detention officers;

(2) prior to participating in any restraint juvenile probation officers and juvenile detention officers shall be:

(A) certified in the use of the approved physical restraint technique;

(B) trained in the use all approved mechanical restraint devices; and

(C) trained in the use of any approved chemical agents;

(3) restraints shall only be used in instances of threat of imminent self-injury, injury to others, serious property damage, or prevention of escapes;

(4) restraints shall only be used as a last resort;

(5) only the amount of force and type of restraint necessary to control the situation shall be used;

(6) restraints shall be implemented in such a way as to protect the health and safety of the resident and others; and

(7) restraints shall be terminated as soon as the resident's behavior indicates that the threat of imminent self-injury, injury to others, serious property damage, or prevention of escape has subsided.

#### §343.62. Prohibitions.

Restraints that employ a technique listed below are prohibited:

(1) restraints used for punishment, discipline, retaliation, harassment, compliance, intimidation, or as a substitute for room restriction or confinement;

(2) restraints that deprive the resident of basic human necessities including restroom privileges, water, food and clothing;

(3) restraints that are intended to inflict pain;

(4) restraints that put a resident face down with sustained or excessive pressure on the back or chest cavity;

(5) restraints that put a resident face down with pressure on the neck or head;

(6) restraints that obstruct the airway or impair the breathing of the resident;

(7) restraints that restrict the resident's ability to communicate;

(8) restraints that obstruct the view of the resident's face;

(9) any technique that does not require the monitoring of the resident's respiration and other signs of physical distress during the restraint; and

(10) percussive or electrical shocking devices.

#### §343.63. Documentation.

Documentation. Except as required by §343.68(c) of this chapter all restraints shall be fully documented and maintained. Written documentation regarding the use of restraints shall require at a minimum:

(1) name of resident;

(2) staff member(s) name and title(s) who administered the restraint;

(3) date of the restraint;

- (4) duration of the restraint including notation of the time the restraint began and ended;
- (5) location of the restraint;
- (6) description of preceding activities;
- (7) behavior which prompted the restraint;
- (8) type of restraint applied;
- (9) efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
- (10) any injury that occurred during the restraint.

§343.64. Physical Restraint.

In addition to the requirements found in §§343.61 - 343.63 of this chapter, juvenile probation and detention officers shall be re-certified in the approved physical restraint technique at least every two years.

§343.65. Mechanical Restraint.

In addition to the requirements found in §§343.61 - 343.63 of this chapter, the use of mechanical restraint, except the restraint chair shall be governed by the following criteria:

(1) Requirements.

(A) mechanical restraints shall only be used in a manner consistent with their intended use;

(B) there shall be provisions for the inspection and maintenance of mechanical restraint devices; and

(C) mechanical restraints may be used when moving a resident from point to point within the facility. The mechanical restraint shall terminate upon completion of the resident's relocation.

(2) Prohibitions.

(A) mechanical restraint devices shall not be altered from the manufacturer's design;

(B) a resident shall not be placed face down while restrained in any mechanical restraint for a period of time longer than necessary to apply the restraint devices;

(C) a mechanical restraint shall not secure a resident in a prone position with his or her arms and/or hands behind the resident's back and secured to the resident's legs;

(D) mechanical restraint devices shall not be secured so tightly as to interfere with circulation nor so loosely as to cause chafing of the skin;

(E) mechanical restraint devices shall not be secured to a stationary object except when complete immobilization is required by four-point restraint;

(F) a resident in mechanical restraints shall not participate in any physical activity; and

(G) plastic cuffs shall only be used in emergency situations.

§343.66. Restraint Chair.

In addition to the requirements found in §§343.61 - 343.63 of this chapter, the use of the restraint chair shall be governed by the following criteria:

(1) Requirements.

(A) only a professionally manufactured restraint chair approved by the juvenile board may be used in a juvenile facility;

(B) the restraint chair may only be used to prevent self-injury, injury to others, or when a resident displays extremely aggressive or disruptive behavior and other approved restraint techniques are inappropriate or ineffective to control the resident's behavior; and

(C) only a juvenile probation or detention officer who has been trained in the proper use of the restraint chair shall:

(i) be authorized to place a resident in the restraint chair; and

(ii) provide supervision of a resident placed in the restraint chair;

(D) circulation checks shall be conducted by a juvenile probation or detention officer every 10 minutes;

(E) length of confinement

(i) a resident shall be released from the restraint chair as soon as the resident is no longer a threat to self or others and the resident can be reasonably controlled by staff;

(ii) a resident shall be considered for removal from the restraint chair every ten minutes;

(iii) the maximum confinement time in the restraint chair is one hour unless authorized by the facility administrator or designee after examination of the resident's condition by one of the following licensed medical professionals:

(I) emergency medical services (EMS/fire rescue);

(II) paramedic;

(III) registered nurse (RN);

(IV) physician (MD);

(V) licensed vocational nurse (LVN);

(VI) licensed practicing nurse (LPN);

(VII) physician assistant (PA); or

(VIII) emergency medical technician (EMT);

(iv) five hours is the maximum total time a resident may be restrained in a restraint chair within a twenty-four hour period;

(F) each use of the restraint chair shall be authorized by the facility administrator or designee;

(G) when occupied, the restraint chair shall be placed in an area with minimum visibility by other residents in the facility; and

(H) there shall be provisions for the inspection and maintenance of the restraint chair.

(2) Prohibitions.

(A) restraint chairs that have been altered, modified or customized in any way from their originally manufactured state and intended use; and

(B) the restraint chair shall not be used to confine any resident for the sole reason as having been designated as being at high risk of suicidal behavior.

(3) Supervision of Resident in Restraint Chair.

(A) level of supervision.

(i) a resident placed in the restraint chair shall be under constant visual supervision until the resident is removed from the chair;

(ii) the officer responsible for providing the constant visual supervision of a resident in the restraint chair may have limited concurrent duties only if those duties do not impede the constant visual supervision requirement; and

(iii) a resident classified as high risk of suicidal behavior under §343.10(g) of this chapter who is placed in a restraint chair shall be supervised in accordance with §343.10(g)(2)(B) of this chapter;

(B) the officer responsible for providing the constant visual supervision of a resident in the restraint chair shall have physical possession of the key or other mechanism for unlocking or releasing the resident from the restraint chair;

(C) primary control room staff shall not be authorized to provide the constant visual supervision of a resident placed in the restraint chair; and

(D) audio and/or video monitoring cannot substitute for the constant visual supervision;

(4) Required Training. Any juvenile probation or juvenile detention officer authorized to place a resident into a restraint chair shall be trained annually in the proper use of the restraint chair. Training topics shall include but not be limited to:

(A) circumstances that are appropriate for use of the restraint chair;

(B) proper use of the restraint chair, including how to get a resident in and out of the device safely;

(C) supervision procedures for a resident placed in the chair;

(D) monitoring the vital signs and critical circulation points of a resident placed in the restraint chair;

(E) emergency procedures for the removal of a resident from the restraint chair; and

(F) documentation required for use of the restraint chair.

(5) Documentation of Chair Restraints. In addition to any documentation required under §343.63 of this chapter a ten-minute observation log shall be maintained that documents:

(A) justification for the resident's continued restraint in or removal from the restraint chair;

(B) the results of the circulation checks conducted under paragraph (1)(D) of this section; and

(C) any medical checks conducted under paragraph (1)(E)(iii) of this section.

(6) Review of Use of Restraint Chair.

(A) The facility administrator and the juvenile board shall review the use of the restraint chair annually.

(B) The review shall consider and evaluate:

(i) the frequency of use;

(ii) the outcomes of the chair's use; and

(iii) any needed modifications to policy and procedure concerning the chair.

§343.67. Chemical Agents.

In addition to the requirements found in §§343.61 - 343.63 of this chapter, the use of chemical agents shall be governed by the following criteria:

(1) the juvenile board shall authorize under which situations chemical agents may be used;

(2) immediately following the use of a chemical agent, exposed residents shall be examined by a medical professional and treated if necessary;

(3) in all cases, the use of a chemical agent shall be witnessed by a staff member other than the juvenile detention officer or juvenile probation officer using the agent; and

(4) any use of a chemical agent is to be reported to the facility administrator immediately after the incident.

§343.68. Transporting Residents Outside Facility.

(a) During transportation of a resident in a vehicle, the resident may not be affixed to any part of the vehicle.

(b) During transportation in a vehicle, a resident may not be secured to another resident.

(c) Mechanical restraints used during routine transportation in a vehicle, or movement of a resident from the facility to another location outside the facility are not required to be documented as a restraint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

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## CHAPTER 344. STANDARDS FOR JUVENILE POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES

The Texas Juvenile Probation Commission proposes the repeal of Chapter 344, §§344.1 - 344.17, 344.25, 344.30 - 344.35, 344.40 - 344.44, and 344.50 - 344.53, relating to standards for Juvenile Post-Adjudication Secure Correctional Facilities. The repeal is in an effort not to overlap with new proposed standards in Chapter 343 which provide structural and substantive changes from the current standards.

Luis Guerrero, Unit Coordinator-Field Services Division, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Guerrero, has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will provide Texas Juvenile Probation Commission with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the repeal.

Public comments on the repeal may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

## SUBCHAPTER A. DEFINITIONS

### 37 TAC §344.1

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

#### §344.1. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. FACILITY STANDARDS

### 37 TAC §§344.2 - 344.17

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

#### §344.2. Administration, Organization and Management.

#### §344.3. Personnel.

#### §344.4. Management Information System.

#### §344.5. Juvenile's Records.

#### §344.6. Physical Plant.

#### §344.7. Security and Control.

#### §344.8. Rules and Discipline.

#### §344.9. Food Services.

#### §344.10. Hygiene.

#### §344.11. Medical and Health Care Services.

#### §344.12. Intake, Admission, and Release.

#### §344.13. Communications.

#### §344.14. Juvenile Rights.

#### §344.15. Programs.

#### §344.16. Volunteers and Interns.

#### §344.17. Waiver to Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. HIRING JUVENILE CORRECTIONS OFFICERS

### 37 TAC §344.25

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

#### §344.25. Hiring Juvenile Corrections Officers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## SUBCHAPTER D. JUVENILE CORRECTIONS OFFICER CERTIFICATION

### 37 TAC §§344.30 - 344.35

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.



No other code or article is affected by the repeal.

- §344.30. *Persons Who Must be Certified.*
- §344.31. *Certification.*
- §344.32. *Recertification.*
- §344.33. *Transfer of Certification.*
- §344.34. *Expiration of Certification While Under Certification Suspension Order.*
- §344.35. *Applicability.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers  
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## SUBCHAPTER E. TRAINING

### 37 TAC §§344.40 - 344.44

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

- §344.40. *Training Hours.*
- §344.41. *Training Hours for Trainers.*
- §344.42. *Certification Training.*
- §344.43. *Recertification Training.*
- §344.44. *Applicability.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER F. CODE OF ETHICS AND ENFORCEMENT PROCEEDINGS

### 37 TAC §§344.50 - 344.53

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

- §344.50. *Code of Ethics.*
- §344.51. *Enforcement Procedures--Code of Ethics.*
- §344.52. *Mandatory Certification Revocation.*
- §344.53. *Mandatory Suspension for Failure to Pay Child Support.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers  
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Texas Juvenile Probation Commission  
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## CHAPTER 345. COMMUNITY CORRECTIONS ASSISTANCE PROGRAM

### 37 TAC §345.1, §345.2

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Juvenile Probation Commission proposes the repeal of Chapter 345, §345.1 and §345.2, relating to standards for Community Corrections Assistance Program and Post-Adjudication Secure Facilities. The repeal is in an effort not to overlap with provisions in the Commission's state aid contract with all Texas Juvenile Boards.

Erika Sipiora, Deputy General Counsel, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Sipiora, has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will be the elimination of repetitive rules. There will be no impact on small business or individuals as a result of the repeal.

Public comments on the repeal may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711- 3547.

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§345.1. *Definitions.*

§345.2. *Purpose.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

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Texas Juvenile Probation Commission

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## CHAPTER 347. TITLE IV-E FEDERAL FOSTER CARE PROGRAM

**37 TAC §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, 347.21**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Juvenile Probation Commission proposes the repeal of Chapter 347, §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, 347.21, relating to standards for Title IV-E Federal Foster Care Programs. The repeal is in an effort not to overlap with new proposed standards in Chapter 347 which provide structural and substantive changes from the current standards.

Pamela Gereau, Federal Programs Specialist, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Gereau, Federal Programs Specialist, has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will provide TJPC with a more accurate account in evaluating the effectiveness of the Title IV-E Federal Foster Care Program within the juvenile probation system. There will be no impact on small business or individuals as a result of the repeal.

Public comments on the repeal may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711- 3547.

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§347.1. *Introduction.*

§347.3. *Definitions.*

§347.5. *Specific Language Required in Court Orders.*

§347.7. *Screening and Certification of IV-E Juveniles.*

§347.9. *Placement in IV-E Approved Facilities.*

§347.11. *Eligibility Recertification.*

§347.13. *Family Reunification.*

§347.15. *Case Plan and Review System.*

§347.17. *Information System.*

§347.19. *Foster Care Assistance Payments.*

§347.21. *Program Monitoring.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 424-6710



## CHAPTER 347. TITLE IV-E FEDERAL FOSTER CARE PROGRAMS

**37 TAC §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, 347.21**

The Texas Juvenile Probation Commission proposes new Chapter 347, §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, 347.21, relating to standards for Title IV-E Federal Foster Care Programs. The proposed standards provide structural and substantive changes from the current standards.

Pamela Gereau, Federal Programs Specialist, has determined that for the first five year period the new sections are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Gereau, Federal Programs Specialist, has also determined that for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcement will be the consistent standards to all counties across the State of Texas which will provide TJPC with a more accurate account in evaluating the effectiveness of the Title IV-E Federal Foster Care Program within the juvenile probation system. There will be no impact on small business or individuals as a result of the new sections.

Public comments on the proposed new sections may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§347.1. *Introduction.*

(a) The Texas Department of Protective and Regulatory Services (TDPRS) is the state agency in Texas that administers Title IV-E of the Social Security Act (42 United States Code §670 et seq.). The federal government reimburses TDPRS for part of the foster care costs

of eligible children served by TDPRS. This law was enacted to establish a program of adoption assistance, to strengthen the program of foster care assistance for needy and dependent children, to improve the programs for child welfare, social services, and aid to families with dependent children, and for other purposes. In addition, to be eligible for this program, TDPRS must manage the cases of eligible children in compliance with standards set in the Social Security Act, 42 USC §622. These requirements ensure careful management of a child's case. They require a case plan and a case review system designed to return children to their families or some other permanent plan at the earliest possible date. They require a system to track the location of children in placement, even when they run away. It also includes protection of families' and children's rights.

(b) The Texas Juvenile Probation Commission (TJPC) has contracted with TDPRS to make these federal funds available to reimburse part of the foster care costs of eligible children in the juvenile justice system. TJPC is willing to contract with any juvenile board which meets the federal requirements for Title IV-E and the Social Security Act, 42 USC §622. A juvenile board that wants to contract with TJPC to access these funds must perform in the ways described in the following rules, and in certain rules of the TDPRS referred to in these rules.

§347.3. Definitions.

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

(1) Periodic review--A review open to the participation of the caregiver and parents of the child. The purposes of the review are to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, the extent of progress on issues that led to the child's removal from the home, and to project a likely date for permanency.

(2) Aid to families with dependent children (AFDC)--A financial assistance program available to low-income families who meet categorical requirements described in 40 TAC Part 1, Chapter 3. The ADFC program has been renamed Temporary Assistance for Needy Families (TANF). However, Title IV-E eligibility continues to be based on AFDC criteria in effect on July 16, 1996.

(3) Billing level of care--Rate of payment based on the level of services a facility is licensed or approved to provide.

(4) Caregiver or substitute care facility--Any IV-E approved facility or foster family.

(5) Date of actual placement--The date the child enters an eligible foster care setting.

(6) Disposition order--A court order that results in the child's placement in substitute care.

(7) TJPC eligibility specialist--A person employed and trained by TDPRS to make IV-E eligibility determinations.

(8) Initial order of removal--The first order that removes the child from the home and which culminates in the child's placement in substitute care without the child having returned to the home.

(9) Juvenile board--An administrative body established by state statute that is responsible for the provision of juvenile probation services within a defined jurisdiction.

(10) Juvenile court--A court designated by the juvenile board under the Texas Family Code, §51.04, or other state law, which hears cases involving delinquent conduct or conduct indicating a need for supervision.

(11) Level of care--A numerical rating based on an assessment of the services a child will need while in substitute care.

(12) Permanency hearing--A judicial hearing required by 42 USC §675. The hearing must be held no later than 12 months after the child's date of actual placement in a Title IV-E approved facility, and every 12 months thereafter throughout the child's stay in substitute care.

(13) Permanency plan--A description of the planned living arrangement for the child following a stay in substitute care. It may include, but is not limited to:

(A) return to parent;

(B) placement with a relative(s);

(C) adoption;

(D) emancipation/independent living; or

(E) another permanent living arrangement.

(14) Reasonable efforts--Judicial findings regarding efforts made to prevent or eliminate the need to remove the child from the home, and if the child must be removed, judicial findings regarding efforts made to finalize the permanency plan.

(15) Specified relative--A relative within the degree of relationship specified under AFDC rules with whom the child lived within six months prior to removal from the home.

(16) Substitute care--The placement of a child in a foster home, residential treatment center, or other child care institution.

(17) Texas Department of Protective and Regulatory Services (TDPRS)--The state agency responsible for the administration of the Title IV-E program in Texas.

(18) Title IV-E (IV-E)--A federal foster care program established under 42 USC §670 et seq. which, among other things, assists states with the cost of care for children who qualify for financial assistance through the Aid to Families with Dependent Children Program, and who meet the eligibility requirements described in 42 USC §672(a).

(19) Title IV-E approved facility--Facilities licensed and/or approved by the Texas Department of Protective and Regulatory Services (TDPRS) for Title IV-E participation.

§347.5. Specific Language Required in Court Orders.

(a) The initial order of removal shall be issued no later than six months after the last day on which a child lived with a specified relative and shall include one of the following findings:

(1) "The court finds that it is in the best interest of the child for the child to be placed outside of (his or her) home"; or

(2) "The court finds that continuation in the home is contrary to the child's welfare".

(b) The initial order of removal or any subsequent orders shall include the following additional findings:

(1) "The court finds that reasonable efforts have been made to prevent or eliminate the need for the child to be removed from (his or her) home, and to make it possible for the child to return to (his or her) home";

(2) "It is ordered that the (name of county in which the court's jurisdiction arises) juvenile probation department be responsible for the child's care and placement"; and

(3) "The court finds that the child has been removed from (his or her) home and the court approves the removal."

(c) The safety of the child is of paramount concern when determining the level of reasonable efforts that are necessary.

(d) This finding must be entered within 60 days of the child's removal from the home; and

(e) A child is not IV-E eligible until the findings described in subsection (a) and (b) of this section have been made and all other IV-E eligibility requirements are met.

(f) Findings regarding reasonable efforts and best interest of the child must be based on documentation of the child's specific circumstances and so stated in the court order.

§347.7. Screening and Eligibility of IV-E Juveniles.

(a) The juvenile board shall ensure that the juvenile probation department develops and implements a procedure to screen all children placed outside the home by the juvenile court for the following IV-E eligibility criteria:

(1) whether court orders used to remove the child from the home contain language required by §347.5 of this Chapter; and

(2) whether the child would have been eligible for AFDC at the time of removal from a specified relative; and

(3) whether the child has been placed in a IV-E eligible setting as described in §347.9 of this Chapter.

(b) If a child meets the requirements in subsection (a) of this section the juvenile probation department shall complete and submit to TJPC within 30 calendar days of the child's date of actual placement a foster care assistance application with all required attachments.

(c) TJPC shall forward the application to the Eligibility Specialist who shall determine the child's IV-E eligibility and notify TJPC in writing of the child's IV-E eligibility status. TJPC shall notify the juvenile probation department of the determination.

(d) A juvenile probation department has the right to appeal any eligibility determination. The department shall submit the appeal to TJPC in writing. TJPC shall forward the appeal to TDPRS for a ruling and report the results of the ruling to the department.

§347.9. Placement in IV-E Approved Facilities.

(a) Facilities shall be licensed or approved by TDPRS to be eligible for Title IV-E participation.

(b) Facilities eligible for IV-E participation include:

(1) private residential facilities which are licensed or certified as:

- (A) an emergency shelter;
- (B) a foster family home;
- (C) a foster group home;
- (D) a therapeutic foster family home;
- (E) a therapeutic foster group home;
- (F) a residential treatment center;
- (G) a maternity home;
- (H) a halfway house;
- (I) a child placing agency;
- (J) a therapeutic camp; or

(K) a basic child care facility as these facilities are defined in 40 TAC Chapter 720.

(2) public residential child care institutions which:

(A) meet the definition of one of the facilities in paragraph (1) of this subsection;

(B) are licensed or certified for no more than 25 children; and

(C) are not operated primarily for the detention of children determined to be delinquent.

(c) Facilities not licensed by TDPRS shall comply with minimum licensing standards equivalent to those described in 40 TAC §720.

(d) A juvenile board may assist a facility who meets the requirements of subsection (b)(1) or (b)(2) of this section in obtaining approval from TDPRS for IV-E participation by ensuring that the following information is provided to TJPC:

(1) the type of license or certification held by the facility;

(2) the agency that issued the certification or license;

(3) whether the facility is a private residential facility or a public residential child care institution as those terms are defined in subsection (b)(1)(2) of this section;

(4) a description of the facility;

(5) a description of the services provided by the facility and corresponding per diem rates; and

(6) a copy of the written agreement between the facility and the juvenile probation department, if one exists.

(e) For programs operated by a juvenile board and administered by a juvenile probation department, the juvenile board shall verify that upon approval for participation in the Title IV-E program, the department shall:

(1) complete cost reports as required by TDPRS and obtain approval of the report by an independent auditor;

(2) implement procedures to ensure compliance with TDPRS or equivalent licensing standards; and

(3) allow TJPC or its designee to conduct quality assurance monitoring to measure compliance with levels of service provision as determined by TDPRS standards.

(f) For private facilities that are approved for participation in the Title IV-E program but that are not under contract with TDPRS, the juvenile board shall ensure that the provider:

(1) completes a cost report as required by TDPRS and obtains approval of the report by an independent auditor;

(2) implements procedures to ensure compliance with TDPRS or equivalent minimum licensing standards; and

(3) contracts with an independent party to measure compliance with levels of service provision in accordance with TDPRS standards.

§347.11. Eligibility Recertification.

(a) The juvenile board shall ensure that the juvenile probation department administers a process to recertify a child's IV-E eligibility status twelve months from the child's date of actual placement and every twelve months thereafter.

(b) The juvenile board shall ensure that the juvenile probation department:

(1) develops and implements procedures to track each child's IV-E eligibility status and recertification date; and

(2) submits to TJPC the foster care assistance review information every twelve months and when changes affecting eligibility occur.

(c) TJPC shall forward the foster care assistance review information to the Eligibility Specialist who shall make a redetermination of the child's IV-E eligibility and notify TJPC in writing of the child's eligibility status. TJPC shall notify the department of the determination.

(d) A department has the right to appeal any eligibility determination as described in §347.7(d) of this chapter.

§347.13. Family Reunification.

(a) The Child/Family Case Plan includes family reunification services. The juvenile board shall ensure that the juvenile probation department:

(1) assesses the home situation and offers services to the family to help them safely resume supervision, care, and control of the child;

(2) plans for permanent placement for a child, if a child cannot safely return home; and

(3) documents in the child's case record a chronology of all contacts and services offered to the family, child, and caregiver.

(b) The juvenile board shall ensure that the juvenile probation department maintains contact with the child, the child's family, and the caregiver monthly, or more frequently as required by the child/family case plan.

§347.15. Case Plan and Review System.

(a) The juvenile board shall ensure that the juvenile probation department develops a case plan that meets the requirements of 42 USC §675 for each IV-E eligible child within 30 calendar days of the child's date of actual placement. The case plan shall outline actions designed to facilitate the safe return of the child to his or her own home or other permanent placement and assure that the child receives safe and proper care while in substitute care.

(b) The status of each IV-E eligible child shall be reviewed periodically but no less frequently than once every six months from the date of actual placement.

(1) The purpose of the review is to determine:

(A) the safety of the child;

(B) the continuing necessity for and appropriateness of the placement;

(C) the extent of compliance with the case plan;

(D) the extent of progress on issues that led to the child's removal from the home; and

(E) to project a likely date for permanency.

(2) The review may be a judicial review or an administrative review, and shall be open to the participation of the parent and the caregiver.

(3) If the review is an administrative review, it shall be conducted by a panel of appropriate persons, at least one of whom is not responsible for the case management of or the delivery of services to either the child or the parents who are the subject of the review. Others with a legitimate interest in the child's welfare who may participate

in the review include the juvenile probation officer, the probation officer's supervisor, the child's counselor, the child's attorney, guardian ad litem, and a representative from the child's school.

(c) A permanency hearing open to the participation of the parent and the caregiver shall be held for each child no later than 12 months after the child's actual date of placement and every 12 months thereafter. The juvenile board shall ensure that the juvenile probation department provides sufficient information for the court to review the child's status as described in subsection (b) of this section and to determine whether:

(1) the permanency plan for the child is appropriate;

(2) reasonable efforts to finalize the permanency plan have been made;

(3) for a child 16 or older, services are needed to assist the child in the transition to independent living;

(4) for a child placed outside the state, whether the placement continues to be in the best interests of the child; and

(5) procedural safeguards have been applied regarding parental rights to notification regarding removal of the child from the home, any change in the child's placement, and any determination affecting parental visitation privileges.

(d) In accordance with 42 USC §675(5)(E), the juvenile probation department shall notify the appropriate local entity responsible for filing a petition to terminate parental rights for any child who has been in substitute care under the responsibility of the juvenile court for 15 of the most recent 22 months unless:

(1) the child is being cared for by a relative; or

(2) the child's case plan includes documentation of the compelling reason that such a petition would not be in the best interests of the child; or

(3) the family has not been provided services described in the case plan as being necessary for the safe return of the child to the child's home.

§347.17. Information System.

(a) The juvenile board shall ensure that the juvenile probation department maintains a system to track at least the following for children in substitute care:

(1) current level of care;

(2) name;

(3) date of birth;

(4) ethnicity;

(5) sex;

(6) present location;

(7) permanency plan; and

(8) who is responsible for the child's care and placement.

(b) The juvenile board shall ensure that the juvenile probation department notifies TJPC within 5 days of any changes in the child's location or any other change that would affect the child's eligibility.

§347.19. Foster Care Assistance Payments.

(a) A juvenile board shall ensure that the juvenile probation department submits to TJPC:

(1) a request for reimbursement of substitute care costs by the tenth of the month following the month in which the services were provided.

(2) a request for reimbursement of IV-E related administrative expenses within 30 calendar days of the close of each TJPC fiscal quarter; and

(3) a request for correction of a prior month's reimbursement as soon as any discrepancy or need for adjustment is discovered.

(b) TJPC shall review all reimbursement requests for accuracy and forward the requests to TDPRS for payment. All payments are contingent on the availability of federal funds and shall be forwarded to juvenile probation departments upon receipt from TDPRS.

§347.21. Program Monitoring.

(a) The juvenile board shall allow staff from TJPC to review IV-E case management systems and case records, fiscal operations, and Title IV-E approved residential programs operated by the juvenile board for compliance with TJPC, TDPRS, and related federal standards. These reviews shall be conducted on a regular basis as determined by TJPC.

(b) TJPC shall notify the juvenile board in writing of the monitoring results.

(c) The juvenile board shall ensure that the juvenile probation department responds to written notice of noncompliance with a written corrective action plan that includes a projected date of compliance within 30 calendar days of receipt of the notice.

(d) If a juvenile probation department fails to respond to the written notice of noncompliance, or continues to be out of compliance with one or more of these rules, then TJPC may pursue further action, which may include one or more of the following:

(1) arranging a meeting with the juvenile probation department to discuss:

(A) problems with noncompliance and reasons for non-compliance;

(B) identification of needed resources to assist with correcting problem areas; and

(C) strategies to correct problem areas;

(2) requiring a written corrective action plan and expected date of compliance to be submitted to TJPC within 30 calendar days of conference date;

(3) suspending federal funds to the juvenile probation department temporarily until compliance with federal standards is accomplished;

(4) requiring the juvenile probation department to reimburse funds to TJPC; and

(5) terminating the IV-E contract between TJPC and the juvenile board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

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Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## CHAPTER 348. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS

The Texas Juvenile Probation Commission proposes new Chapter 348, §§348.1-348.19 and 348.30-348.33, relating to standards for juvenile justice alternative education programs. The proposed standards provide structural and substantive changes from the current standards.

Linda Brooke has determined that for the first five year period the new sections are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Brooke has also determined that for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcement will be the consistent standards to all counties across the State of Texas which will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the new sections.

Public comments on the proposed new sections may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

### SUBCHAPTER A. PROGRAM OPERATIONS

#### 37 TAC §§348.1 - 348.19

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

#### §348.1. Purpose.

The purpose of this chapter is to establish minimum operational, programmatic, and educational standards for juvenile justice alternative education programs (JJAEP) in Texas.

#### §348.2. Definitions.

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

(1) Attendance Days--The actual number of instructional days a student is enrolled and in attendance at the JJAEP for a minimum of 4 hours per day.

(2) Absent Days--The actual number of instructional days a student is enrolled and not in attendance at the JJAEP for a minimum of 4 hours per day.

(3) Exit Reason--The reason a student exits the JJAEP program. A student shall be accounted for in only one of the following categories.

(A) Completed program/returned to home school while on probation--Student has returned to home school district while still under terms of probation.

(B) Completed program/term of probation expired--Student has returned to home school district due to expiration of probation order.

(C) Completed program/term of placement ended--Student returned to home school district due to termination of expulsion status and probation status.

(D) GED Completion--Student has successfully tested and passed the high school equivalency examination.

(E) Graduated--Student has completed all necessary requirements to receive a high school diploma.

(F) Left Program Incomplete--Student has been terminated from the program due to:

(i) a probation modification or revocation;

(ii) an out-of-home placement;

(iii) being held in juvenile detention;

(iv) being held in jail;

(v) absconding (violation of conditions of release from detention or court order);

(vi) being committed to the Texas Youth Commission;

(vii) being committed to the Texas Department of Criminal Justice; or

(viii) truant or runaway.

(G) Other--Student who left program due to out of county move, death, medical reason, other non-delinquency reason or withdrew to enroll in another educational program.

(4) Inactive Status--Attendance status assigned to a student where the student is maintained as enrolled and not counted as absent or present from the JJAEP.

(5) Juvenile Justice Alternative Education Program (JJAEP)--An educational program operated by the juvenile board of a county to serve expelled students pursuant to Chapter 37, Texas Education Code.

(6) Commission--The Texas Juvenile Probation Commission.

#### §348.3. Program Administration and Organization.

##### (a) Policy Board.

(1) The juvenile board of the county in which the JJAEP is located shall be responsible for approving and implementing the policy for the program.

(2) The JJAEP shall be operated according to current written policies which address personnel, administration, programming, training, and standards under this chapter.

(b) Management Review. The juvenile board and the administrative officer shall participate in an annual evaluation of overall operations of the JJAEP. Existing policies and practices shall be reviewed to determine their continuing relevance to the mission of the JJAEP.

(c) Required Staff. Each JJAEP shall provide the required administration, programmatic and supervision staffing as required by this section.

(1) Administration. The juvenile board shall designate an administrative officer.

(A) Qualifications. The administrative officer shall, at a minimum, hold a four-year degree from an accredited university and shall possess juvenile justice and/or education experience.

##### (B) Duties.

(i) The administrative officer shall be responsible for the management of the JJAEP and shall ensure compliance with all applicable laws related to JJAEPs.

(ii) The administrative officer shall ensure compliance with contractual provisions of all contracts with the Commission related to JJAEPs.

(2) Instructional Staff. The juvenile board shall employ adequate instructional staff or contract for the provision of instructional services to provide appropriate educational services to students in attendance in the JJAEP.

(A) The instructional staff for the JJAEP shall include, at a minimum, one Texas certified teacher that meets the requirements of certification as required by the State Board for Educator Certification.

(B) The Juvenile Board shall employ or contract for the employment of the appropriate number of special education teachers as required by federal law. A special education teacher shall meet the requirements of certification as required by the State Board for Educator Certification.

(C) Instructional staff shall, at a minimum, hold a four-year degree from an accredited university.

(D) Instructional Staff to Student Ratio. 1 to 16 preferred; 1 to 24 maximum.

(3) Caseworkers. The Juvenile Board shall employ or contract for the employment of at least one caseworker per JJAEP. Caseworkers shall be either social workers, probation officers assigned to the JJAEP, counselors or other mental health professionals.

(A) Qualifications. All caseworkers shall meet the minimum professional requirements and shall be licensed or certified by the appropriate authority in their field.

(B) Caseworker Staff to Student Ratio. 1 to 25 preferred; 1 to 44 maximum.

##### (4) Supervision Staff.

(A) The Juvenile Board shall employ or contract for the employment of adequate supervision staff, which may include drill instructors, teacher aides, security personnel, caseworker aides, and volunteers.

(B) Supervision staff shall, at a minimum, possess a high school diploma or GED.

(5) Operational Staff to Student Ratio (Includes Instructional Staff, Supervisory Staff, On-site Caseworkers, and Facility Administrators as defined above). 1 to 8 preferred; 1 to 12 maximum.

#### §348.4. Personnel Administration.

(a) Personnel Policies. Written policy shall be made available to each JJAEP staff member and volunteer at the time of hiring. The policies shall include:

(1) grievance procedures;

(2) job descriptions including duties and responsibilities of each position; and

(3) security and control procedures.

(b) Personnel Records. The administrative officer shall ensure that a personnel file is maintained for each employee. The file shall, at a minimum include:

- (1) application for employment;
- (2) references;
- (3) criminal records check;
- (4) training records;
- (5) applicable personnel actions;
- (6) documentation of the employee's qualifications; and
- (7) applicable certification verification.

(c) New Employee Orientation. All staff, including temporary, seasonal or substitute employees shall have orientation training prior to having sole contact with students. At a minimum this training shall include:

- (1) safety and security procedures including but not limited to fire drills and the JJAEP's safety disaster plan;
- (2) child abuse reporting;
- (3) incident reports;
- (4) student code of conduct;
- (5) behavior management program;
- (6) transporting students, if applicable;
- (7) crisis intervention;
- (8) distribution of medication, if applicable;
- (9) sexual harassment; and
- (10) physical restraint training, if applicable.

(d) Criminal Record Check.

(1) Prior to employment in the JJAEP, the juvenile board or designee, shall initiate a criminal history check in accordance with the following guidelines on all JJAEP staff that have direct contact with students.

(2) Continued employment in the JJAEP shall be contingent upon the completion and return of acceptable results of criminal history checks in accordance with the Texas Administrative Code §341.23(a).

(3) The following criminal history checks shall be conducted:

(A) a Texas criminal history background search (Texas Crime Information Center);

(B) a local law enforcement sex offender registration records check in the city or county where the applicant resides;

(4) An internet based criminal background search shall not be used to conduct the background searches required under paragraph (3)(A) of this subsection.

(e) Research Programs.

(1) The administrative officer shall review proposals for research to ensure conformity with departmental policy.

(2) Departmental policy shall forbid student participation in medical, pharmacological, and cosmetic research programs.

(3) Students may voluntarily participate in approved research programs with the written consent of the student's parent, guardian or custodian.

§348.5. Management Information System.

(a) Data Collection. The juvenile board and the administrative officer shall ensure that statistical and programmatic data pertaining to each student admitted to a JJAEP are gathered and documented.

(b) Student Educational Data and Records. At a minimum, the following information shall be documented and contained in the case file for each student in the program:

- (1) current grade level;
- (2) notice of expulsion;
- (3) applicable court orders placing student into JJAEP;
- (4) police offense report if applicable;
- (5) entry and exit transition plans.
- (6) education records to include special education determination, appropriate special educational records, statewide assessment scores, and home language survey;
- (7) admission and exit testing data, if applicable;
- (8) physical exam, as required under §348.7(f) of this chapter;
- (9) documentation of regular education program review of student as required by Texas Education Code §37.011(d);

(10) date of admission;

(11) number of attendance days;

(12) number of absence days;

(13) date of release;

(14) emergency notification contacts for the student;

(15) special medical needs, if any, of the student;

(16) student immunization records; and

(17) medical release form.

§348.6. Curriculum.

(a) Required Courses. The JJAEP shall, at a minimum, provide the following required courses to all students in attendance at the JJAEP:

(1) English language arts;

(2) mathematics;

(3) social studies;

(4) science;

(5) high school equivalency program (GED); and

(6) self discipline which may be integrated into the program and may include formal instruction in drug awareness, anger management, and impulse control.

(b) Recommended Courses. The following courses are recommended to be provided to all students in attendance at the JJAEP:

(1) life skills;

(2) physical fitness;

(3) vocational training; and

(4) other electives.



(c) Curriculum Development. Programs shall have a strong accelerated component to their instruction for all required areas of instruction.

(1) At least one certified teacher shall oversee the development and implementation of the curriculum in the JJAEP academic program.

(2) The juvenile board or designee shall assure that course instruction is consistent with the essential knowledge and skills of each subject of the foundation curriculum as defined under the rules of the State Board of Education under Texas Education Code §28.002(c).

(3) The GED curriculum must address the elements required to pass the GED test but program components may be integrated into the regular program curriculum.

§348.7. Program Requirements.

(a) Special Education. Students with disabilities who are placed in the JJAEP shall be afforded education services determined by a duly constituted Admissions Review and Dismissal Committee to be appropriate for the student to receive a free and appropriate public education as defined by federal and state laws.

(b) English as a Second Language (ESL). English as a second language services and instruction shall be provided in the JJAEP and shall be appropriate to address the needs of those students who speak English as a second language or who are non-English speaking.

(c) High School Equivalency Examination (GED). Scores on each GED test administered shall be certified by the GED examiner.

(d) Counseling. Counseling services provided by caseworkers shall be available to all students enrolled and in attendance at the JJAEP.

(e) Meals.

(1) Policy and practice shall ensure the provision of a lunch meal for each student in attendance at the JJAEP on each school day.

(2) A student shall not be denied a lunch meal as a sanction or disciplinary measure.

(f) Medical.

(1) The JJAEP shall have a medical release on file for each student in accordance with Texas Family Code §32.001 signed by the student's parent, guardian or custodian.

(2) Screening.

(A) A JJAEP that has a boot-camp or intensive physical fitness component, shall require a medical screening for each student performed by a licensed physician or physician assistant.

(B) No student shall be permitted to participate in physical activity unless a licensed physician or physician assistant certifies in writing that the student has no physical limitations or conditions that would prohibit participation.

(3) In accordance with Texas Human Resources Code §142.005, the JJAEP shall have written policies and procedures governing the storage, use and distribution of all medication to students.

(g) Student Attendance Accounting.

(1) A JJAEP shall maintain accurate and current attendance records for all students enrolled.

(2) A student shall be placed on inactive status as defined in §348.2 of this chapter for the following reasons:

(A) juvenile detention or jail;

(B) truancy as defined by Texas Family Code §51.03(b)(2);

(C) documented runaway; and

(D) extended illness documented by a medical professional.

(3) A student on inactive status for 30 consecutive school days shall be withdrawn.

§348.8. Inter-Local Cooperation.

(a) Parent or Guardian.

(1) The JJAEP shall notify a student's parent, guardian or custodian of the student's enrollment into and exit from the JJAEP.

(2) Periodic progress reports shall be given to the student and the student's parent, guardian or custodian at a minimum of every 120 school days.

(b) School District.

(1) Student Entry and Exit Transition Plans.

(A) The JJAEP shall coordinate with the school district a written transition plan for entrance into the JJAEP.

(B) The JJAEP shall develop, provide and communicate to the school district a written transition plan that covers the students exit from the JJAEP.

(C) The JJAEP shall provide the student's parent with a written notice of the transition plan.

(2) The JJAEP shall provide to each enrolled student's home school district the student's attendance records, grades and transition plan as well as any other records upon the student's transition back to the home school.

(3) The JJAEP shall transfer all grades and course credit earned to the sending school district when a student is transferred back to the home school district.

(4) All students enrolled in the JJAEP shall take the statewide assessment as required under Texas Education Code §39.023. The JJAEP shall have a policy on how to coordinate the provisions of the statewide assessment with the local school districts.

(c) Juvenile Probation Departments.

(1) The JJAEP and the local juvenile probation department shall cooperate in the coordination of providing needed social services for the students enrolled in the JJAEP.

(2) Local probation departments shall, at a minimum, provide information to the JJAEP regarding the probation status of the juvenile, as well as the name of the juvenile's probation officer.

(3) The JJAEP shall provide the local probation department with monthly attendance records of juvenile probationers enrolled in the JJAEP.

(d) Truancy. The JJAEP shall within 2 working days, report truancy to the appropriate enforcement agency.

§348.9. Physical Plant.

(a) The facility shall conform to all applicable federal, state, and/or local ordinances and codes.

(b) The population of the facility shall not exceed the rated capacity as determined by the local fire marshal.

(c) The classroom space, fixtures and common areas shall be adequate to meet the programmatic requirements for each student enrolled and in attendance in the JJAEP.

§348.10. Security and Control.

(a) Security Plan. The JJAEP shall have a written plan that addresses security:

- (1) within the school facility;
- (2) on school property;
- (3) at school sponsored events off school property; and
- (4) during transportation of JJAEP students if applicable.

(b) Transportation.

(1) Policies shall govern the use of motor vehicles to transport students enrolled in the JJAEP.

(2) Policies shall address:

- (A) methods of transportation authorized;
- (B) security and supervision;
- (C) authorized transport personnel;
- (D) emergency procedures; and
- (E) the requirement of auto liability insurance when transporting in personal vehicles.

(c) Emergency Procedures. The JJAEP shall have written policies and procedures regarding emergency situations, including but not limited to:

- (1) fire;
- (2) bomb threats;
- (3) hazardous weather conditions;
- (4) riots; and
- (5) medical emergencies.

(d) Cardio-Pulmonary Resuscitation (CPR) and First Aid. Each JJAEP shall have a minimum of two staff members on duty at all times certified in CPR and first aid.

(e) Emergency Drills. Unless otherwise required more frequently by local fire codes or ordinances, the JJAEP shall conduct fire drills at least twice a year.

(f) Supervision.

(1) Students removed from the regular classroom setting and placed in an unlocked isolation, administrative segregation, time-out, in-school suspension or other disciplinary removals from the regular classroom shall be under continuous visual supervision.

(2) Electronic monitoring equipment shall not be used to substitute for required staff or continuous visual supervision.

(g) Law Violations. Written policy, procedures, and practice shall provide that all alleged violations of penal laws of this state or the United States shall be reported by the JJAEP staff to the proper law enforcement authorities if the conduct that constitutes the alleged violation occurred:

- (1) in any JJAEP building or facility;
- (2) on the property where the JJAEP is located;
- (3) in a motorized vehicle being operated by JJAEP staff that is transporting JJAEP students;

(4) at a JJAEP sponsored event either on or off the property where the JJAEP is located; or

(5) within 300 feet of the property where the JJAEP is located.

(h) Searches.

(1) Searches shall be conducted according to written policies limited to certain conditions.

(2) All students entering the JJAEP shall, at a minimum, be subjected to a pat-down search or a metal detector screening on a daily basis.

(3) JJAEP staff shall not conduct strip searches.

(i) Disciplinary Reports.

(1) Written policy, procedure, and practices shall require JJAEP staff to prepare a written disciplinary report for each incident occurring in the JJAEP that constitutes a major violation of the student code of conduct or facility rules.

(2) The disciplinary report shall be forwarded to the administrative officer within 24 hours or on the next working day.

(j) Weapons. Only certified peace officers acting in the scope of their authority may possess and carry weapons or chemical agents within the premises of the JJAEP.

§348.11. Physical Restraint Definitions.

The words or terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(1) Approved Physical Restraint Technique ("physical restraint")--A professionally trained restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints. The approved physical restraint technique shall be approved for use by the Commission and adopted by the juvenile board.

(2) Approved Mechanical Restraint Devices ("mechanical restraint")--A professionally manufactured mechanical device to aid in the restriction of a person's bodily movement. The approved mechanical restraint shall be approved by the Commission and adopted by the juvenile board. The following are Commission approved mechanical restraint devices:

(A) Ankle Cuffs--Metal, cloth or leather band designed to be fastened around the ankle to restrain free movement of the legs;

(B) Anklets--Cloth or leather band designed to be fastened around the ankle or leg;

(C) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms;

(D) Plastic Cuffs--Plastic devices designed to be fastened around the wrist or legs to restrain free movement of hands, arms or legs;

(E) Waist Band--A cloth, leather, or metal band designed to be fastened around the waist used to secure the arms to the sides or front of the body; and

(F) Wristlets--A cloth or leather band designed to be fastened around the wrist or arm which may be secured to a waist belt.

(3) Physical Escort--Touching or holding a student with a minimum use of force for the purpose of directing the student's movement from one place to another. A physical escort is not considered a physical restraint.

(4) Protective Devices--Professionally manufactured devices used for the protection of students or staff that do not restrict the movement of a student. Protective devices are not considered mechanical restraint devices.

§348.12. Requirements.

The use of restraints shall be governed by the following criteria:

(1) restraints shall only be used by JJAEP staff certified in the use of the approved physical restraint technique;

(2) prior to participating in any restraint JJAEP staff shall be certified in the use of the approved physical restraint technique;

(3) restraints shall only be used in instances of threat of imminent self-injury, injury to others, or serious property damage;

(4) restraints shall only be used as a last resort;

(5) only the amount force and type of restraint necessary to control the situation shall be used;

(6) restraints shall be implemented in such a way as to protect the health and safety of the student and others; and

(7) restraints shall be terminated as soon as the student's behavior indicates that the threat of imminent self-injury, injury to others, or serious property damage.

§348.13. Prohibitions.

Restraints that employ a technique listed below are prohibited:

(1) restraints used for punishment, discipline, retaliation, harassment, compliance, or intimidation;

(2) restraints that deprive the student of basic human necessities including restroom privileges, water, food and clothing;

(3) restraints that are intended to inflict pain;

(4) restraints that put a student face down with sustained or excessive pressure on the back or chest cavity;

(5) restraints that put a student face down with pressure on the neck or head;

(6) restraints that obstruct the airway or impair the breathing of the student;

(7) restraints that restrict the student's ability to communicate;

(8) restraints that obstruct the view of the student's face;

(9) any technique that does not require the monitoring of the student's respiration and other signs of physical distress during the restraint; and

(10) percussive or electrical shocking devices.

§348.14. Documentation.

All restraints shall be fully documented and maintained. Written documentation regarding the use of restraints shall require at a minimum:

(1) name of student;

(2) staff member(s) name and title(s) who administered the restraint;

(3) date of the restraint;

(4) duration of the restraint including notation of the time the restraint began and ended;

(5) location of the restraint;

(6) description of preceding activities;

(7) behavior which prompted the restraint;

(8) type of restraint applied;

(9) efforts made to de-escalate the situation and alternatives to restraint that were attempted; and

(10) any injury that occurred during the restraint.

§348.15. Mechanical Restraint.

Mechanical restraints shall only be used by juvenile probation and detention officers in the manner defined under chapters 341 and 343 of this title.

§348.16. Serious Incidents.

The administrative officer or his/her designee shall report in writing to the Commission and the juvenile board within 24 hours the death, suicide, attempted suicide and any serious injury, including youth on youth assaults, that requires medical treatment by a physician or physician's assistant that occurs in the JJAEP.

§348.17. Abuse, Exploitation and Neglect.

(a) Reporting. Any employee, contractor, intern or volunteer of a JJAEP shall report to the Commission, the juvenile board and local law enforcement any allegation of abuse, exploitation or neglect of a student that occurs in or involves an employee, contractor, intern or volunteer of a juvenile justice program, juvenile probation department, juvenile justice alternative education program, pre-adjudication secure detention facility, post-adjudication secure facility or short-term detention facility.

(1) Any allegation of abuse, exploitation or neglect involving a juvenile under the jurisdiction of the juvenile court that is not alleged to have occurred in a juvenile justice program or facility under the jurisdiction of the juvenile board shall be reported as required in Texas Family Code §261.101.

(2) A report of the alleged abuse, exploitation or neglect under paragraph (a) of this section shall be made within 24 hours from the time the allegation is made.

(b) Internal Investigation.

(1) An internal investigation shall be conducted of all allegations of abuse, exploitation or neglect of a student in the JJAEP;

(2) All employees of the JJAEP shall fully cooperate with any Commission investigation of alleged abuse, exploitation or neglect of a student;

(3) Until the conclusion of the internal investigation any person alleged to be a perpetrator of abuse, exploitation or neglect of a student shall be placed on administrative leave or reassigned to a position having no contact with the students in the JJAEP or juveniles under supervision by the juvenile probation department, participating in a juvenile justice program or juveniles under the jurisdiction of the juvenile court, or the alleged victim's family;

(4) At the conclusion of the internal investigation the administrative officer or his/her designee shall take appropriate measures to provide for the safety of the students and;

(5) The administrative officer or his/her designee shall submit a copy of the internal investigation to the Commission within 5 calendar days following the completion of the internal investigation.

(c) Juvenile Board. In the event the administrative officer is alleged to be a perpetrator of abuse, exploitation or neglect of a student, the juvenile board shall:

(1) Conduct the internal investigation or appoint an individual who is not an employee of the JJAEP, juvenile probation department, or juvenile justice program to conduct the internal investigation;

(2) Until the conclusion of the internal investigation place the administrative officer on administrative leave, or ensure the administrative officer has no contact with the students in the JJAEP, juveniles under supervision by the juvenile probation department, participating in a juvenile justice program or under the jurisdiction of the juvenile court or the alleged victim's family; and

(3) The juvenile board or their designee shall submit a copy of the internal investigation to the Commission within 5 calendar days following the completion of the internal investigation.

(d) Treatment and Safety. The administrative officer shall ensure that students participating in the JJAEP shall not be subjected to abuse, exploitation or neglect as defined in Chapter 261, Texas Family Code.

§348.18. Student Code of Conduct.

(a) Adoption. The JJAEP student code of conduct shall be adopted by the juvenile board and shall describe and define in writing the JJAEP behavior management system.

(b) Notice. The JJAEP student code of conduct shall be provided to each student and the student's parent, guardian or custodian upon admittance into the JJAEP.

(1) The code of conduct shall be reviewed with each student and the student's parent, guardian or custodian and shall be translated if necessary to ensure understanding of the content by all parties.

(2) A signed acknowledgment of receipt of the student code of conduct shall be maintained in each student's file.

(3) JJAEP staff shall be provided a copy of the code of conduct.

(c) Discipline and Sanctions. The JJAEP student code of conduct shall detail the sanctions and disciplinary procedures that may be applied to students for particular behaviors. Disciplinary procedures shall be carried out promptly and all students shall be afforded due process protections. The student code of conduct shall include, but not be limited to the following:

(1) Prohibited behaviors and conduct;

(2) Disciplinary consequences for prohibited behaviors and conduct;

(3) Description of circumstances that will allow removal from the classroom; and

(4) Circumstances under which a JJAEP student may be placed into another educational setting.

(d) Prohibited Sanctions. The following sanctions shall be prohibited in the JJAEP and their prohibition shall be clearly noted in the student code of conduct:

(1) Corporal punishment, physical abuse, humiliating punishment or hazing;

(2) Deprivation of food and water;

(3) One student sanctioning another; or

(4) Expulsion from a JJAEP.

(e) Dress Code. The JJAEP student code of conduct may require a reasonable dress code or uniforms for students in attendance.

(f) Grievance Procedures. Student grievance procedures shall be explained fully in the student code of conduct.

(1) Procedure and practice shall facilitate student complaints of mistreatment or complaints of programmatic issues and shall ensure students are protected against retaliation in any form.

(2) Grievance procedures shall ensure that each student is afforded one level of appeal on all grievance complaints.

(3) A copy of each grievance submitted by a student shall be provided to the student's parent, guardian or custodian and to the juvenile board or its designee.

§348.19. Waiver or Variance to Standards.

Unless expressly prohibited by another standard, the juvenile board or chief administrative officer may make an application for waiver and the juvenile board may make an application for variance of any standard or standards adopted by the Commission in accordance with §349.2 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300431

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 424-6710



## SUBCHAPTER B. ACCOUNTABILITY

### 37 TAC §§348.30 - 348.33

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§348.30. Mission of Program.

Academically, the mission of the JJAEP shall be to allow students to perform at grade level. The JJAEP shall provide an instructional program that results in a level of student academic progress in the areas of reading and math.

§348.31. Annual Performance Evaluation.

A JJAEP's performance indicators shall be based primarily on non-academic and academic performance indicators. In evaluating a JJAEP, the Commission may consider other factors, including but not limited to, the recidivism rate of its students, classroom behaviors measured through a standardized methodology, total course credits earned and total courses passed.

(1) Non-Academic Indicator. Average rate of attendance for all JJAEP students shall not be less than seventy-five percent of the total number of student attendance days for the school year.

(2) Academic Indicator. The JJAEP shall use the assessment instrument as selected by the Commission in assessing student

performance in the areas of reading and mathematics. The pre- and post-testing instruments shall be valid for measuring performance improvement for an individual student for a period of 90 school days or longer.

(A) Pre-tests. Every student that will be enrolled in a JJAEP for 90 or more school days shall be assessed during the admission period. The pre-test shall be administered to appropriate JJAEP students no more than 15 school days after the student is enrolled in the JJAEP.

(B) Post-tests. Post-tests shall evaluate the change in academic performance of the student while in attendance at the JJAEP in the areas of reading and mathematics. A JJAEP is not required to administer a post-test to:

(i) Those students whose exit reasons are "unsuccessful" or "other" as defined by §348.2 of this chapter.

(ii) Students who are not enrolled in a JJAEP for at least one semester or 90 cumulative full time instructional days, whichever is shorter.

(C) Growth in the statewide assessment as required under Texas Education Code Chapter 39 shall be used to demonstrate performance in the areas of reading and math. Performance of students who were enrolled for a period of 90 days or longer at the time the instrument was administered shall be compared to the students' previous performance on the same instrument.

(3) Other Performance Indicators.

(A) Risk Assessment. The JJAEP shall use the instrument selected by the Commission to evaluate student behavior progress.

(i) the instrument shall be administered to all students within 15 school days of student entry into the JJAEP.

(ii) the instrument shall be administered to all students within 10 school days of the student's exit from the JJAEP unless a student exits "unsuccessful" or "other" as determined by §348.2 of this chapter and the student is unavailable.

(B) Re-Contact Rate. The rate of subsequent contact with the juvenile probation department.

(4) Establishment of Benchmarks. A benchmark analysis shall be conducted on each indicator over a three-year period. Thereafter, JJAEP benchmark computation and methodology shall be reassessed every five years.

§348.32. Assessment Reliability and Safeguards.

Written policy of the JJAEP shall describe the safeguards it will use to maintain the integrity of the assessment process so that all student scores reflect actual student progress.

§348.33. Performance Reports.

(a) Each year the Commission shall publish statistical and performance data for each mandatory JJAEP. Performance data will indicate if the JJAEPs are impacting the measures being utilized in the evaluation.

(b) The report will be sent to the chairman of the juvenile board that operates a mandatory JJAEP, the chairman of the board of trustees of each school district that participates in a mandatory JJAEP, and the regional education service center having jurisdiction over the area served by the mandatory JJAEP.

(c) The report will examine changes in the following factors:

(1) Statewide assessment scores for Math and Reading;

(2) Risk Assessment that demonstrates the correlation with improvement in academic performance;

(3) Attendance;

(4) Pre and Post-test performance comparison by individual students; and

(5) Rate of Re-contact.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300432

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710

◆ ◆ ◆  
**CHAPTER 348. JUVENILE JUSTICE  
ALTERNATIVE EDUCATION PROGRAMS**

The Texas Juvenile Probation Commission proposes the repeal of Chapter 348, §§348.101 - 348.112 and §§348.501 - 348.504, relating to standards for Juvenile Justice Alternative Education Programs. The repeal is in an effort not to overlap with new proposed standards in Chapter 348 which provide structural and substantive changes from the current standards.

Linda Brooke, Director of Education, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Brooke, has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will provide Texas Juvenile Probation Commission with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the repeal.

Public comments on the repeal may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

**SUBCHAPTER A. PROGRAM OPERATIONS**

**37 TAC §§348.101 - 348.112**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§348.101. Purpose.

§348.102. Definitions.

- §348.103. *Program Administration and Organization.*
- §348.104. *Personnel Administration.*
- §348.105. *Management Information System.*
- §348.106. *Curriculum.*
- §348.107. *Program Requirements.*
- §348.108. *Inter-Local Cooperation.*
- §348.109. *Physical Plant.*
- §348.110. *Security and Control.*
- §348.111. *Student Code of Conduct.*
- §348.112. *Waiver.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## SUBCHAPTER B. ACCOUNTABILITY

### 37 TAC §§348.501 - 348.504

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

- §348.501. *Mission of Program.*
- §348.502. *Annual Performance Evaluation.*
- §348.503. *Assessment Reliability and Safeguards.*
- §348.504. *Performance Reports.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

The Texas Juvenile Probation Commission proposes new Chapter 349, §§349.1, 349.2, 349.7-349.15, 349.21-349.32, 349.37, 349.42-349.52, 349.57-349.64, and 349.69-349.72, relating to general administrative standards. The proposed standards provide structural and substantive changes from the current standards.

Ron Quiros, Director of Training and Certification, has determined that for the first five year period the new sections are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Quiros has also determined that for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcement will be the consistent standards to all counties across the State of Texas which will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the new sections.

Public comments on the proposed new sections may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

## SUBCHAPTER A. DEFINITIONS

### 37 TAC §349.1

The standard is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the new standard.

#### §349.1. Definitions.

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

(1) Applicant--An individual applying for certification or recertification as a detention or probation officer.

(2) Board--The governing board of the Texas Juvenile Probation Commission.

(3) Certified Officer--Either a detention or probation officer who has met the minimum certification requirements and is currently certified by the Commission.

(4) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a single juvenile probation department or a multi-county judicial district.

(5) Commission--The Texas Juvenile Probation Commission.

(6) Department--A juvenile probation department.

(7) Detention Officer--A person whose primary responsibility is the supervision of the daily activities of residents in either a secure detention facility or a post adjudication secure correctional facility. This may include the facility administrator, assistant facility administrator or a supervisor of juvenile detention officers. Other administrative, food services, janitorial, and auxiliary staff are not considered to be detention officers.

(8) Distance Learning--Distance learning takes place when a teacher and student(s) are separated by physical distance, and technology (i.e., voice, interactive video, data, and print), is used to bridge

the instructional gap. Distance learning does not include a course delivered by an accredited college or university using distance education methods.

(9) Facility--Either a secure detention facility or a post-adjudication secure correctional facility.

(10) Facility Administrator--Individual designated by the policy board of a private secure detention facility or a post adjudication secure correctional facility, or by the Chief Administrative Officer or juvenile board, as the program director or superintendent of a secure detention facility or post adjudication secure correctional facility.

(11) NCIC--The National Crime Information Center (NCIC) is the Federal Bureau of Investigation (FBI) database utilized for the tracking of an individual's criminal history in the United States.

(12) TCIC--Texas Crime Information Center (TCIC) is the Department of Public Safety database utilized for the tracking of an individual's criminal history in the state of Texas.

(13) Training--An organized, planned and evaluated activity designed to achieve specific learning objectives.

(14) Video Training--Pre-recorded non-interactive training materials or conferences. Video training does not include video tele-conference.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. WAIVER

### 37 TAC §349.2

The standard is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the new standard.

#### §349.2. Waiver or Variance.

##### (a) Waiver.

(1) Who May Request. Unless expressly prohibited by another standard, the juvenile board, chief administrative officer or facility administrator may make an application for waiver of any standard or standards adopted by the Commission. If the chief administrative officer or facility administrator makes a request for waiver, the chief administrative officer or facility administrator shall in writing notify the juvenile board of the request simultaneous with the request's submission to the Commission.

(2) Contents of Request. The written request for waiver shall:

(A) explain why compliance with standards cannot be achieved immediately;

(B) explain the impact the waiver would have on compliance with other standards;

(C) provide a plan to ensure compliance including how the health and safety of juveniles would be maintained during the duration of the waiver; and

(3) Length of Waiver. Waivers granted by the Commission under this section shall not exceed one year. The juvenile board may request one subsequent waiver.

(4) Review of Request. In the event a request for waiver is denied, the juvenile board, or chief administrative officer may request a review by the Commission. The review of the waiver request shall occur at the next regularly scheduled Commission meeting.

##### (b) Variance.

(1) The TJPC Board may grant a permanent variance from a standard if the Board makes the following findings of fact:

(A) The juvenile board has shown by the substantial weight of the evidence that the health and safety of juveniles is maintained;

(B) The juvenile board has shown substantial compliance with the intent and purpose of the standard for which a variance is requested through alternative methods or means;

(C) The juvenile board has shown that compliance with the standard in question would be an undue hardship on the county; and

(D) The juvenile board has shown that issuing the variance would not put the juvenile board in violation of any state or federal law.

(2) The juvenile board shall submit an application for a variance to the TJPC Board on a Commission provided form.

(3) The Commission shall grant or deny the variance at the next scheduled board meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. CERTIFICATION AND RECERTIFICATION

### 37 TAC §§349.7 - 349.15

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§349.7. Certification Eligibility.

(a) Basic Eligibility Requirements.

(1) In addition to the requirements in subsections (b) or (c) of this section an applicant is eligible for certification from the Commission if the applicant:

(A) is twenty-one years of age or older;

(B) does not have any of the following disqualifying criminal history:

(i) a felony conviction against the laws of this state, another state, or the United States within the past 10 years;

(ii) a deferred adjudication for a felony against the laws of this state, another state, or the United States within the past 10 years;

(iii) current felony probation or parole;

(iv) a jailable misdemeanor conviction against the laws of this state, another state or the United States within the past 5 years;

(v) a deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United States within the past 5 years;

(vi) current misdemeanor probation or parole; or

(vii) registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(C) is not currently under an order of suspension issued under §349.27 or §349.31 of this chapter; and

(D) has never had any type of certification revoked from the Commission under §394.27(D)(3) of this chapter.

(2) A request for waiver may not be requested for any disqualifying criminal history under paragraph 1(B) of this subsection unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by either the trial or an appellate court.

(b) Probation Officer.

(1) In addition to meeting the requirements under subsection (a) of this section, an applicant is eligible for certification as a probation officer if the applicant:

(A) meets the employment eligibility requirements under §341.20 of this title or has received an exemption under §341.21 of this title; and

(B) completes 40 hours of certification training in accordance with §349.15(c)(1) of this chapter within 18 months prior to the Commission's receipt of the certification application.

(2) An individual with a degree from a foreign college or university may apply one time for provisional certification as a probation officer under §349.9 of this chapter.

(c) Detention Officer.

(1) In addition to meeting the requirements under subsection (a) of this section, an applicant is eligible for certification as a detention officer if the applicant:

(A) meets the employment eligibility requirements under §343.15 of this title;

(B) has completed 40 hours of certification training in accordance with §349.15(c)(2) of this chapter within 18 months prior to the Commission's receipt of the certification application;

(C) has one of the following:

(i) a high school diploma;

(ii) a general equivalency diploma from a high school or issuing authority within the United States of America;

(iii) a United States Military record that indicates the education level received is equivalent to a United States high school diploma or general equivalency diploma;

(iv) a foreign high school or home schooling diploma that meets the validation requirements under §349.9(b)(2) of this chapter; or

(v) unconditional acceptance into an accredited college or university accredited by an accrediting organization recognized by the Higher Education Coordinating Board.

(D) has current certification in:

(i) Cardiopulmonary Resuscitation (CPR);

(ii) First Aid; and

(iii) an approved physical restraint technique as defined by §343.60(1) of this chapter;

(2) An applicant with a high school diploma issued in a foreign country or who completed high school under home schooling may apply one time for provisional certification under §349.9 of this chapter.

§349.8. Certification Procedures.

(a) Criminal History Checks.

(1) Prior to submitting a certification application, the following criminal history checks shall be conducted and returned on every certification applicant:

(A) a Texas criminal history background search (TCIC);

(B) a local law enforcement sex offender registration records check in the city or county where the applicant resides; and

(C) a Federal Bureau of Investigation (FBI) fingerprint based criminal history background search (NCIC).

(D) In addition to the requirements in paragraph (1)(A), (B), and (C) of this subsection, if the applicant currently resides in one of the following states, or resided in one of the following states within the 10 years prior to the date the certification application was made, a state criminal history background search and state sex offender registration check shall also be conducted where available:

(i) Hawaii;

(ii) Kansas;

(iii) Kentucky;

(iv) Louisiana;

(v) Maine;

(vi) Massachusetts;

(vii) New Hampshire;

(viii) Rhode Island;

(ix) Tennessee;

(x) Vermont; and

(xi) the District of Columbia.



(2) An Internet based criminal background search shall not be used to conduct the background searches required under subsection (a)(1)(A) and subsection (a)(1)(C) of this section.

(3) A returned criminal history check under subsection (a)(1) of this section that is more than 90 calendar days old will not meet the certification eligibility requirement under §349.7(a)(1)(B) of this chapter.

(4) A copy of all returned criminal history checks shall be retained with the probation department's or facility's records.

(b) Submission of Certification Application.

(1) Probation Officer Certification.

(A) Probation Officers. The chief administrative officer or the chief administrative officer's designee shall submit the certification applications for probation officers and supervisors of probation officers.

(B) Chief Administrative Officers. Prior to submission of the chief administrative officer's certification application, the juvenile board shall review the certification documentation and approve in writing the submission of the certification application to the Commission.

(2) Detention Officer Certification.

(A) Detention Officers. The facility administrator, chief administrative officer or either's designee shall submit a certification application to the Commission for all detention officers and supervisors of detention officers.

(B) Facility Administrators. Prior to submission of the facility administrator's certification application:

(i) the juvenile board shall review the certification documentation and approve in writing the submission of the certification application to the Commission; or

(ii) the chief administrative officer shall review the certification documentation and approve in writing the submission of the certification application to the Commission.

(c) Length of Certification. A certification is valid for two years from the date of approval by the Commission.

§349.9. Provisional Certification.

(a) Requirements for Provisional Certification.

(1) Probation Officers. An individual will qualify for provisional certification as a probation officer if:

(A) all of the requirements for certification under §349.7(a) and (b) of this chapter are met except that the individual's college or university degree was issued in a foreign country; and

(B) the individual agrees to validate their foreign college or university degree under subsection (b)(1) of this section.

(2) Detention Officers. An individual will qualify for provisional certification as a detention officer if:

(A) all of the requirements for certification under §349.7(a) and §349.7(c) of this chapter except for subsection §349.7(c)(1)(C) of this chapter are met; and

(B) the individual agrees to complete a validation of their high school diploma under subsection (b)(2) of this section.

(b) Method of Validation.

(1) Probation Officers. An individual with provisional probation officer certification agrees to validate their education using one of the following methods:

(A) obtaining unconditional acceptance into a graduate program accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(B) obtaining evaluation of the foreign college or university diploma as the equivalent to a bachelor's degree received within the United States of America by an educational evaluation service approved by the Commission; or

(C) providing documentation of the conferral of an advanced degree from a university or college accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(2) Detention Officers. An individual with provisional detention officer certification agrees to validate their education using one of the following methods:

(A) obtaining unconditional acceptance into a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(B) receiving a general equivalency diploma;

(C) obtaining evaluation of their high school diploma as the equivalent to a high school diploma received within the United States of America by an educational evaluation service approved by the Commission; or

(D) providing documentation of the conferral of a bachelor's or master's degree from a university or college accredited by an accrediting organization approved by the Texas Higher Education Coordinating Board.

(c) Certification Upon Validation.

(1) Upon the Commission's receipt of validation documentation, the Commission shall certify the individual as a detention or probation officer.

(2) Certification is valid for 2 years from the date the provisional certification was approved.

(d) Expiration of Provisional Certification.

(1) A provisional certification shall expire six months from the date of approval.

(2) An individual who has not yet validated their degree under subsection (b)(1) or (b)(2) of this section by the expiration date of the provisional certification may apply for certification after their education has been validated.

§349.10. Recertification Eligibility.

(a) Basic Eligibility Requirements.

(1) In addition to the requirements in subsections (b) or (c) of this section, an applicant is eligible for recertification from the Commission if the applicant:

(A) does not have any of the following disqualifying criminal history:

(i) a felony conviction against the laws of this state, another state, or the United States within the past 10 years;

(ii) a deferred adjudication for a felony against the laws of this state, another state, or the United States within the past 10 years;

(iii) current felony probation or parole;

(iv) a jailable misdemeanor conviction against the laws of this state, another state or the United States within the past 5 years;

(v) a deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United States within the past 5 years;

(vi) current misdemeanor probation or parole; or

(vii) registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(B) is not currently under an order of suspension issued under §349.27(d)(2) or §349.31 of this chapter; and

(C) has never had any type of certification revoked from the Commission under §349.27(d)(3) of this chapter.

(2) A request for waiver may not be requested for any disqualifying criminal history under subsection (a)(1)(A) of this section unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by either the trial or an appellate court;

(b) Probation Officer. In addition to meeting the requirements under subsection (a) of this section, an applicant is eligible for recertification as a probation officer if the applicant:

(1) has completed 80 hours of recertification training in accordance with §349.15(d) of this chapter within the two years following the date of the certification's or recertification's approval; and

(2) if the person applying for recertification is the chief administrative officer, 20 hours of the required recertification training shall be in management and supervisory skills.

(c) Detention Officer. In addition to meeting the requirements under subsection (a) of this section, an applicant is eligible for recertification as a detention officer if the applicant:

(1) has completed 80 hours of recertification training in accordance with §349.15(d) of this chapter within the two years following the date of the certification's or recertification's approval; and

(2) if the person applying for recertification is the facility administrator, 20 hours of the required recertification training shall be in management and supervisory skills.

(3) has current certifications in:

(A) Cardiopulmonary Resuscitation (CPR);

(B) First Aid; and

(C) an approved physical restraint technique as defined by §343.60(1) of this chapter.

#### §349.11. Recertification Procedures.

(a) Criminal History Checks.

(1) Prior to submitting a recertification application, the following criminal history checks shall be conducted and returned on every applicant:

(A) a Texas criminal history background search (TCIC);

(B) a local law enforcement sex offender registration records check in the city or county where the applicant resides; and

(C) a Federal Bureau of Investigation (FBI) fingerprint based criminal history background search (NCIC).

(D) In addition to the requirements of paragraph (1) of this subsection, if the applicant currently resides in one of the following states, or resided in one of the following states within the 10 years prior to the date the recertification application was made, a state criminal history background search and state sex offender registration check shall also be conducted where available:

(i) Hawaii;

(ii) Kansas;

(iii) Kentucky;

(iv) Louisiana;

(v) Maine;

(vi) Massachusetts;

(vii) New Hampshire;

(viii) Rhode Island;

(ix) Tennessee;

(x) Vermont; and

(xi) the District of Columbia;

(2) An Internet based criminal background search shall not be used to conduct the background searches required under subsection (a)(1)(A) and subsection (a)(1)(C) of this section.

(3) A returned criminal history check under paragraph (1) of this subsection that is more than 90 calendar days old will not meet the recertification eligibility requirement under §349.10(a)(1) of this chapter.

(4) A copy of all returned criminal history checks shall be retained with the probation department or facility's records.

(b) Submission of Recertification Application.

(1) Probation Officer Recertification.

(A) Probation Officers. The chief administrative officer or the chief administrative officer's designee shall submit the recertification applications for all probation officers and supervisors of probation officers.

(B) Chief Administrative Officers. Prior to submission of the chief administrative officer's recertification application, the juvenile board shall review the recertification documentation and approve the submission of the recertification application to the Commission.

(2) Detention Officer Recertification.

(A) Detention Officers. The facility administrator, chief administrative officer or either's designee shall submit the recertification applications to the Commission for all detention officers and supervisors of detention officers.

(B) Facility Administrators. Prior to submission of the facility administrator's recertification application:

(i) the juvenile board shall review the recertification documentation and approve the submission of the recertification application to the Commission; or

(ii) the chief administrative officer shall review the recertification documentation and approve the submission of the recertification application to the Commission.

(c) Timeline for Submission.

(1) Unless a request for extension has been made and granted under paragraph (2) of this subsection, the recertification

application shall not be sent more than 30 calendar days before or 60 calendar days after the certification expiration date.

(2) Requests for Extension.

(A) The juvenile board, chief administrative officer, facility administrator or either's designee may request an extension of time to allow a certified officer additional time to meet the recertification eligibility requirements under §349.10(a) and §349.10(b) or §349.10(c) of this chapter or for the submission of recertification applications listed in §349.11(b) of this chapter. The request shall include an explanation showing cause why an extension is needed.

(B) Grants of Extension. The Commission may grant an extension for a period not to exceed 90 calendar days from the date the certification expired.

(C) Failure to submit the recertification application before the extension period expires, shall result in the Commission's denial of the recertification application. In the event the recertification application is denied, an applicant may apply for certification under §349.8 of this chapter.

(d) Length of Recertification. A recertification is valid for two years from the date of expiration of the previous certification or recertification.

§349.12. Expiration of Certification While Under Suspension.

(a) An individual whose certification expires while under a suspension order issued in accordance with §349.27(d)(2) of this chapter may apply for certification once the suspension period has expired and the individual meets the certification eligibility requirements listed under §349.7(a) and §349.7(b) or §349.7(c) of this chapter.

(b) An individual whose certification expires while under a suspension order issued in accordance with §349.31 of this chapter may apply for certification once TJPC has received an order issued under Texas Family Code §232.013, which either vacates or stays the suspension order and the individual meets the certification eligibility requirements listed in §349.7(a) and §349.7(b) or §349.7(c) of this chapter.

§349.13. Transfer of Certification.

(a) Notification Upon Resignation or Termination. The facility administrator, chief administrative officer, the juvenile board or either's designee shall notify the Commission within 7 working days after a certified officer, including the chief administrative officer or facility administrator, resigns or is terminated from employment.

(b) Inactive Certifications.

(1) Upon receipt of notice under subsection (a) of this section, the Commission shall place the certified officer's certification on inactive status.

(2) A person may not perform the duties of a certified officer while on inactive status.

(c) Transfer of Certification.

(1) When a person with an inactive certification obtains employment in a position for which certification is required, the juvenile board, the chief administrative officer, facility administrator or either's designee in the hiring county may request a transfer of certification to active status.

(2) The request for certification transfer shall include verification that all criminal history checks were conducted in accordance with §349.8(a) of this chapter and returned within the 90 calendar days prior to submission of the transfer request.

(d) Expiration of Certification While On Inactive Status.

(1) If an officer's certification expires while on inactive status, the officer will not be eligible for transfer of certification.

(2) The officer whose certification expires while on inactive status may apply for certification after obtaining employment and meeting the eligibility requirements listed under §349.7(a) and §349.7(b) or §349.7(c) of this chapter.

(e) Transfer of Training Records. The chief administrative officer, facility administrator, juvenile board, or either's designee shall forward a certified officer's training records, upon a request from the chief administrative officer, facility administrator or juvenile board in the county where the officer's certification was transferred.

§349.14. Applicability.

Sections 349.7 through 349.13 of this chapter apply to all certification and recertifications received on or after the effective date of this subchapter. Any felony conviction, felony deferred prosecution, misdemeanor conviction, or misdemeanor deferred prosecution occurring before September 1, 2003 will not disqualify a certified officer who held an active certification on September 1, 2003 from receiving recertification under this subchapter.

§349.15. Training Hours.

(a) Approval. The Commission reserves the right to refuse to grant approval for training hours that do not comply with the guidelines under this subchapter.

(b) Hour Limitations.

(1) Training Topic. No more than 40 training hours in one topic may count toward certification or recertification.

(2) Video Training.

(A) No more than 15 hours of video training may count toward certification requirements.

(B) No more than 30 hours of video training may count toward recertification requirements.

(3) Distance Learning.

(A) No more than 15 hours of distance learning may count toward certification requirements.

(B) No more than 30 hours of distance learning may count toward recertification requirements.

(4) Training Hours for Trainers. An individual who provides approved officer training under subsection (a) of this section may claim up to 20 hours per certification period for the development of course curriculum.

(5) College Courses. A three-hour course delivered by an accredited college or university may count as 40 hours of recertification training.

(c) Certification Training.

(1) Probation Officers. Certification training for probation officers shall include but not be limited to the following subjects:

(A) role of the probation officer;

(B) case planning and management;

(C) officer safety;

(D) transportation;

(E) juvenile law;

(F) courtroom proceedings and presentation;

(G) law enforcement processing;

(H) local programs and services including access procedures;

(I) interagency collaborations and memoranda of understanding;

(J) code of ethics, disciplinary and revocation hearing procedures; and

(K) abuse, exploitation and neglect.

(2) Detention Officers. Certification training for detention officers shall include but not be limited to the following subjects:

(A) an introduction to juvenile detention;

(B) juvenile rights;

(C) abuse, exploitation and neglect;

(D) behavior observation and recording;

(E) suicide prevention and identification, including training on the facility's suicide prevention plan;

(F) legal liabilities;

(G) dynamics of youth with mental illness in detention centers;

(H) behavior management;

(I) risk management, safety, and security;

(J) HIV/AIDS and communicable diseases;

(K) medical and health services; and

(L) Code of Ethics, disciplinary and revocation procedures.

(d) Recertification Training. Recertification training shall be related to job responsibilities, the field of juvenile justice, or fields of study approved by the Commission.

(e) Applicability. This standard applies to all training hours accrued on or after the effective date of this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Juvenile Probation Commission

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## SUBCHAPTER D. DISCIPLINARY HEARINGS

### 37 TAC §§349.21 - 349.32

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

### §349.21. Requests for Disciplinary Hearing.

#### (a) Department, Facility or Juvenile Board Requests.

(1) Code of Ethics Violations. The chief administrative officer, facility administrator or juvenile board shall forward a copy of an internal investigation based on a code of ethics violation to the Commission. The internal investigation shall serve as a request for a disciplinary hearing. If the chief administrative officer or facility administrator makes the request for a disciplinary hearing, the chief administrative officer or facility administrator shall notify in writing the juvenile board of the request simultaneous with the request's submission to the Commission.

#### (2) Criminal Conduct.

(A) The chief administrative officer, facility administrator or the juvenile board shall in writing request a certification revocation from the Commission within 10 working days after obtaining notice that a certified officer has been convicted or given deferred adjudication for any offense listed under §349.7(a)(1)(B) of this chapter.

(B) A request for waiver under §349.2 of this chapter may not be requested for this section unless the certified officer, chief administrative officer or facility administrator received a pardon based upon proof of innocence or the guilty verdict was overturned by a trial or appellate court.

#### (b) Public Requests.

(1) Code of Ethics Violations. In the event the Commission receives notice from a member of the public that a certified officer has violated the code of ethics, the Commission shall notify in writing the chief administrative officer or the facility administrator and the local juvenile board. Upon receipt of notification from the Commission, the chief administrative officer, facility administrator or the juvenile board may conduct an internal investigation.

(2) Criminal Conduct. In the event the Commission receives notice from a member of the public that a certified officer has been convicted or given deferred adjudication for any offense listed under §349.7(a)(1)(B) of this chapter, the Commission shall in writing notify the facility administrator, chief administrative officer or the juvenile board. Upon receiving notice from the Commission, the facility administrator, chief administrative officer, or juvenile board shall investigate and if disqualifying criminal history exists request certification revocation in accordance with subsection (a)(2) of this section.

### §349.22. Commission Initiated Hearings.

The Commission may initiate a disciplinary hearing when:

(1) the Commission discovers through a monitoring visit, compliance audit or as a result of receiving notice in any other manner that an individual currently certified by the Commission does not meet the requirements under §349.7(a) and §349.7(b) or §349.7(c) of this chapter; or

(2) the Commission designates a certified officer as a perpetrator in an investigation of abuse, exploitation or neglect investigation conducted under subchapter F of this chapter.

### §349.23. Effect of Request for Disciplinary Hearing.

When the Commission receives a request for disciplinary hearing under §349.21 of this chapter, or when the Commission initiates a disciplinary hearing under §349.22 of this chapter, the Commission shall give the officer subject to the disciplinary hearing written notice of a hearing conducted by a hearings examiner in accordance with §349.25 of this chapter.

§349.24. Procedure for Disciplinary Hearing.

(a) Hearings under this section shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

(b) The Commission shall have the power to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, conduct hearings and issue subpoenas or summons.

(c) Nothing in this subchapter precludes the Commission from making an informal disposition, including entering into an agreed order, as provided by the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

§349.25. Notice.

(a) The Commission shall provide a minimum of 10 calendar days notice to the certified officer subject to a disciplinary hearing. Notice shall be sent by certified mail return receipt requested.

(b) The notice shall include:

(1) a statement of the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short plain statement of the matters asserted.

§349.26. Right to Counsel.

(a) An individual subject to a disciplinary hearing under this subchapter is entitled to the assistance of counsel during the hearing. The officer is responsible for all costs of obtaining counsel.

(b) The officer may expressly waive the right to the assistance of counsel.

(c) The officer may also be represented by a designated person.

(d) Written notice at least 5 calendar days in advance of the hearing shall be given by each party intending to be represented, including the name of the representative.

(e) Failure to give such notice may result in postponement of the hearing.

§349.27. Disciplinary Hearing.

(a) The certified officer or his/her representative, shall be given the opportunity to show compliance with the code of ethics and all requirements of the law, including Commission standards.

(b) The hearing shall be conducted before a hearings examiner appointed by the executive director with only designated Commission staff, the certified officer, the chief administrative officer, the facility administrator, their representatives and such witnesses as may be called in attendance, unless the officer requests that it be open. Witnesses may be excluded from the hearing until it is their turn to present evidence.

(c) The conduct of the hearing shall be under the hearings examiner's control, and in general, shall be conducted in accordance with the following steps:

(1) The hearing shall begin with the presentation of investigatory findings by the Commission, supported by such proof as is deemed necessary.

(2) The certified officer or his/her representative may cross-examine any witnesses for the Commission;

(3) The certified officer or his/her representative may then present such testimonial or documentary proof as desired in rebuttal or in support of the contention that the officer violated the code of ethics;

(4) The Commission may cross-examine any witnesses for the certified officer and offer rebuttal testimony of the certified officer's witnesses;

(5) Each party may make closing arguments;

(6) The hearing shall be recorded and transcribed by means including but not limited to a stenographic record of the proceedings.

(d) Findings. The hearings examiner may consider only such evidence as is presented at the hearing. If the hearings examiner determines that the evidence presented is insufficient, the hearings examiner may ask for additional information from the certified officer, or the Commission and may ask questions on the hearing examiner's own motion. After all the evidence has been presented, the hearings examiner shall issue to the Board for its approval findings of fact and conclusions of law and a proposed disposition. The proposed disposition may include one of the following:

(1) Written Reprimand;

(2) Suspension for a specified period not to exceed 24 months; or

(3) Revocation.

(e) Commission's Approval. Based on the findings of fact and conclusions of law the Board by order may approve or amend the proposed disposition.

(f) Notice of Order. The Commission shall notify an individual whose conduct was the subject of a disciplinary hearing of the final order. The Commission may notify the individual either in person or by certified mail return receipt requested. The notice of order shall include:

(1) which acts or omissions by the officer, if any, violated the code of ethics;

(2) a statement of the evidence relied upon;

(3) a statement of which section or sections of the code of ethics, if any, were violated by the acts or omissions of the officer;

(4) the Board's disposition concerning the officer's certification; and

(5) the individual's right to rehearing and appeal.

§349.28. Motion for Rehearing.

(a) An individual wishing to appeal the Commission's final order may file a motion for rehearing with the Commission no later than the 20th calendar day after receiving notice of disposition.

(b) The Commission shall rule on the Motion for Rehearing no later than the 45th calendar day after receiving the motion.

§349.29. Judicial Review.

An individual whose certification has been suspended or revoked and whose motion for rehearing has been denied by the Board is entitled to judicial review of the Commission's action.

§349.30. Record.

The Commission shall create a record for each hearing conducted. The record shall include:

(1) the request for disciplinary hearing received under §349.21 of this chapter;

(2) the transcript of the hearing conducted by the hearings examiner,

(3) the transcript of the hearing conducted by the Board, which may take the form of the minutes of the Board meeting;

(4) any documentary proof submitted during the hearing;

(5) all staff memoranda and documentation submitted to the Board in making its decision;

(6) a copy of the final order issued by the Board;

(7) any motions for rehearing; and

(8) the Board's ruling on any motions for rehearing.

§349.31. Mandatory Suspension for Failure to Pay Child Support.

(a) Upon receipt of an order suspending licensure for failure to pay child support issued under Texas Family Code §232.008 or §232.009, the Commission shall suspend the certified officer's certification.

(b) Notice of Suspension.

(1) The Commission shall notify the certified officer subject to a suspension order received under subsection (a) of this section that the agency has formally suspended the individual's certification.

(2) The notice shall also instruct the individual that he or she may not perform the duties of a certified officer while the suspension order is in effect.

(3) The Commission shall also notify the chief administrative officer or facility administrator and the juvenile board of the employing juvenile probation department or facility of the suspension.

(c) Length of Suspension. A certification suspension shall remain in effect until the Commission receives an order issued under Texas Family Code §232.013 that either vacates or stays the certification's suspension.

(d) An individual subject to a suspension order issued under subsection (a) of this section may not be hired, certified, or recertified while the suspension order remains in effect.

(e) A request for waiver or variance under §349.2 of this title may not be requested for this standard.

(f) An individual subject to a suspension order issued under subsection (a) of this section may not appeal the suspension order to the Commission.

§349.32. Applicability.

The mandatory revocation procedures enacted in this subchapter apply to all felony convictions, felony deferred adjudications, or convictions or deferred adjudications that require sex offender registration under Chapter 62 Texas Code of Criminal Procedure that occur on or after September 1, 2003.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2003.

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Lisa A. Capers  
Deputy Executive Director and General Counsel  
Texas Juvenile Probation Commission  
Earliest possible date of adoption: March 9, 2003  
For further information, please call: (512) 424-6710

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**SUBCHAPTER E. COMPLAINTS AGAINST  
JUVENILE BOARDS**

**37 TAC §349.37**

The standard is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the new standard.

§349.37. Complaint Process.

(a) When the Commission receives a complaint about a juvenile board, the Commission shall review the circumstances surrounding the complaint to determine whether the juvenile board has violated the rules or standards of the Commission.

(b) If the Commission determines the complaint is about the juvenile services within the discretion of the juvenile board, the complaint shall be referred to the juvenile board. The complainant shall be notified in writing of the referral by the Commission.

(c) If the Commission determines the juvenile board has violated the Commission's rules or standards, the juvenile board shall be notified in writing of the violation. If, within 90 calendar days of the date on which the juvenile board received written notice of the Commission's determination, the juvenile board does not propose its own means of achieving compliance or the plan is not acceptable to the Commission, the Commission will attempt to negotiate a mutually agreeable solution.

(d) Upon written notice of the violation, the juvenile board shall be given 90 calendar days to achieve compliance or propose a plan to achieve compliance acceptable to the Commission.

(e) If the Commission and the juvenile board cannot reach an agreement, the Commission will give the juvenile board written notice of its intent to refuse, reduce, or suspend state aid, under authority of the Texas Human Resources Code, §141.085 Upon receipt of the above notice, the juvenile board shall have 15 calendar days to:

(1) notify in writing the Commission's Executive Director of the juvenile boards compliance;

(2) propose in writing an alternate solution; or

(3) provide a written appeal of the Commission's action(s) to the Executive Director.

(f) The juvenile board's appeal must state specifically its differences of opinion with the Commission's staff concerning the facts in dispute and the solution necessary under the standards or rules of the Commission. The appeal shall state whether the juvenile board requests a hearing before the Commission's board.

(g) The Commission shall set the appeal on the agenda for its next regularly scheduled meeting. If the juvenile board has requested a hearing, the juvenile board and the Commission's staff may appear and make oral presentations concerning the appeal. If the juvenile board does not request a hearing before the Commission, the Commission's board will make its decision based upon the record.

(h) The complainant shall be notified in writing upon receipt of the complaint and upon resolution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER F. ABUSE, EXPLOITATION AND NEGLECT INVESTIGATIONS

### 37 TAC §§349.42 - 349.52

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

#### §349.42. Applicability.

This chapter applies to investigations conducted by the Commission of allegations of abuse, exploitation and neglect that occur in or involve an employee, volunteer or intern of a juvenile justice program, juvenile probation department, secure detention facility, short-term detention facility, post-adjudication secure correctional facility or juvenile justice alternative education program.

#### §349.43. Definitions.

The Commission applies the statutory definitions of "abuse," "exploitation" and "neglect" that appear in the Texas Family Code Chapter 261. In addition, the words and terms used in this subchapter shall have the following definitions unless the context clearly indicates otherwise.

(1) Administrative Closure--Allegation disposition used when further Commission intervention is unwarranted.

(2) Allegation Disposition--The finding made at the conclusion of an investigation about each individual allegation of abuse, exploitation or neglect that was identified at intake or during the investigation.

(3) Alleged Perpetrator--A person alleged as being responsible for the abuse, exploitation or neglect of a juvenile.

(4) Alleged Victim--A juvenile alleged as being a victim of abuse, exploitation or neglect.

(5) Collateral--Anyone other than the alleged perpetrator or alleged victim that may have any information relevant to an investigation.

(6) Designated Perpetrator--Role assigned to the individual the investigator concludes is responsible for the abuse, exploitation or neglect of a juvenile when an allegation disposition is reason to believe.

(7) Designated Victim--Role assigned to the juvenile the investigator concludes was abused, exploited or neglected when the allegation disposition is reason to believe.

(8) Initiate--First contact or attempted contact by the Commission by phone, fax or e-mail with a representative of the juvenile probation department, secure detention facility, short-term detention facility, post-adjudication secure correctional facility, juvenile justice program, juvenile board or law enforcement agency or member of the public in response to an allegation of abuse, exploitation or neglect.

(9) Internal Investigation--An investigation conducted by a juvenile justice program, secure detention facility, short-term detention facility, post-adjudication secure correctional facility, juvenile probation department or juvenile justice alternative education program in response to an allegation of abuse, exploitation, or neglect.

(10) Juvenile--Regardless of age, any participant in a juvenile justice program, JJAEP, or any resident of a secure detention facility, short-term detention facility or post-adjudication secure correctional facility.

(11) No Role--Designation assigned by an investigator to a person alleged as a victim or as a perpetrator when the allegation disposition is administrative closure or ruled out.

(12) Notice of TJPC Standards Non-Compliance--Formal report issued by the Commission that states the standards with which the facility, program or department were non-compliant.

(13) Unable to Determine--Allegation disposition where, based on the lack of sufficient evidence, the investigator could not determine if the abuse, exploitation or neglect occurred.

(14) Unknown--Role assigned by the investigator to the alleged perpetrator and alleged victim where the allegation disposition was unable to determine.

(15) Reason to Believe--Allegation disposition where, based on a preponderance of the evidence, the investigator concludes that abuse, exploitation or neglect has occurred.

(16) Report--An allegation of abuse, exploitation, or neglect of a juvenile.

(17) Reporter--An individual who makes a report alleging the abuse, exploitation or neglect of a juvenile. If more than one individual makes a report of the same allegation, all such individuals shall have the designation of reporter.

(18) Risk Assessment--Documentation issued by the Commission during the course of an investigation that notifies a department, facility or program that a current policy, procedure, practice or other circumstance may lead to or contribute to abuse, neglect or exploitation.

(19) Ruled Out--Allegation disposition where, based on a preponderance of evidence, the investigator determines that the abuse, exploitation or neglect did not occur.

(20) Serious Incident Report--Report by a facility, or program informing the Commission of a suicide, attempted suicide, escape, serious injury of a juvenile or youth-on-youth assault.

(21) Witness--A person other than the alleged perpetrator or alleged victim, who has either seen or heard an incident that was the basis of a report of abuse, exploitation or neglect.

#### §349.44. Serious Incident Reports.

(a) The Commission shall maintain a database of all serious incident reports.

(b) The Commission shall screen all serious incident reports and may open an investigation of abuse, exploitation or neglect based on any information contained in the serious incident report that leads

the Commission to believe a juvenile may have been abused, exploited or neglected.

§349.45. Notification to Law Enforcement.

(a) The Commission shall report an allegation of abuse, exploitation or neglect to a law enforcement agency within 24-hours from the time the allegation is received by the Commission.

(b) Allegations involving serious physical or sexual abuse shall be investigated jointly with local law enforcement in accordance with the Texas Code of Criminal Procedures Article 2.27.

§349.46. Priorities for Investigation.

(a) The Commission shall assign each report of abuse, exploitation or neglect to one of two priority groups:

(1) Priority I. Reports concerning juveniles who appear to face an imminent risk of abuse, exploitation or neglect that could result or did result in death or serious harm.

(2) Priority II. All reports of abuse, exploitation or neglect that are not assigned to Priority I.

(b) The Commission shall initiate an investigation:

(1) within 24 hours of receiving a Priority I report; and

(2) within 10 working days of receiving a Priority II report.

§349.47. Roles Assigned at Assessment.

Each person named in the report shall be assigned a role in the alleged abuse, exploitation or neglect. Roles assigned at the initial assessment of the report are:

(1) Alleged victim

(2) Alleged perpetrator

(3) Witness

§349.48. Investigation Steps.

(a) The investigator shall provide for the protection of the juvenile as specified in Texas Family Code §261.101(d).

(b) The investigator shall determine if the Commission has jurisdiction to conduct the investigation.

(c) Basic Steps. In conducting an investigation, the investigator may, but is not limited to:

(1) make contact with any collateral;

(2) obtain the internal investigation from the facility or program in which the alleged abuse, exploitation or neglect occurred;

(3) examine or obtain an examination of:

(A) the alleged victim(s); and

(B) each juvenile who may be at risk of abuse, exploitation or neglect

(4) interview:

(A) the alleged victim;

(B) each juvenile who may be at risk of abuse, exploitation or neglect;

(C) the alleged victim's parents;

(D) the alleged perpetrator(s);

(E) collateral sources, including but not limited to, facility administrators, teachers, medical personnel, staff, volunteers and interns;

(F) every juvenile who may have information that will help determine whether any juvenile has been or is at risk of abuse, exploitation or neglect;

(G) an interview may occur through a recorded telephone conversation so long as the person being interviewed knows the telephone interview is being recorded.

(5) make a department, facility or program visit;

(6) conduct a criminal background check on the alleged perpetrator;

(7) obtain written statements from the alleged victim(s), alleged perpetrator(s) and collateral sources;

(8) take photographs that are deemed necessary to the investigation;

(9) issue a risk assessment; and

(10) notify the placing juvenile court and juvenile probation department immediately, if during the course of an investigation, the investigator determines a juvenile is in need of a medical examination.

(d) On-Site Investigations. If an investigator decides to make a visit under subsection (c)(5) of this section, the investigator:

(1) may announce the visit on the basis of the nature of the allegation and the need to protect the juvenile;

(2) shall at the first face-to-face contact with the chief administrative officer or his/her designee and the alleged perpetrator(s):

(A) identify himself/herself using the Commission identification

(B) explain the nature of the complaint or the reason for the contact;

(C) explain the Commission's role, legal responsibilities in the investigation, and procedures for conducting the investigation;

(D) discuss each allegation in the report;

(E) explain that the law requires the Commission to refer all reports of alleged abuse, exploitation or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

(F) explain a designated perpetrator's right to file a complaint with the Commission or to request a review of the findings made by the Commission in the investigation;

(G) explain the alleged perpetrator's or designated perpetrator's right to review all records of the investigation unless the review would jeopardize an on-going criminal investigation;

(H) explain the right to seek legal counsel; and

(I) provide a copy of the signed Formal Notification of the TJPC Investigation.

§349.49. Investigation Process, Disposition and Roles.

All investigations conducted by the Commission shall be conducted and disposed of in one of the following ways:

(1) Preliminary Investigation.

(A) Unless the Commission does not have jurisdiction to complete a Preliminary Investigation, the investigator shall:

(i) make contact with a collateral; and



(ii) receive an internal investigation.

(B) A Preliminary Investigation shall be disposed of as "Administrative Closure" when:

(i) the situation no longer appears to meet the statutory definitions of abuse, exploitation or neglect;

(ii) the allegation has already been investigated by the Commission;

(iii) another authorized entity, such as law enforcement or another state agency such as the Texas Department of Protective and Regulatory Services, Texas Department of Health, Texas Commission of Alcohol and Drug Abuse, Texas Youth Commission or the Texas Department of Mental Health and Mental Retardation will be conducting an investigation;

(iv) the Commission does not have the authority to finish the investigation because the alleged abuse, exploitation or neglect did not occur in a facility or program within the jurisdiction of the Commission in accordance with Texas Family Code §261.405; or

(v) the internal investigation received by the investigator substantiates the allegation and further agency intervention is unwarranted.

(C) The role assigned to the alleged victim(s) and the alleged perpetrator(s) in a Preliminary Investigation with an allegation disposition of administrative closure shall be "No Role".

(2) Abbreviated Investigation.

(A) To complete an Abbreviated Investigation, the investigator shall:

(i) interview and/or examine the alleged victim;

(ii) interview at least one collateral;

(iii) assess and document the impact of any risk factors; and

(iv) determine that abuse, exploitation or neglect did not occur.

(B) An Abbreviated Investigation shall only be assigned a disposition of "Ruled Out".

(C) The role assigned to the alleged victim(s) and the alleged perpetrator(s) in an Abbreviated Investigation shall be "No Role".

(3) Thorough Investigation.

(A) A Thorough Investigation shall be conducted for all cases assessed as Priority I and may be conducted for any case assessed as Priority II.

(B) A Thorough Investigation shall include:

(i) an on-site visit;

(ii) an interview and/or examination of the alleged victim(s);

(iii) an interview with at least one collateral;

(iv) an interview with the alleged perpetrator unless:

(I) the alleged perpetrator is in police custody and the investigator was unable to obtain authorization from the investigating law enforcement entity before conducting the interview or;

(II) the alleged perpetrator declines the interview.

(C) A Thorough Investigation may be assigned a disposition of:

(i) Reason-to-Believe;

(ii) Ruled Out; or

(iii) Unable-to-Determine

(D) The roles assigned to the alleged victim(s) and alleged perpetrator(s) in a Thorough Investigation shall be:

(i) "Designated Victim" and "Designated Perpetrator" if the disposition is "Reason-to-Believe";

(ii) "No Role" if the disposition is "Ruled Out"; and

(iii) "Unknown" if the disposition is "Unable-to-Determine".

§349.50. Notification of Disposition.

(a) Preliminary Investigation. When a Preliminary Investigation is disposed of, the Commission shall notify in writing the following parties about the disposition of the investigation:

(1) the juvenile board of the placing county;

(2) the chief administrative officer of the placing county;

(3) the juvenile board of the county in which the alleged abuse, exploitation or neglect occurred;

(4) the chief administrative officer of the county in which the alleged abuse, exploitation or neglect occurred;

(5) the facility administrator; and

(6) the reporter, if requested.

(b) Abbreviated or Thorough Investigation. When an Abbreviated or Thorough Investigation is disposed of, the Commission shall notify in writing the following parties about the disposition of the investigation:

(1) the parents of the alleged/designated victim(s);

(2) the alleged/designated perpetrator(s);

(3) the chief administrative officer of the placing county;

(4) the juvenile board of the county in which the alleged abuse, exploitation or neglect occurred;

(5) the chief administrative officer of the county in which the alleged abuse, exploitation or neglect occurred;

(6) the facility administrator;

(7) the reporter, if requested; and

(8) the juvenile board of the placing county.

§349.51. Notice of TJPC Standards Non-Compliance and Risk Assessment.

At the conclusion of an investigation the Commission may issue a:

(1) Notice of TJPC Standards Non-Compliance; or

(2) Risk Assessment.

§349.52. Administrative Review and Appeal of Investigation Findings.

(a) Anyone whom the Commission designates as a perpetrator of abuse, exploitation or neglect as specified in §349.49(3)(D)(i) of this chapter may request an administrative review of the Commission's allegation disposition of whether abuse, exploitation or neglect occurred.

(b) The designated perpetrator shall request the review in writing within 45 calendar days after receiving the Commission's written notice of findings.

(c) If civil or criminal court proceedings related to an allegation that the Commission has investigated are pending when a designated perpetrator requests an administrative review, or if such proceedings are initiated before the Commission begins the review, the Commission may postpone the review until the proceedings are completed.

(d) The designated perpetrator has a right to:

- (1) appear in person at the review;
- (2) invite a representative to speak on his or her behalf; and
- (3) submit relevant written material.

(e) If the designated perpetrator does not speak English or is hearing impaired, the Commission shall provide a certified interpreter unless the designated perpetrator chooses to provide a certified interpreter of his or her own.

(f) The designated perpetrator is responsible for all costs incurred in connection with the review, including the cost of an interpreter if he or she chooses to provide one.

(g) The administrative review shall be conducted by a Commission hearings examiner. The hearings examiner shall confirm or revise the Commission's original dispositions based on the same policies that the Commission applied during the original investigation. Within 30 calendar days after completing the review, the hearings examiner shall notify the designated perpetrator of the outcome of the review.

(h) The hearings examiner's notification must inform the designated perpetrator that he or she can appeal to the State Office of Administrative Hearings if he or she is dissatisfied with the decision. To this end, the notification must explain the procedure for making an appeal.

(i) If the hearings examiner or the State Office of Administrative Hearings revises the Commission's original findings or advises the Commission to take any other actions in the case, the Commission must:

- (1) enter the revised findings into the investigation record;
- (2) notify each person who was notified of the original findings about the revised findings, except for reporters who report in a non-professional capacity; and
- (3) take the other actions specified by the reviewer, if any.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER G. CONFIDENTIALITY AND RELEASE OF ABUSE, EXPLOITATION AND NEGLECT INVESTIGATION RECORDS

### 37 TAC §§349.57 - 349.64

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

#### §349.57. Purpose.

The purpose of this subchapter is to clarify to whom and under what circumstances the Commission may disclose information made confidential under Texas Family Code §261.201.

#### §349.58. Definitions.

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

(1) Case records--All records described in Texas Family Code §261.201(a) which were collected, developed, or used in an abuse, exploitation or neglect investigation, which are under the control of the Commission. The term case records, as used in this subchapter, shall include investigation records, facility records as well as all juvenile court and probation department records in the control of the Commission which relate to the placement of a juvenile or which relate to the provision of other services to a juvenile or the juvenile's family.

(2) Code--The Texas Family Code.

(3) Investigation Records--That portion of the records described in Texas Family Code §261.201(a) which were collected, developed, or used in an abuse, exploitation or neglect investigation and which are under the control of the Commission. The term investigation records, as used in this subchapter, shall not include those records under the control of the Commission that relate solely to the placement of a juvenile or to the provision of services to a juvenile or the juvenile's family.

(4) Parent--Adoptive parent, possessory conservator, temporary or permanent managing conservator, legal guardian, or other legal representative of the juvenile, provided that the requestor's parental or other legal relationship to the juvenile has not been terminated at the time the request for information is made.

(5) Report--A report of alleged abuse, exploitation or neglect

(6) Reporter--An individual who makes a report to the Commission alleging the abuse, exploitation or neglect of a juvenile. If more than one individual makes a report alleging abuse, exploitation or neglect of the same juvenile, all such individuals shall have the designation of reporter.

#### §349.59. Access to Confidential Information.

(a) To the extent required by state or federal law, or to the extent deemed necessary by the Commission for the protection and care of juveniles, the Commission may release case record information made confidential under Texas Family Code §261.201(a) to the following listed persons or entities:

(1) the juvenile board and the chief administrative officer that placed the alleged victim;

(2) the juvenile board, the chief administrative officer and the facility administrator of the county in which the facility, juvenile

justice program or juvenile justice alternative education program is located;

(3) law enforcement officials for the purpose of investigating allegations of abuse, exploitation or neglect or for the purpose of investigating allegations of false or malicious reporting of alleged abuse, exploitation or neglect;

(4) a physician who suspects a juvenile may be the victim of abuse, exploitation or neglect and requires this information for diagnosis, prognosis, or treatment of the juvenile;

(5) a government official when specifically required by law;

(6) a grand jury;

(7) an attorney, attorney ad litem, guardian ad litem, or court appointed special advocate of an alleged victim;

(8) a court in a criminal or civil case arising out of an investigation of abuse, exploitation and neglect;

(9) the attorney general of the state, or a county attorney or district attorney, when such attorney represents the state in a proceeding arising out of an investigation;

(10) a member of the state legislature when necessary to carry out that member's official duties; and

(11) any other person or entity, when in the discretion of the Commission, such information is necessary to properly meet the juvenile's needs.

(b) Upon written request, the Commission shall provide access to case records to the parent or other legal guardian of the alleged/designated victim provided that the records are redacted in accordance with §349.60.

(c) The Commission may release case records, or information contained therein, to a minor child who is the subject of those records if the Commission deems the release to be in the best interest of the minor child.

(d) Upon written request, the Commission shall provide access to investigation records to an alleged or designated perpetrator.

(e) An individual not otherwise entitled to have access to records under this section, but who participated in, cooperated with, or otherwise contributed to an investigation may have access to only that portion of the case records obtained directly from or pertaining directly to that individual.

§349.60. Redaction of Records Prior to Release.

(a) Redaction of Reporter's Identity.

(1) Unless otherwise permitted by law, prior to the release of investigation or case records, the Commission shall redact the name, address, and any other information in the record that tends to reveal the identity of the reporter.

(2) In the event that the reporter also provided a witness statement or other evidence, the reporter's identity as a witness and the information provided in the role of witness will be released. Any information which might identify that individual as the reporter shall be redacted from the record prior to its release.

(b) The Commission shall withhold the release of any records obtained from another source, if the release of those records to the requestor is specifically prohibited under state or federal law. Information which may be withheld under this section includes, but is not limited to, the following:

(1) all medical records subject to the Medical Practices Act, Texas Civil Statutes, Article 4495(b), unless release to the requestor is authorized under that Act;

(2) HIV information unless release to the requestor is authorized under the Health and Safety Code, Chapter 81;

(3) criminal history or arrest records obtained from a law enforcement entity unless their release to the requestor is specifically authorized under state and federal law;

(4) adult or juvenile probation records, as well as juvenile arrest records, unless their release to the requestor is specifically authorized under state and federal law; and

(5) polygraph exam reports, unless their release to the requestor is specifically authorized under the Polygraph Examiners Act, Texas Civil Statutes, Article 4413(29cc), §19A.

(c) Notwithstanding any other provision in this chapter, the Commission may withhold any information in its records if, in the judgment of the Commission, the release of that information would endanger the life or safety of any individual. The Commission shall keep a record of any information so withheld and shall document the specific factual basis for its belief that the release of the information would be likely to endanger the life or safety of an individual.

(d) Information withheld from a requestor under this subsection, as well as the documented basis for withholding information under subsection (b) of this section, may be released only upon a court order.

§349.61. Procedures for Requesting Access to Confidential Information.

(a) Subject to the exception in §349.63 upon written request for copies of records, and a determination that the requestor is entitled to have access to those records, the Commission will provide copies of the requested records.

(b) Notwithstanding any other provision in this subchapter, the Commission shall not disclose any record or information, which, if released to the requestor, would interfere with an ongoing criminal investigation or prosecution.

(c) Records will not be released until the investigation of an allegation of abuse, exploitation or neglect is complete.

(d) Notwithstanding any other provision in this subchapter, if the Commission has been sued by any party and the Commission determines that the release of the requested records might interfere with its defense of that litigation, the Commission may require that a requestor seek access to records under the appropriate rules of civil procedure rather than these rules.

§349.62. Public Information.

The Commission shall compile statewide statistics on the incidence of abuse, exploitation and neglect as required by Texas Family Code §261.402. The following information is available to the public upon request:

(1) the number of allegations of abuse, exploitation and/or neglect;

(2) whether the allegation was abuse, exploitation or neglect; and

(3) the allegation dispositions.

§349.63. Videotapes, Audiotapes and Photographs.

(a) Individuals authorized under §349.59 of this chapter have access to investigation records or case records and may view and/or listen to any videotapes, audiotapes, or photographs which are a part of those records.

(1) Access will be permitted only in areas, designated by the Commission, at a time mutually convenient to the requestor and the Commission.

(2) When viewing or listening to these records, the requestor may not be accompanied by any individual who would not otherwise be entitled to have access to these records, unless the participation of this individual is deemed by the Commission to be appropriate under the circumstances surrounding the request.

(b) Copies of videotapes, audiotapes, and photographs may be provided to the individuals or entities identified in §349.59(a) of this chapter, only if, in the judgment of the Commission the provision of a copy is essential to the investigation, prosecution, or resolution of a case.

§349.64. Charges for Copies of Records.

The Commission may charge a fee for records provided under §349.59(a) of this chapter using the same fee structure as that used by the Commission when assessing charges under Chapter 552, Texas Government Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## SUBCHAPTER H. MEMORANDA OF UNDERSTANDING

### 37 TAC §§349.69 - 349.72

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§349.69. Memorandum of Understanding--Coordinated Services for Multi-problem Children and Youth.

(a) The Commission adopts by reference a joint memorandum of understanding with the Texas Commission for the Blind, Texas Department of Health, Texas Department of Protective and Regulatory Services, Texas Department of Mental Health and Mental Retardation, Texas Education Agency, Texas Rehabilitation Commission, and the Texas Youth Commission concerning coordinated services for multi-problem children and youth which provides for the implementation of a system of community resource coordination groups.

(b) The memorandum of understanding was published in the November 15, 1988, issue of the Texas Register (13 TexReg 5727) by the Texas Department of Human Services, 40 TAC §72.701. Copies of the memorandum of understanding are available from the Texas Juvenile Probation Commission.

§349.70. Memorandum of Understanding--Service Delivery to Dysfunctional Families.

(a) The Commission adopts by reference a joint memorandum of understanding with the Texas Department of Human Services and the Texas Youth Commission regarding service delivery to dysfunctional families.

(b) The memorandum of understanding was published in the Texas Register by the Texas Department of Human Services on October 29, 1991 (16 TexReg 6126). Copies of the memorandum of understanding are available from the Texas Juvenile Probation Commission.

§349.71. Memorandum of Understanding--Transition Planning for Students Receiving Special Education Services.

(a) The Commission adopts by reference a joint memorandum of understanding with the Texas Education Agency and other state agencies regarding transition planning for students receiving special education services.

(b) The memorandum of understanding is published in Title 19 Texas Administrative Code §89.1110.

§349.72. Memorandum of Understanding--Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.

(a) The Commission adopts by reference a joint memorandum of understanding with the Texas Education Agency and other state agencies regarding the coordination of special education services to students with disabilities in residential facilities.

(b) The memorandum of understanding is published in Title 19 Texas Administrative Code §89.1115.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 349. STANDARDS FOR CHILD ABUSE AND NEGLECT INVESTIGATIONS IN SECURE JUVENILE FACILITIES

The Texas Juvenile Probation Commission proposes the repeal of Chapter 349, §§349.101 - 349.119 and §§349.501 - 349.508, relating to standards for child abuse and neglect investigations in secure juvenile facilities. The repeal is in an effort not to overlap with new proposed standards in Chapter 349 which provides structural and substantive changes from the current standards.

Ron Quiros, Director of Training and Certification, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Quiros, has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a

result of the repeal will provide Texas Juvenile Probation Commission with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the repeal.

Public comments on the repeal may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

## SUBCHAPTER A. INTAKE, INVESTIGATION, AND ASSESSMENT

### 37 TAC §§349.101 - 349.119

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§349.101. *Terminology Used in Statutory Definitions of Child Abuse and Neglect and Person Responsible for a Child's Care, Custody, or Welfare.*

§349.102. *Definitions.*

§349.103. *Response to Reports That Do Not Allege Abuse or Neglect.*

§349.104. *Availability of Intake Services.*

§349.105. *Priorities for Investigation and Assessment.*

§349.106. *Notification of Law Enforcement Agencies.*

§349.107. *Investigation Interviews.*

§349.108. *Roles Alleged at Intake.*

§349.109. *Interviews with Facility Administrators, Staff, and Alleged Perpetrators.*

§349.110. *Interview.*

§349.111. *Medical Examinations.*

§349.112. *Completion of the Investigation and Assessment.*

§349.113. *Disposition of the Allegations of Abuse or Neglect.*

§349.114. *Conclusions about Roles.*

§349.115. *Notification about Results.*

§349.116. *Risk Assessment and Safety Evaluation.*

§349.117. *Providing Immediate or Short-Term Protection.*

§349.118. *Administrative Review of Investigation Findings.*

§349.119. *Testing.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. CONFIDENTIALITY AND RELEASE OF RECORDS

### 37 TAC §§349.501 - 349.508

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

§349.501. *Purpose.*

§349.502. *Definitions.*

§349.503. *Access to Confidential Information Maintained by the Texas Juvenile Probation Commission (TJPC).*

§349.504. *Redaction of Records Prior to Release.*

§349.505. *Procedures for Requesting Access to Confidential Information.*

§349.506. *Public Information.*

§349.507. *Videotapes, Audiotapes, and Photographs.*

§349.508. *Charges for Copies of Records.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 351. STANDARDS FOR HOLD-OVER DETENTION FACILITIES

The Texas Juvenile Probation Commission proposes the repeal of Chapter 351, §§351.1 - 351.16 and §§351.20 - 351.23, relating to standards for short-term detention facilities. The repeal is in an effort not to overlap with new proposed standards in Chapter 351 which provide structural and substantive changes from the current standards.

Luis Guerrero, Unit Coordinator of the Field Services Division, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Guerrero, has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will provide Texas Juvenile Probation Commission with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the repeal.

Public comments on the repeal may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

## SUBCHAPTER A. DEFINITIONS

### 37 TAC §351.1

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

#### §351.1. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. HOLD-OVER DETENTION FACILITY STANDARDS

### 37 TAC §§351.2 - 351.16

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

#### §351.2. Administration, Organization, and Management.

#### §351.3. Supervision.

#### §351.4. Treatment and Safety.

#### §351.5. Management Information Systems.

#### §351.6. Residents' Records.

#### §351.7. Physical Plant.

#### §351.8. Security and Control.

#### §351.9. Rules and Discipline.

#### §351.10. Hygiene.

#### §351.11. Medical and Mental Health Services.

#### §351.12. Intake, Admission and Release.

#### §351.13. Communications.

#### §351.14. Residents' Rights.

#### §351.15. Volunteers and Interns.

#### §351.16. Waivers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

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## SUBCHAPTER C. HIRING, CERTIFICATION AND RECERTIFICATION OF JUVENILE DETENTION OFFICERS

### 37 TAC §§351.20 - 351.23

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by the repeal.

#### §351.20. Hiring Short-Term Juvenile Detention Officers.

#### §351.21. Training.

#### §351.22. Requirements for Continued Employment.

#### §351.23. Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 351. STANDARDS FOR SHORT-TERM DETENTION FACILITIES

The Texas Juvenile Probation Commission proposes new Chapter 351, §§351.1-351.17, 351.30-351.33, and 351.40-351.48, relating to standards for short-term detention facilities. The proposed standards provide structural and substantive changes from the current standards.

Luis Guerrero, Unit Coordinator of the Field Services Division, has determined that for the first five year period the new sections

are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Guerrero has also determined that for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcement will be the consistent standards to all counties across the State of Texas which will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the new sections.

Public comments on the proposed new sections may be submitted to Kristy Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

## SUBCHAPTER A. DEFINITIONS

### 37 TAC §351.1

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

#### §351.1. Definitions.

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

(1) Alleged Victim--A juvenile alleged as being a victim of abuse, exploitation or neglect.

(2) Attempted Suicide--Any action a resident takes that could result in taking his or her own life voluntarily and intentionally while detained or placed in a short-term detention facility.

(3) Chemical Agents--Oleorsin Capsicum (OC) pepper spray, or Orthochlorobenzalmalonitrile (tear gas).

(4) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department or a multi-county juvenile judicial district.

(5) Commission--The Texas Juvenile Probation Commission.

(6) Contraband--Any item not issued to employees for the performance of their duties and which employees have not obtained supervisory approval to possess. Contraband also includes any item given to a resident by an employee or other individual, which a resident is not authorized to possess or use. Specific items of contraband include, but are not limited to:

- (A) firearms;
- (B) knives;
- (C) ammunition;
- (D) drugs;
- (E) intoxicants;
- (F) pornography; and

(G) any unauthorized written or verbal communication brought into or taken from an institution for a resident, former resident, associate of or family members of a resident.

(7) Design Capacity--The number of people that can safely occupy a building or space as determined by the original architectural

design and any building modifications, licensing, accreditation, regulatory authorities, and building codes.

(8) Facility Administrator--Individual designated by the Chief Administrative Officer or juvenile board, as the on-site program director or superintendent of a short-term detention facility.

(9) Medical Professional--Practitioner licensed or certified by:

- (A) the Texas Board of Nurse Examiners;
- (B) the Texas Board of Medical Examiners;
- (C) the State Board of Physician Assistants; or
- (D) the Texas Department of Health.

(10) Mental Health Professional--Practitioner licensed or certified by:

- (A) the Texas State Board of Examiners of Professional Counselors;
- (B) the Texas State Board of Examiners of Marriage and Family Therapists;
- (C) the Texas Department of Health;
- (D) the Texas Commission on Alcohol and Drug Abuse;
- (E) the Texas State Board of Examiners of Psychologists; and

(F) the Texas Board of Social Worker Examiners provided the licensure is either as an advanced practitioner or advanced clinical practitioner;

(G) the Texas State Board of Medical Examiners; or

(H) mental health professionals employed by the Texas Department of Mental Health and Mental Retardation or an entity that contracts as a service provider with the Texas Department of Mental Health and Mental Retardation.

(11) Primary Control Room--A restricted or secure area from which entrance into and exit from a secure facility is controlled. The primary control room also contains the emergency, monitoring, and communications systems and is staffed 24 hours each day that residents are in the facility.

(12) Resident--A juvenile or other individual that has been admitted into a short-term detention facility.

(13) Short-Term Detention--The temporary secure custody of a juvenile or other individual pending the first hearing to be conducted under Texas Family Code §54.01.

(14) Short-Term Detention Facility ("Facility")--A facility used to provide temporary secure custody of a juvenile or other individual pending the first detention hearing to be conducted under Texas Family Code §54.01.

(15) Short-Term Detention Officer--A person whose primary responsibility is the supervision of the daily activities of the short-term detention facility's residents.

(16) TJPC Standard Screening Tool--An instrument approved by the Commission that screens the juvenile's needs in the area of mental health.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. SHORT-TERM DETENTION FACILITY STANDARDS

### 37 TAC §§351.2 - 351.17

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

#### §351.2. Administration and Management.

(a) Policies and Procedures. The juvenile board shall approve policies and procedures for the facility or approve the policies and procedures of a private provider operating a facility within its county under contract with the Juvenile Board and/or the County.

(b) Certification and Registration. The juvenile board's current facility certification and the Commission's registration shall be posted within the facility in a public area.

#### (c) Facility Administrator.

(1) There shall be a single facility administrator on-site that is designated to oversee the daily operations of the facility.

(2) The person designated as the facility administrator may be the county or judicial district's chief administrative officer.

(3) A short-term detention officer shall be designated to be in charge during the facility administrator's absence.

(d) Duties of Facility Administrator. The duties of the facility administrator shall include, but shall not be limited to the following:

(1) reviewing the facility's policy and procedure manual on an annual basis and maintaining documentation of this review; and

(2) maintaining personnel records for each employee which shall include:

(A) proof of age;

(B) documentation of criminal background checks under §351.30(b)(4) of this chapter and §349.8 of this title;

(C) the application for employment;

(D) performance evaluations;

(E) training records; and

(F) documentation of promotion, demotion, termination and other personnel actions.

#### §351.3. Treatment and Safety.

(a) Serious Incidents. The facility administrator or designee shall report to the Commission within 24 hours, the death, attempted

suicide, escape and any serious injury, including youth on youth assaults that requires medical treatment by a physician or physician's assistant that occurs in a facility.

(b) Abuse, Exploitation and Neglect. Any employee, volunteer or intern of a facility shall report to the Commission and local law enforcement any allegation of abuse, exploitation or neglect of a resident that occurs in or involves an employee of a juvenile justice program, juvenile probation department, juvenile justice alternative education program, pre-adjudication secure detention facility, post adjudication secure correctional facility or short-term detention facility.

(1) Any allegation of abuse, neglect or exploitation involving a juvenile under the jurisdiction of the juvenile court that is not alleged to have occurred in a program or facility under the jurisdiction of the juvenile board shall be reported as required in Texas Family Code, Section 261.

(2) A report of the alleged abuse, exploitation or neglect under (b) shall be made within 24 hours from the time the allegation is made.

#### (c) Internal Investigation.

(1) An internal investigation shall be conducted of all allegations of abuse, exploitation or neglect of a resident.

(2) All employees, volunteers and interns shall fully cooperate with any Commission investigation of alleged abuse, exploitation, or neglect of a resident;

(3) Until the conclusion of the internal investigation, any person alleged to be a perpetrator of abuse, exploitation or neglect shall be placed on administrative leave or reassigned to a position having no contact with residents in the facility, relatives of the alleged victim, participants in a juvenile justice program or individuals under the jurisdiction of the juvenile court.

(4) At the conclusion of the internal investigation, the facility administrator or his/her designee shall take appropriate measures to provide for the safety of the residents.

(5) The facility administrator or designee shall submit a copy of the internal investigation to the Commission within 5 calendar days following the completion of the internal investigation.

(d) Juvenile Board. In the event the facility administrator is alleged to be a perpetrator of abuse, exploitation or neglect, the juvenile board shall:

(1) conduct the internal investigation or appoint an individual who is not an employee of the facility to conduct the internal investigation;

(2) until the conclusion of the internal investigation, place the facility administrator on administrative leave, or ensure the facility administrator has no contact with residents in the facility, relatives of the alleged victim, participants in a juvenile justice program or individuals under the jurisdiction of the juvenile court.

(3) the juvenile board or their designee shall submit a copy of the internal investigation to the Commission within 5 calendar days following the completion of the internal investigation.

(e) Public Facilities. If the facility is operated by the juvenile board and the chief administrative officer is not the facility administrator, the chief administrative officer may perform the duties under subsection (d) of this section.

#### §351.4. Intake, Admission and Release.

(a) Intake. Any individual presented for admission for detention in a short-term detention facility and in need of emergency medical



care due to injury, illness or intoxication or in need of mental health intervention shall not be admitted into the short-term detention facility.

(1) The referring person shall be directed to a health care facility to have the individual evaluated and treated.

(2) Subsequent admission to the short-term detention facility is contingent upon written medical clearance provided by a medical or mental health professional.

(b) Intoxicated Individuals.

(1) Anyone admitted into a short-term detention facility shall be assessed to determine need for detoxification from alcohol or other substances.

(2) Intoxicated individuals who have been medically cleared for admission should be segregated from other residents and closely monitored by staff.

(c) Intake and Release.

(1) An intake or other officer authorized by the court shall be on duty at the facility or on call 24 hours a day.

(2) Written policy shall state the conditions under which the intake officer may authorize the conditional release of a resident referred to the facility.

(d) Orientation.

(1) A short-term detention officer shall orient each newly admitted resident to the facility.

(2) The orientation shall include an explanation of the following:

(A) facility's rules; and

(B) grievance procedures.

(e) Personal Property. Written policy shall describe the procedures regarding the handling of residents' personal property held by the facility.

(f) Bedding. Each resident shall be provided suitable clean bedding including sheets, pillow and pillowcase, mattress, and blankets.

(g) Clothing. Clean clothing is to be provided upon admission.

(h) Personal Hygiene. Residents shall be required to bathe or shower upon admission.

(i) Notice. Each resident shall be informed of the procedures in which health care services shall be provided.

(j) Assessment Period. Upon entering a short-term detention facility, a resident may be placed in room confinement for purposes of assessing the risks and needs of the resident in accordance with the following:

(1) the assessment period shall not last more than 24 hours;

(2) short-term juvenile detention officers shall document their assessment of residents during this 24-hour period; and

(3) short-term juvenile detention officers shall conduct and record room checks at staggered intervals not to exceed 15 minutes.

(k) Health Screening. Within one hour of admission, a health screening shall be conducted on each resident. Information obtained shall include but is not limited to:

(1) mental health problems;

(2) suicide risk in accordance with §351.13(d)(1)(A)(ii) of this chapter;

(3) current state of health including:

(A) allergies;

(B) other chronic conditions;

(C) tuberculosis;

(D) sexually transmitted diseases; and

(E) other infectious diseases.

(4) current use of medication including type, dosage, and prescribing physician;

(5) dental problems;

(6) vision problems;

(7) drug and alcohol use;

(8) physical disabilities; and

(9) evidence of physical trauma.

(l) Screening Results. Any finding of the health screening that indicates a significant potential health risk to the staff and residents shall be immediately reported to the facility administrator and the affected resident shall be placed in medical confinement until proper medical clearance is obtained.

(m) Screening. The TJPC Standard Screening Tool shall be administered to each resident that is admitted into the short-term detention facility.

(1) The tool shall be administered within 24 hours from the time the resident is admitted into detention.

(2) A copy of the completed tool shall be provided to the supervising juvenile probation officer.

(3) A copy of the completed tool shall be provided to the receiving pre-adjudication secure detention facility upon transfer from the short-term detention facility.

(n) Release. Procedures for releasing residents shall include:

(1) verification of identity of the person receiving custody;

(2) verification of release authorization;

(3) signed release by resident for return of personal property; and

(4) receipt signed by person receiving custody.

§351.5. Supervision.

(a) Gender.

(1) If residents of both genders are housed within the short-term detention facility, short-term detention officers of both genders shall be on duty and available to the residents for every shift.

(2) Short-term juvenile detention officers of one gender shall be the sole supervisors of residents of the same gender during showers, physical searches, pat downs, disrobing of suicidal youth, or during other times in which personal hygiene practices or needs would require the presence of a short-term detention officer of the same gender.

(b) Ratios.

(1) The short-term juvenile detention officer to resident ratio shall not be less than 1 short-term detention officer to every 8 residents.

(2) An individual hired as a short-term detention officer may count toward meeting the detention officer to resident ratio under subsection (b)(1) of this section so long as the individual:

(A) has received training in recognizing and reporting abuse, exploitation and neglect;

(B) has been certified in

(i) first aid;

(ii) cardio-pulmonary resuscitation; and

(iii) a TJPC approved physical restraint technique;

and

(C) has received training on the contents and implementation of the suicide prevention plan.

(c) Level of Supervision.

(1) When present outside of their rooms, residents shall be in the constant physical presence of a short-term detention officer.

(2) Private visitation between one resident and an attorney, authorized visitor or clergy does not require the constant physical presence of a short-term detention officer.

(3) When residents are placed inside of their rooms, the short-term detention officer shall:

(A) visually observe each resident at staggered intervals not to exceed 15 minutes; and

(B) document each observation made with the time of the observation and a general description of the resident's behavior.

(d) Communication. At least one short-term detention officer on every shift shall carry on their person two-way radio communication with local law enforcement.

(e) Technology. Video and audio monitoring devices shall not substitute for supervision by short-term juvenile detention officers.

§351.6. Data Collection.

The facility administrator shall ensure that accurate annual statistics are gathered and recorded, including:

(1) total number of admissions;

(2) total days of care provided;

(3) residents' age;

(4) residents' gender;

(5) residents' race;

(6) referring offense of those detained;

(7) length of stay;

(8) average cost per resident per day;

(9) total number of physical restraints applied;

(10) total number of mechanical restraints applied;

(11) total number of room confinements;

(12) total number of resident related injuries to detention staff; and

(13) total number of incidents where chemical agents were applied.

§351.7. Residents' Records.

(a) Facility Records. The facility shall maintain:

(1) dated and signed record of entries by the staff supervising the residents;

(2) a daily report of admissions and releases; and

(3) a single document to identify all residents in the facility and their housing assignment.

(b) Admission Records. At the time of admission, the following information will be documented in each resident's admission record:

(1) date and time of admission;

(2) name;

(3) nicknames and aliases;

(4) social security number;

(5) last known address;

(6) detention criteria as required by the Texas Family Code §53.02(b);

(7) referring offense;

(8) name of attorney;

(9) name, title, and signature of delivering individual;

(10) gender;

(11) race;

(12) date of birth;

(13) place of birth;

(14) citizenship;

(15) current education level;

(16) last school attended;

(17) name, relationship, address, and phone number of parents, guardian, or persons with whom the resident resides at admission; and

(18) health assessment.

(c) Residents Records Maintenance. Resident records shall be maintained in accordance with:

(1) a uniform format for identifying and separating files, and

(2) procedures to ensure confidentiality of records.

(d) Resident Record Contents. Each resident's record shall include at least the following:

(1) offense report, offense narrative, arrest warrant, or directive to apprehend;

(2) signed inventory of cash and property surrendered signed by the resident and short-term detention officer;

(3) list of approved visitors;

(4) name of assigned probation officer;

(5) record of resident's notification of program rules and disciplinary policy;

(6) record of resident's notification of the facility's grievance procedures;

(7) behavioral record including any special incidents, discipline, or grievances;

- (8) referrals to other agencies;
  - (9) a copy of the completed TJPC standard screening tool;
- and
- (10) final release or transfer report.

§351.8. Physical Plant.

(a) Sleeping Units. All sleeping rooms constructed and/or placed into operation on or after the effective date of this standard shall be utilized as single occupancy.

(1) Sleeping rooms constructed and/or placed into operation on or after the effective date of this standard shall have a minimum ceiling height of seven and one-half feet.

(2) Sleeping rooms constructed and/or placed into operation on or after the effective date of this standard shall have a minimum of 60 square feet of floor space.

(3) Residents held in sleeping rooms shall have access to a toilet above floor level, a washbasin, drinking water, running water, and a bed above floor level.

(4) There shall be separate sleeping rooms for male and female residents.

(b) Exits. Facility exits shall be clear of obstruction and properly marked for evacuation in the event of fire or other emergency.

(c) Storage. Storage of cleaning supplies and equipment shall not be accessible to residents.

(d) Safety Plan. Written policies shall promote the safety of residents, staff, and visitors. The policies shall be reviewed annually with written documentation submitted by a qualified fire prevention and safety officer. These shall include, but shall not be limited to:

- (1) maintenance of a current fire drill log;
- (2) proper disposal of combustible refuse;
- (3) a posted plan for prompt evacuation of the facility;
- (4) required quarterly fire drills on all shifts; and
- (5) procedures for use and control of flammable, toxic, and caustic materials.

(e) Safety Codes. The facility shall conform to the provisions set forth in the Life Safety Code, National Fire Protection Association (NFPA), 101 and/or any applicable state and local fire safety codes. The Life Safety Code may be substituted with local government ordinances/codes only if said ordinances/codes are specifically written to include building occupancy for detention and correctional usage.

(1) A formalized facility Life Safety/fire safety inspection shall be completed prior to the facility becoming operational.

(2) All subsequent Life Safety/fire safety shall be conducted at least annually.

(3) All inspection reports shall be reduced to written documentation which shall include:

- (A) an enumeration of the specific codes used during the inspection;
- (B) any corrective action required;
- (C) the name and title of person conducting the inspection; and
- (D) the date(s) of the inspection.

(f) Population. The population of the facility shall not exceed the rated capacity of the facility.

(g) Lighting. There shall be lighting available for the residents.

(h) Lavatory. There shall be a toilet and washbasin for at least every five residents.

(i) Facility Design. All housing areas shall provide for the following:

(1) an operable shower or bath with hot and cold running water for at least every ten residents;

(2) fully functioning:

- (A) heating systems;
- (B) ventilation systems; and
- (C) cooling systems.

(3) access to a drinking fountain.

(j) New Facilities. All facilities placed into operation on or after the effective date of this standard shall provide for the following:

(1) Natural Lighting. All housing areas shall provide natural light available from a source within 20 feet of the area.

(2) Disabled Residents. Rooms or housing units used by disabled residents shall be designed for their use and provide for their safety and security in accordance with state and federal law.

(3) Personal Property. Space shall be provided for secure storage of the resident's personal property.

(4) Alternate Power Source. The facility shall have an alternate source of power to operate:

- (A) operate lights;
- (B) communications systems; and
- (C) electric door locks.

(5) Preventive Maintenance.

(A) A written plan shall provide for emergency repair or replacement of equipment.

(B) Power systems shall be tested at least every two weeks, the results documented and any deficiencies corrected.

(C) All emergency equipment and systems shall be tested at least monthly, the results documented and any deficiencies corrected.

(6) Ventilation. An alternate means of ventilation shall be maintained in case regular power is interrupted.

(7) Access for Individuals with Disabilities. All parts of the facility that are accessible to the public shall be accessible to and usable by staff and visitors with physical disabilities in accordance with the Americans with Disabilities Act.

(8) Secure Storage. There shall be a location for secure storage of restraining devices, and related security equipment. This equipment shall be readily accessible to authorized persons.

(k) Co-located Facilities. If the short-term detention facility is located in the same building or is on the grounds of any type of adult corrections facility, it shall be a separate, self-contained unit. All applicable federal and state laws pertaining to the separation of juveniles from adult inmates shall apply.

§351.9. Security and Control.

(a) Policy. Written policies for security and control of the facility shall include the following:

- (1) procedures to continue operation in the event of a work stoppage;
- (2) key control;
- (3) control of the use of:
  - (A) tools;
  - (B) medical equipment; and
  - (C) kitchen tools; and
- (4) provisions to prevent firearms from entering the secure area of the facility.
- (5) Written procedures for coordination with law enforcement authorities in the case of riot, rebellion, escape, or other situations requiring assistance from city, county, or state law enforcement agencies.

(b) Searches. Searches shall be conducted according to written policies limited to the following conditions:

- (1) residents may be required to submit to a pat down/frisk search to prevent concealment of contraband and as necessary for facility security;
- (2) residents may be required to submit to an oral cavity search to prevent concealment of contraband, to ensure the proper administration of medication, and as necessary for facility security;
- (3) residents may be required to surrender their clothing and submit to a search as necessary for facility security;
- (4) residents may be required to undergo an anal or genital body cavity search only if there is probable cause to believe that they are concealing contraband; and
- (5) an anal or genital body cavity search may be conducted only by a physician.

(c) Special Incidents.

- (1) All special incidents including, but not limited to, riots, rebellion, the taking of hostages, escapes, and assaults shall be reported in writing to the facility administrator.
- (2) A copy of the report shall be placed in the permanent file of the resident(s) involved in the incident.

(d) Perimeter Security. The facility shall be constructed so that residents remain within the premises and the general public is denied access without authorization. Perimeter security shall be maintained at all times.

§351.10. Rules and Discipline.

(a) Prohibited Sanctions. The following sanctions shall be prohibited:

- (1) corporal punishment;
- (2) humiliating punishment;
- (3) one resident sanctioning another;
- (4) group punishment for the acts of an individual;
- (5) deprivation of food;
- (6) deprivation of clothing;

- (7) deprivation of sleep;
- (8) deprivation of medical services; and
- (9) physical exercise used for discipline, compliance, or intimidation.

(b) Enforcement.

- (1) Rule violations and corresponding staff actions shall be recorded in the resident's record.
- (2) Law Violations. When a resident is alleged to have committed a felony or a class A or B misdemeanor while in the facility, the case shall be referred to a law enforcement agency for possible investigation and/or prosecution.

§351.11. Food.

- (a) Nutritional Requirements. Meals shall be well balanced and nutritious.
- (b) Modified Diets. Modified diets shall be provided in the following circumstances:
  - (1) upon the recommendation of a physician or dentist; or
  - (2) when a resident's religious beliefs require it.
- (c) Staff Meals. Facility staff on duty where residents are eating need not eat, but if they do, they shall eat the same food served to the residents unless:

- (1) a special diet has been ordered by staffs' physician or dentist; or
  - (2) a special diet is required by staff's religious beliefs.
- (d) Daily Schedule.
- (1) Three meals shall be provided daily.
  - (2) Two of the meals shall be hot.
  - (3) No more than 14 hours may elapse between the evening meal and breakfast unless a snack is provided.
  - (4) Residents shall be allowed no less than 10 minutes to eat.

§351.12. Hygiene.

- (a) Bedding and Towels. Bed linens shall be clean.
- (b) Housekeeping Plan. A written housekeeping plan shall be followed which promotes cleanliness, facility sanitation, and control of vermin and pests.
- (c) Clothing. Clean socks and underclothing shall be issued daily.
- (d) Personal Hygiene. Residents shall be required to bathe or shower daily.

(e) Hygiene Plan. Residents shall be given appropriate instruction on hygiene and shall be required to comply with acceptable rules of personal cleanliness and oral hygiene.

§351.13. Health Care Services.

- (a) Medical Referral. If a staff member believes any resident to be in need of immediate medical attention or if a resident requests treatment, the resident shall be referred for medical services.
- (b) Medical Release. Documentation of consent for medical treatment received in accordance with Texas Family Code Section 32.001, shall be maintained in applicable resident files.

(c) Medication. In accordance with Texas Human Resources Code Section 142.005, the juvenile board shall adopt a policy concerning the administration of medication to residents. The policy shall include which facility employees are authorized to administer medication to residents.

(d) Suicidal Youth.

(1) Prevention Plan.

(A) Each facility shall have a written suicide prevention plan developed in consultation with a mental health professional that addresses the following components:

(i) definitions of high risk and moderate risk suicidal behavior;

(ii) screening methodology to assess a resident's risk of suicide upon admission and upon any indication a resident previously screened may now be at moderate or high risk for suicidal behavior;

(iii) communication among facility staff, mental health professionals, the resident, and the resident's parent or guardian including communication regarding observations or indications a resident previously screened may now be at moderate or high risk for suicidal behavior;

(iv) level of supervision for residents assigned to moderate or high risk for suicidal behavior;

(v) policy and procedure for intervening in suicide attempts;

(vi) reporting of resident suicides and attempted suicides in accordance with any applicable state law, administrative standard, or local policy or ordinance;

(vii) training on the contents and implementation of the suicide prevention plan;

(viii) housing of residents assigned to moderate or high risk of suicidal behavior including the removal from the resident's presence any dangerous objects; and

(ix) mortality reviews designed to review the facility's compliance and possible needed revisions to the suicide prevention plan following a resident's suicide.

(B) All short-term juvenile detention officers shall be trained annually in the implementation of the suicide prevention plan.

(C) Review.

(i) The suicide prevention plan shall be reviewed on an annual basis in consultation with a mental health professional.

(ii) The suicide prevention plan shall be included in the facility administrator's review of the facility's policies and procedures in accordance with §351.2(d)(1) of this chapter.

(2) Level of Supervision.

(A) Moderate Risk for Suicidal Behavior. During non-program hours, or any time a resident classified as a moderate risk for suicidal behavior is confined or restricted from the general population:

(i) The resident shall be visually checked by a short-term juvenile detention officer at staggered intervals not to exceed every 10 minutes.

(ii) The short-term juvenile detention officer shall document each visual observation made with the time of the observation and a general description of the resident's behavior.

(B) High Risk for Suicidal Behavior.

(i) Supervision. During non-program hours, or any time a resident classified as high risk for suicidal behavior is confined or restricted from the general population:

(I) the resident shall be under the continuous, uninterrupted visual supervision of a short-term juvenile detention officer; and

(II) the short-term juvenile detention officer shall document physical observations of a high risk resident at staggered intervals of no less than every 30 minutes.

(ii) Required Documentation. The following documentation shall be maintained for high-risk residents and shall be posted where it is immediately accessible to the short-term juvenile detention officer providing supervision to the high risk resident:

(I) the date and time the resident was classified as high risk;

(II) who classified the resident as high risk;

(III) a description of the resident's behavior that caused the resident's classification as high risk;

(IV) who has been assigned to supervise the resident;

(V) the location for the resident's supervision;

(VI) the date and time the resident was reclassified as no longer being high risk; and

(VII) the name of the mental health professional who reclassified the resident as no longer being high risk.

(C) A short-term juvenile detention officer assigned to work in a facility's primary control room may not provide supervision under paragraph (2)(A) or (2)(B) of this subsection.

(D) Video and audio monitoring devices shall not substitute for supervision by a short-term juvenile detention officer under paragraph 2(A) or (2)(B) of this subsection.

(3) Mental Health Referral.

(A) The facility shall refer a resident classified as exhibiting a high risk for suicidal behavior to a mental health professional as defined by §351.1(10)(A),(B),(E),(F) and (G) of this chapter within 24 hours from the time the resident is classified as a high risk for suicidal behavior.

(B) The facility shall maintain written documentation that the referral under subparagraph (A) of this paragraph was made. The documentation shall include:

(i) who notified the mental health professional or mental health agency;

(ii) the date and time of the notification;

(iii) the method of notification; and

(iv) a brief description of the response provided by the mental health professional or mental health agency.

(C) Prior to being removed from a high risk for suicidal behavior designation/classification, a mental health professional as defined by section §351.1(10)(A)(B)(E)(F) and (G) of this chapter shall conduct an assessment of the resident's suicide risk and issue a written recommendation which addresses the following:

(i) the need to re-classify the resident's suicide risk level;

(ii) the need for intervention strategies and/or services during the resident's period of incarceration within the facility; and

(iii) the need for additional assessment(s).

(D) The mental health professional's written recommendation shall be maintained in the resident's record.

(E) Only the facility administrator or their designee may remove a resident from being designated/classified as being a high risk for suicidal behavior paragraph (2)(B) of this section.

§351.14. Communications.

(a) Visitation.

(1) Written policies shall allow for regularly scheduled visitation and procedures for emergency visitation.

(2) The parents or guardians of the resident shall be provided a copy of the visitation schedule.

(3) A registry shall be maintained to document the name and relationship to the resident of all visitors.

(4) Attorneys and their representatives may visit residents at any time.

(b) Telephone.

(1) Written policies shall allow reasonable and fair access to telephones and detail the specific time, length, and other limitations on calls.

(2) The parents or guardians of the resident shall be provided a copy of the policy.

(c) Mail.

(1) Limitations. A resident's rights to privacy and correspondence may not be limited except when:

(A) probable cause exists to suspect that the correspondence is part of an attempt to formulate, devise, or otherwise effectuate a plan to escape from the facility or to violate state or federal laws. If such cause exists, then facility staff shall:

(i) ask the resident's permission to read the letter;

(ii) if permission is denied, request a search warrant prior to opening and reading the letter; and

(iii) if a search warrant request is denied, the correspondence shall be provided to the resident;

(B) Communication with certain individuals is specifically forbidden by:

(i) the resident's court ordered rules of probation or parole; or

(ii) by the facility's rules of separation; or

(iii) a specific list of individuals furnished by a minor resident's parents or guardian indicating who they feel should not communicate with the resident.

(iv) Such incoming correspondence shall be returned unopened to the sender.

(2) Withholding mail. When mail is withheld from the resident, the reasons shall be documented.

(3) Materials and Postage. Upon request, residents shall be furnished with writing materials and postage for no fewer than two letters.

(4) Legal Correspondence. Residents shall be furnished adequate postage for legal correspondence.

(5) Forwarding Mail. Provisions shall be made to forward mail when the resident is released or transferred.

(6) Inspection. Mail may be opened by staff only in the presence of the resident with inspection limited to searching for contraband. Money received in the mail shall be held for the resident in their personal property inventory, with receipt provided, or returned to the sender.

§351.15. Residents' Rights.

(a) Illegal Discrimination. Residents shall not be subjected to discrimination based on race, national origin, religion, sex, or disability.

(b) Supervision. Residents shall not be subjected to supervision and control by other residents. Supervision is to be exercised only by short-term detention officers .

(c) Legal Counsel. Residents have the right to confidential contact with attorneys through telephone, uncensored letters, and personal visits.

(d) Work. Residents may not be required to work unless the activity is related to general housekeeping or as required by a court order or deferred prosecution agreement for community service restitution.

(e) Visitation and Communication. Residents have the right to receive visitors and to communicate and correspond subject only to the limitations necessary to maintain facility security and control.

(f) Use of Medication. Except upon the order of a physician, no stimulant, tranquilizer, or psychotropic drug shall be administered to residents.

(g) Experimentation. Participation by residents in medical, pharmaceutical, or cosmetic experiments is prohibited.

(h) Grievances. The facility shall have a written grievance procedure with at least one level of appeal.

(i) Religion. Residents may participate in religious services and religious counseling voluntarily, subject to the limitations necessary to maintain facility security and control.

(j) Services.

(1) Residents have the right to a program of services including:

(A) one hour of physical exercise per day outside of the resident's cell/sleeping unit; and

(B) one hour of unstructured activity per day outside of the resident's cell/sleeping unit.

(2) Denial of a service under paragraph (1)(A) and (B) of this section shall not be used as a means of disciplining a resident. Denial of a service under paragraph (1)(A) of this subsection and paragraph (1)(B) of this subsection may only occur during the resident's assessment period under §351.4(k) of this title or if the resident poses a threat to himself or others.

(k) Treatment and Safety. Residents shall not be subjected to abuse, neglect or exploitation as defined in Chapter 261, Texas Family Code.

§351.16. Volunteers and Interns.

If a short-term detention facility has or develops a volunteer or internship program, the juvenile board shall adopt the following policies:

(1) a description of the authority, responsibility and accountability of volunteers and interns who work with the department;

(2) performance of a Texas criminal history background search (TCIC);

(3) performance of a local law enforcement sex offender registration records check in the city or county where the volunteer or intern resides;

(4) selection and termination criteria including disqualification based on criminal history;

(5) orientation and training requirements including training on recognizing and reporting abuse, exploitation and neglect;

(6) a requirement that volunteers and interns meet minimum applicable professional requirements; and

(7) a provision for a volunteer and intern registry sign-in log.

§351.17. Waivers and Variances.

Unless expressly prohibited by another standard, the juvenile board, chief administrative officer or facility administrator may make an application for waiver and the juvenile board may make an application for variance of any standard or standards adopted by the Commission in accordance with §349.2 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa A. Capers

Deputy Executive Director and General Counsel  
Texas Juvenile Probation Commission

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 424-6710



## SUBCHAPTER C. SHORT-TERM JUVENILE DETENTION OFFICERS

### 37 TAC §§351.30 - 351.33

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§351.30. Employment of Short-Term Juvenile Detention Officers.

(a) Qualifications for Employment.

(1) Short-Term Juvenile Detention Officers and Supervisors of Short-Term Juvenile Detention Officers.

(A) An applicant for the position of a short-term juvenile detention officer, or supervisor of short-term juvenile detention officers shall be at least 21 years of age; and

(B) have either a high school diploma or a general equivalency diploma from a high school or issuing authority within the

United States of America. An applicant with a high school diploma issued in a foreign country or who completed high school under home schooling may be hired contingent upon a successful validation of the applicant's high school diploma or high school education under subparagraph (C) of this paragraph.

(C) Validation of High School Diploma or High School Education:

(i) Method of Validation. An applicant with a foreign high school diploma, or who received a high school education through home schooling shall validate his/her high school diploma within 3 months from the applicant's date of hire using one of the following methods:

(I) obtaining unconditional acceptance into a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(II) receiving a general equivalency diploma;

(III) obtaining evaluation of their high school diploma as the equivalent to a high school diploma received within the United States of America by an educational evaluation service approved by the Commission; and

(IV) providing documentation of the conferral of a bachelor's or master's degree from a university or college accredited by an accrediting organization approved by the Texas Higher Education Coordinating Board.

(ii) A short-term detention officer subject to subparagraph (C) of this paragraph who fails to validate his/her high school education within the three month time frame shall not be the sole supervisor of residents under §351.5(a)(2) of this title, nor count toward meeting the supervision ratio under §351.5(b) of this title.

(2) Facility Administrator. An applicant for the position of facility administrator shall:

(A) have a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(B) have either:

(i) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology; or

(ii) have one year of experience in full-time case-work, counseling, community group work in criminal justice or a related field.

(C) If necessary, and in accordance with Title 37 Texas Administrative Code §341.39, the juvenile board, or chief administrative officer shall apply to the Commission for an exemption of the one year of experience or graduate study prior to the employment of an individual as the facility administrator.

(b) Criminal Records Check. Prior to employing a person as a short-term juvenile detention officer, supervisor of short-term juvenile detention officers, or facility administrator, the facility administrator, chief administrative officer, juvenile board or their designee shall initiate a criminal history check in accordance with the following guidelines:

(1) The following criminal history checks shall be conducted:

(A) a Texas criminal history background search (TCIC);

(B) a local law enforcement sex offender registration records check in the city or county where the applicant resides; and

(C) a Federal Bureau of Investigation fingerprint based criminal history background search (NCIC).

(2) In addition to the requirements of paragraph (1) of this subsection, if the applicant currently resides in one of the following states, or resided in one of the following states within the 10 years prior to the date the employment application was made, a state criminal history background search and state sex offender registration check shall also be conducted where available:

- (A) Hawaii;
- (B) Kansas;
- (C) Kentucky;
- (D) Louisiana;
- (E) Maine;
- (F) Massachusetts;
- (G) New Hampshire;
- (H) Rhode Island;
- (I) Tennessee;
- (J) Vermont; and
- (K) the District of Columbia.

(3) An Internet based criminal background search shall not be used to conduct the background searches required under subsection (b)(1)(A) or subsection (b)(1)(C) of this section.

(4) A copy of the returned criminal history checks shall be retained in the facility's records.

(5) Continued employment shall be contingent upon the completion and return of criminal history checks that show the individual has no disqualifying criminal history in accordance with §351.30(c)(1) of this title.

(c) Disqualification from Employment.

(1) Criminal History. A person with the following criminal history shall be disqualified from employment as a short-term juvenile detention officer, supervisor of juvenile detention officers, or administrative officer.

(A) a felony conviction against the laws of this state, another state, or the United States within the past 10 years;

(B) a deferred adjudication for a felony against the laws of this state, another state, or the United States within the past 10 years;

(C) current felony probation or parole;

(D) a jailable misdemeanor conviction against the laws of this state, another state or the United States within the past 5 years;

(E) a deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United States within the past 5 years;

(F) current misdemeanor probation or parole; or

(G) registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(H) Waiver. A request for waiver under §349.2 of this title may not be requested for this section unless the person received a

pardon based upon proof of innocence or the reversal of a finding of guilt by a trial or appellate court.

(2) Revocations and Suspensions. An individual whose certification has been revoked by the Commission shall never qualify for employment as a juvenile detention officer, supervisor of detention officers or administrative officer.

(A) An individual whose certification is currently under a suspension order issued under §349.27(d)(2) of this title shall not qualify for employment as a juvenile detention officer, supervisor of juvenile detention officers, or administrative officer so long as the suspension order remains in effect.

(B) An individual whose certification is currently under a suspension order issued under §349.31(a) of this title shall not qualify for employment as a juvenile detention officer, supervisor of juvenile detention officers, or administrative officer until the Commission receives an order issued under Texas Family Code §232.013 staying or vacating the license suspension.

(d) Applicability. This section applies to all individuals hired on or after the effective date of this subchapter.

#### §351.31. Training.

(a) Training Required Before Assuming Duties. Before assuming duties as the facility administrator and before providing supervision to residents, the facility administrator and all short-term detention officers shall be trained in recognition and reporting of abuse, exploitation and neglect, the contents and implementation of the facility's suicide prevention plan, and hold current certification in first aid, cardio-pulmonary resuscitation, and a physical restraint technique that has been approved by the Commission.

(b) Training Required Within 60 Days from Date of Hire.

(1) Within 60 days from the date of hire, the facility administrator and short-term detention officers shall be trained in the following subjects:

(A) Introduction to Juvenile Detention;

(B) Juvenile Rights;

(C) Abuse, Exploitation and Neglect;

(D) Behavior Observation and Recording;

(E) Suicide Prevention and Identification;

(F) Legal Liabilities;

(G) Dynamics of Youth with Mental Illness in Detention Centers;

(H) Behavior Management;

(I) Risk Management, Safety, and Security;

(J) HIV/AIDS and other Communicable Diseases; and

(K) Medical and Health Services.

(2) A short-term juvenile detention officer who fails to complete the training required under paragraph (1) of this subsection within 60 days shall not be the sole supervisor of residents under §351.5(a)(2) of this title, nor count toward meeting the supervision ratio under §351.5(b) of this title.

#### §351.32. Requirements for Continued Employment.

(a) Criminal History Checks.

(1) The facility administrator, chief administrative officer, or juvenile board shall conduct a criminal history check in accordance



with §351.30(b) of this title on every short-term juvenile detention officer, supervisor of short-term juvenile detention officers every two years.

(2) The chief administrative officer or juvenile board shall conduct a criminal history check in accordance with §351.30(b) of this title on the facility administrator.

(3) A person whose returned criminal history check reveals disqualifying criminal history as described under §351.30(c) of this title may not be the sole supervisor of residents under §351.5(a)(2) of this title, nor count toward meeting the supervision ratio under §351.5(b) of this title.

(b) Training.

(1) Certifications. The facility administrator and every short-term juvenile detention officer shall maintain a current certification in first aid, cardio-pulmonary resuscitation, and a physical restraint technique that has been approved by the Commission.

(2) Continuing Education. In addition to the certifications required under paragraph (1) of this subsection the facility administrator and every short-term juvenile detention officer shall receive 30 hours of training in a field related to the performance of their duties every two years.

(3) Abuse, Exploitation and Neglect. Short-term detention officers shall receive training on recognizing and reporting abuse, exploitation and neglect on an annual basis.

§351.33. Certification.

The facility administrator of a short-term detention facility, may elect to certify a facility's short-term juvenile detention officers and supervisors of short-term detention officers as detention officers in accordance with 37 Texas Administrative Code Chapter 349. If the election to certify is made, every short-term detention officer within the facility comply with the certification standards found in Chapter 349.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## SUBCHAPTER D. RESTRAINTS

### 37 TAC §§351.40 - 351.48

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§351.40. Definitions.

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

(1) Approved Physical Restraint Technique ("physical restraint")--A professionally trained restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints. The approved physical restraint technique shall be approved for use by the Commission and adopted by the juvenile board.

(2) Approved Mechanical Restraint Devices ("mechanical restraint")--A professionally manufactured mechanical device to aid in the restriction of a person's bodily movement. The approved mechanical restraint shall be approved by the Commission and adopted by the juvenile board. The following are Commission approved mechanical restraint devices:

(A) Ankle Cuffs--Metal, cloth or leather band designed to be fastened around the ankle to restrain free movement of the legs;

(B) Anklets--Cloth or leather band designed to be fastened around the ankle or leg;

(C) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms;

(D) Plastic Cuffs--Plastic devices designed to be fastened around the wrist or legs to restrain free movement of hands, arms or legs;

(E) Restraint Chair--A professionally manufactured security restraining device that may utilize a combination of handcuffs, leg cuffs, and restraining straps in a specially designed upright contoured chair to provide effective containment of a resident;

(F) Waist Band--A cloth, leather, or metal band designed to be fastened around the waist used to secure the arms to the sides or front of the body; and

(G) Wristlets--A cloth or leather band designed to be fastened around the wrist or arm which may be secured to a waist belt.

(3) Chemical Restraint--The application of a chemical agent on a resident or residents.

(4) Four Point Restraint--The use of mechanical restraint devices, applied to each of a resident's wrists and ankles, used to secure a resident face up to a professionally manufactured bed.

(5) Physical Escort--Touching or holding a resident with a minimum use of force for the purpose of directing the resident's movement from one place to another. A physical escort is not considered a physical restraint.

(6) Protective Devices--Professionally manufactured devices used for the protection of residents or staff that do not restrict the movement of a resident. Protective devices are not considered mechanical restraint devices.

(7) Restraints--Physical, mechanical, or chemical restraint.

§351.41. Requirements.

The use of restraints shall be governed by the following criteria:

(1) restraints shall only be used by juvenile probation and detention officers;

(2) prior to participating in any restraint juvenile probation officers and juvenile detention officers shall be:

(A) certified in the use of the approved physical restraint technique;

(B) trained in the use all approved mechanical restraint devices; and

(C) trained in the use of any approved chemical agents;

(3) restraints shall only be used in instances of threat of imminent self-injury, injury to others, serious property damage, or prevention of escapes;

(4) restraints shall only be used as a last resort;

(5) only the amount of force and type of restraint necessary to control the situation shall be used;

(6) restraints shall be implemented in such a way as to protect the health and safety of the resident and others; and

(7) restraints shall be terminated as soon as the resident's behavior indicates that the threat of imminent self-injury, injury to others, serious property damage, or prevention of escape has subsided.

§351.42. Prohibitions.

Restraints that employ a technique listed below are prohibited:

(1) restraints used for punishment, discipline, retaliation, harassment, compliance, intimidation, or as a substitute for room restriction or confinement;

(2) restraints that deprive the resident of basic human necessities including restroom privileges, water, food and clothing;

(3) restraints that are intended to inflict pain;

(4) restraints that put a resident face down with sustained or excessive pressure on the back or chest cavity;

(5) restraints that put a resident face down with pressure on the neck or head;

(6) restraints that obstruct the airway or impair the breathing of the resident;

(7) restraints that restrict the resident's ability to communicate;

(8) restraints that obstruct the view of the resident's face;

(9) any technique that does not require the monitoring of the resident's respiration and other signs of physical distress during the restraint; and

(10) percussive or electrical shocking devices.

§351.43. Documentation.

Documentation. Except as required by §351.48(c) of this title, all restraints shall be fully documented and maintained. Written documentation regarding the use of restraints shall require at a minimum:

(1) name of resident;

(2) staff member(s) name and title(s) who administered the restraint;

(3) date of the restraint;

(4) duration of the restraint including notation of the time the restraint began and ended;

(5) location of the restraint;

(6) description of preceding activities;

(7) behavior which prompted the restraint;

(8) type of restraint applied;

(9) efforts made to de-escalate the situation and alternatives to restraint that were attempted; and

(10) any injury that occurred during the restraint.

§351.44. Physical Restraint.

In addition to the requirements found in §351.41, §351.42 and §351.43 of this chapter, juvenile probation and detention officers shall be re-certified in the approved physical restraint technique at least every two years.

§351.45. Mechanical Restraint .

In addition to the requirements found in §351.41, §351.42 and §351.43 of this chapter, the use of mechanical restraint, except the restraint chair shall be governed by the following criteria:

(1) Requirements.

(A) mechanical restraints shall only be used in a manner consistent with their intended use;

(B) there shall be provisions for the inspection and maintenance of mechanical restraint devices; and

(C) mechanical restraints may be used when moving a resident from point to point within the facility. The mechanical restraint shall terminate upon completion of the resident's relocation.

(2) Prohibitions.

(A) mechanical restraint devices shall not be altered from the manufacturer's design;

(B) a resident shall not be placed face down while restrained in any mechanical restraint for a period of time longer than necessary to apply the restraint devices;

(C) a mechanical restraint shall not secure a resident in a prone position with his or her arms and/or hands behind the resident's back and secured to the resident's legs;

(D) mechanical restraint devices shall not be secured so tightly as to interfere with circulation nor so loosely as to cause chafing of the skin;

(E) mechanical restraint devices shall not be secured to a stationary object except when complete immobilization is required by four-point restraint;

(F) a resident in mechanical restraints shall not participate in any physical activity; and

(G) plastic cuffs shall only be used in emergency situations.

§351.46. Restraint Chair.

(a) Requirements. In addition to the requirements found in §351.41, §351.42 and §351.43 of this chapter, the use of the restraint chair shall be governed by the following criteria:

(1) only a professionally manufactured restraint chair approved by the juvenile board may be used in a juvenile facility;

(2) the restraint chair may only be used to prevent self-injury, injury to others, or when a resident displays extremely aggressive or disruptive behavior and other approved restraint techniques are inappropriate or ineffective to control the resident's behavior; and

(3) only a juvenile probation or detention officer who has been trained in the proper use of the restraint chair shall:

(A) be authorized to place a resident in the restraint chair; and

(B) provide supervision of a resident placed in the restraint chair;

(4) circulation checks shall be conducted by a juvenile probation or detention officer every 10 minutes;

(5) length of confinement

(A) a resident shall be released from the restraint chair as soon as the resident is no longer a threat to self or others and the resident can be reasonably controlled by staff;

(B) a resident shall be considered for removal from the restraint chair every ten minutes;

(C) the maximum confinement time in the restraint chair is one hour unless authorized by the facility administrator or designee after examination of the resident's condition by one of the following licensed medical professionals:

- (i) emergency medical services (EMS/fire rescue);
- (ii) paramedic;
- (iii) registered nurse (RN);
- (iv) physician (MD);
- (v) licensed vocational nurse (LVN);
- (vi) licensed practicing nurse (LPN);
- (vii) physician assistant (PA); or
- (viii) emergency medical technician (EMT);

(D) five hours is the maximum total time a resident may be restrained in a restraint chair within a twenty-four hour period;

(6) each use of the restraint chair shall be authorized by the facility administrator or designee;

(7) when occupied, the restraint chair shall be placed in an area with minimum visibility by other residents in the facility; and

(8) there shall be provisions for the inspection and maintenance of the restraint chair.

(b) Prohibitions.

(1) restraint chairs that have been altered, modified or customized in any way from their originally manufactured state and intended use; and

(2) the restraint chair shall not be used to confine any resident for the sole reason as having been designated as being at high risk of suicidal behavior.

(c) Supervision of Resident in Restraint Chair.

(1) level of supervision.

(A) a resident placed in the restraint chair shall be under constant visual supervision until the resident is removed from the chair;

(B) the officer responsible for providing the constant visual supervision of a resident in the restraint chair may have limited concurrent duties only if those duties do not impede the constant visual supervision requirement; and

(C) a resident classified as high risk of suicidal behavior under §351.13(d) of this chapter who is placed in a restraint chair shall be supervised in accordance with §351.13(d)(2)(B) of this chapter;

(2) the officer responsible for providing the constant visual supervision of a resident in the restraint chair shall have physical possession of the key or other mechanism for unlocking or releasing the resident from the restraint chair;

(3) primary control room staff shall not be authorized to provide the constant visual supervision of a resident placed in the restraint chair; and

(4) audio and/or video monitoring cannot substitute for the constant visual supervision;

(d) Required Training. Any juvenile probation or juvenile detention officer authorized to place a resident into a restraint chair shall be trained annually in the proper use of the restraint chair. Training topics shall include but not be limited to:

(1) circumstances that are appropriate for use of the restraint chair;

(2) proper use of the restraint chair, including how to get a resident in and out of the device safely;

(3) supervision procedures for a resident placed in the chair;

(4) monitoring the vital signs and critical circulation points of a resident placed in the restraint chair;

(5) emergency procedures for the removal of a resident from the restraint chair; and

(6) documentation required for use of the restraint chair.

(e) Documentation of Chair Restraints. In addition to any documentation required under §351.43 of this chapter a ten-minute observation log shall be maintained that documents:

(1) justification for the resident's continued restraint in or removal from the restraint chair;

(2) the results of the circulation checks conducted under §351.46(a)(4) of this chapter; and

(3) any medical checks conducted under §351.46(a)(5)(c) of this chapter.

(f) Review of Use of Restraint Chair.

(1) The facility administrator and the juvenile board shall review the use of the restraint chair annually.

(2) The review shall consider and evaluate:

(A) the frequency of use;

(B) the outcomes of the chair's use; and

(C) any needed modifications to policy and procedure concerning the chair.

§351.47. Chemical Agents.

In addition to the requirements found in §351.41, §351.42 and §351.43 of this chapter, the use of chemical agents shall be governed by the following criteria:

(1) the juvenile board shall authorize under which situations chemical agents may be used;

(2) immediately following the use of a chemical agent, exposed residents shall be examined by a medical professional and treated if necessary;

(3) in all cases, the use of a chemical agent shall be witnessed by a staff member other than the juvenile detention officer using the agent; and

(4) any use of a chemical agent is to be reported to the facility administrator immediately after the incident.

§351.48. Transporting Residents Outside Facility.

(a) During transportation of a resident in a vehicle, the resident may not be affixed to any part of the vehicle.

(b) During transportation in a vehicle, a resident may not be secured to another resident.

(c) Mechanical restraints used during routine transportation in a vehicle, or movement of a resident from the facility to another location outside the facility are not required to be documented as a restraint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2003.

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Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6710



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES**

#### **CHAPTER 44. COMMUNITY CARE FOR AGED AND DISABLED PROJECT CHOICE**

The Texas Department of Human Services (DHS) proposes to repeal all the rules in Chapter 44, concerning Community Care for Aged and Disabled Project CHOICE, §§44.1, 44.101-44.104, and 44.201-44.207. The purpose of the repeals is to delete the administrative rules for two client services programs that DHS operated as part of Project CHOICE (Consumers Have Options for Independence in Community Environments). Project CHOICE ended when grant funding ceased in 2000; the rules in Chapter 44 are, therefore, obsolete.

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

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of repealing the chapter will be to have obsolete rule language eliminated from the rule base. There will be no adverse economic effect on small or micro businesses, or businesses of any size, as a result of repealing the chapter, because the rules being deleted are no longer in use. There is no anticipated economic cost to persons who are required to comply with the proposed repeals. There is no anticipated effect on local employment in geographic areas affected by these repeals.

Questions about the content of this proposal may be directed to Randy Wyatt at (512) 438-4807 in DHS's Long Term Care/Client Eligibility section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-064, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Pursuant to §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does

not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

## **SUBCHAPTER A. DEFINITIONS**

### **40 TAC §44.1**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under the Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

#### *§44.1. Definitions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3734



## **SUBCHAPTER B. TRANSITION TO LIFE IN THE COMMUNITY PROGRAM**

### **40 TAC §§44.101 - 44.104**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under the Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

*§44.101. Transition to Life in the Community Client Eligibility Criteria.*

*§44.102. Application for Transition to Life in the Community Benefits.*

*§44.103. Transition to Life in the Community Program Benefits.*

*§44.104. Transition to Life in the Community Client Rights.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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## SUBCHAPTER C. PRESUMPTIVE ELIGIBILITY THROUGH THE PROJECT CHOICE PROGRAM

### 40 TAC §§44.201 - 44.207

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under the Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§44.201. *Client Eligibility Criteria for Project CHOICE Presumptive Eligibility Services.*

§44.202. *Period of Presumptive Eligibility.*

§44.203. *Presumptive Eligibility Program Benefits.*

§44.204. *Authorization of Presumptive Eligibility Services.*

§44.205. *Initiation of Presumptive Eligibility Services.*

§44.206. *Provider Billing for Presumptive Eligibility Services.*

§44.207. *Provider Refusal to Deliver Presumptive Eligibility Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche

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## CHAPTER 47. PRIMARY HOME CARE SUBCHAPTER E. SUPPORT DOCUMENTS

### 40 TAC §47.5902

The Texas Department of Human Services (DHS) proposes to amend §47.5902, concerning reimbursement methodology for

primary home care and family care services, in its Primary Home Care chapter. The purpose of the amendment is to modify the reimbursement methodology for Primary Home Care and Family Care (PHC/FC) Services to combine two cost areas into a single cost area for reimbursement payment determination.

The Texas Health and Human Services Commission (HHSC) is proposing related policy in its Chapter 355 in this issue of the *Texas Register*.

Bobby Halfmann, Chief Financial Officer, has determined that, for the first five-year period the proposed section will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal implications for local government as a result of enforcing or administering the section.

The estimated fiscal impact for the first five-year period the section is in effect is subject to the availability of funds in state fiscal years (SFY) 2004-2008. The total fiscal impact based on state and federal funding is estimated at \$9,226,414 in SFY 2004; \$10,003,049 in SFY 2005; \$10,003,049 in SFY 2006; \$10,003,049 in SFY 2007; and \$10,003,049 in SFY 2008. Of the total, the impact on state funding is an estimated \$4,088,168 in SFY 2004; \$4,404,857 in SFY 2005; \$4,404,857 in SFY 2006; \$4,404,857 in SFY 2007; and \$4,404,857 in SFY 2008. Of the total, the estimated federal cost is \$5,138,246 in SFY 2004; \$5,598,192 in SFY 2005; \$5,598,192 in SFY 2006; \$5,598,192 in SFY 2007; and \$5,598,192 in SFY 2008.

Bettye M. Mitchell, Deputy Commissioner for Long Term Care, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be that more providers will have their allowable costs covered by the unit rates for this program. There will be no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the amendment ensures that more providers will have their allowable costs covered by the unit rates for this program. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 685- 3127 in HHSC's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-072, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides HHSC with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§47.5902. *Reimbursement Methodology for Primary Home Care and Family Care Services.*

(a) General requirements. [For the completion and submittal of cost reports pertaining to providers' fiscal years ending in calendar year 1997 and subsequent years, providers must apply the information

~~in this section.~~ The Texas Department of Human Services (DHS) or its designee applies the general principles of cost determination as specified in §20.101 of this title (relating to Introduction).

(b) (No change.)

(c) Reimbursement determination. Reimbursement is determined in the following manner.

(1) Cost determination by cost area. Allowable costs are combined for Primary Home Care and Family Care into three ~~four~~ cost areas, after allocating payroll taxes to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense and after applying employee benefits directly to the corresponding salary line item.

(A) Service support ~~[Field supervisors]~~ cost area. This includes field supervisors' ~~[supervisor's]~~ salaries and wages, benefits, and mileage reimbursement expenses. This also includes building, building equipment, and operation and maintenance costs; administration costs; and other service costs. Administration expenses equal to \$0.18 per Priority 1 unit of service are allocated to Priority 1. The administration costs remaining after this allocation are summed with the other service support costs.

(B)-(C) (No change.)

~~{(D) Building, administration, and other service cost areas. This includes building, building equipment, and operation and maintenance costs; administration costs; and other direct service costs. Administration expenses equal to \$0.18 per Priority 1 unit of service are allocated to Priority 1. The administration costs remaining after this allocation are summed with the facility and the other service costs.}~~

(2) Recommended reimbursement by cost area. For the service support cost area ~~[areas]~~ described in paragraph (1)(A) ~~[and (D)]~~ of this subsection the following is calculated:

(A) (No change.)

(B) Projected cost per unit of service. To determine the projected cost per unit of service for each provider agency, the total projected allowable costs for the service support ~~[each]~~ cost area are divided by total units of service, including nonpriority services, ~~[and]~~ Priority 1 services, and STAR+PLUS services, in order to calculate the projected cost per unit of service ~~[for each cost area]~~.

(C) Projected cost arrays. All provider agencies' projected allowable costs per unit of service are rank ordered from low to high, along with each provider agency's corresponding total units of service ~~[for each cost area]~~.

(D) Recommended reimbursement for the service support ~~[each]~~ cost area ~~[component]~~. The total units ~~[hours]~~ of service ~~[used to calculate each cost area component]~~ for each provider agency are summed until the median hour of service is reached. The corresponding projected expense is the weighted median cost component. The weighted median cost component ~~[for each cost area]~~ is multiplied by 1.044 to calculate the recommended reimbursement for the service support ~~[each]~~ cost area ~~[component]~~. The service support cost area recommended reimbursement is limited, if necessary, to available appropriations.

(3)-(4) (No change.)

(d)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

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## PART 2. TEXAS REHABILITATION COMMISSION

### CHAPTER 104. DUE PROCESS HEARINGS, AND MEDIATION BY APPLICANTS/CLIENTS OF DETERMINATIONS BY AGENCY PERSONNEL THAT AFFECT THE PROVISION OF VOCATIONAL REHABILITATION SERVICES

The Texas Rehabilitation Commission (TRC) proposes to amend Chapter 104 of Title 40, Texas Administrative Code, concerning due process hearings and mediation. This proposal amends §§104.1-104.3, repeals §§104.4-104.9 and adds new §§104.4-104.8. The change is being proposed to eliminate the distinction between formal and informal appeal procedures, and to re-designate the procedures as "due process hearings" in accordance with terminology in final rules effective January 22, 2001 issued by the Office of Special Education and Rehabilitative Services, US Department of Education, published at 34 CFR §361.57.

Bill Wheeler, Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the agency's compliance with Chapter 111, Human Resources Code. There will be no material effect on small businesses. There is no material anticipated economic cost to persons who are required to comply with the section as proposed. In accordance with Government Code section 2001.022, TRC has determined that the proposed rule will not affect a local economy. There will be no effect to small or micro businesses.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

#### 40 TAC §§104.1 - 104.3

The amendments are proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

§104.1. Purpose and Scope.

(a) Purpose. The purpose of these rules is to provide the Texas Rehabilitation Commission with a system for the institution, conduct, and determination of "due process hearings" [~~"informal" and "formal appeals"~~] and "mediation" as those terms are defined herein. These rules shall be liberally construed in accordance with the purpose for which they were adopted. These rules inform all applicants and persons served by TRC of their due process right to appeal when they are dissatisfied with any determination made by a rehabilitation counselor or agency official regarding the furnishing or denial of services.

(b) Statutory Authority. These rules are created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code Annotated (USCA) §§701 et seq. and Department of Education Regulations at 34 Code of Federal Regulations (CFR), Part 361. Federal laws and regulations prevail over state laws and regulations. The Administrative Procedure Act, Texas Government Code Annotated, §§2001.001 et seq. does not apply to client administrative due process hearings which are conducted pursuant to federal law.

(c) Scope.

(1) This chapter applies to client (applicant) appeals, mediations, and due process hearings before the Texas Rehabilitation Commission.

(2) These rules shall be construed to insure fair and expeditious determinations.

(3) These rules supplement the procedures required by law.

#### §104.2. Definitions.

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

(1) Act--The Rehabilitation Act of 1973 as amended, 29 United States Code §701 et seq.

(2) Appellant--An individual who has filed a petition for a due process [~~administrative~~] hearing.

(3) Applicant--An individual who has applied for services under the Act, but for whom an eligibility determination has not been made.

(4) Authorized representative--An attorney authorized to practice law in the State of Texas and/or a person designated by the applicant or client to represent them.

(5) Client--An individual who has been determined to be eligible for services by the commission pursuant to the Act and commission rules. As used in these rules, unless specifically denoted, the terms "client" and "applicant" are synonymous.

(6) Client Assistance Program (CAP)--The program created by the Act which provides assistance in informing and advising clients and applicants of all available benefits under the Act. CAP provides assistance and advocacy in pursuing legal, administrative, or other appropriate remedies to ensure protection of the client's rights under the Act if requested by the client or the client's authorized representative.

(7) Commission--The Texas Rehabilitation Commission (TRC), its officers and agents.

(8) Commissioner --The commissioner of the Texas Rehabilitation Commission.

(9) Appeal [~~Formal appeal~~] --The timely filing of a Petition for Due Process [~~Administrative~~] Hearing due to a client's continued dissatisfaction with a decision of the Commission regarding the furnishing or denial of services.

(10) Hearing, Due Process Hearing--A formal due process hearing [~~formal appeal~~] conducted under these rules by an impartial hearing officer regarding allegations set forth in the client's Petition for Due Process [~~Administrative~~] Hearing regarding the furnishing or denial of services. This term includes prehearing conferences.

(11) Hearing completion date--The date set by the impartial hearing officer which closes the period during which the parties may submit further evidence into the record or the date the impartial hearing officer receives the hearing transcript, whichever is later.

(12) Impartial hearing officer (IHO)--Individual who is selected on a random basis and is appointed by the commissioner to hear an [~~a formal~~] appeal pursuant to these rules. The IHO is selected from a pool of qualified persons identified jointly by TRC and by members of the Rehabilitation Council of Texas.

(13) Informal appeal or review--A communication or series of communications between a client and a Commission official which seeks to resolve the client's dissatisfaction with any determination made by a vocational rehabilitation counselor or commission official concerning the furnishing or denial of services.

(14) Mediation--A voluntary process by which applicants and eligible individuals who have requested appeals may attempt resolution of disputes with TRC involving determinations affecting the provision of vocational rehabilitation services through the use of a trained mediator.

(15) Office for Administrative Hearings and Subrogation--An office of the Texas Rehabilitation Commission which provides, among other functions, administrative support to the impartial hearing officer during the [~~formal~~] appeal process and is the point of contact for client's questions about due process [~~the administrative~~] hearings [~~process~~].

(16) Party--An individual or agency named or admitted to participate in a due process hearing [~~formal appeal~~] before the commission.

(17) Record--The official record of a due process hearing [~~formal appeal~~] includes all of the following: pleadings; motions; intermediate rulings; orders; evidence received or considered; statements of matters officially noticed; questions and offers of proof; objections and rulings on objections; the IHO decision; any other decision, opinion, or report by the IHO; and all Commission memoranda or data, including client files, submitted to or considered by the IHO. The record is maintained by the Office for Administrative Hearings and Subrogation.

~~{(18) Regional program director--Person who reviews applicant and client appeals at the TRC Regional Office level. The person holding this position in each region is also referred to as the operations director for programs.}~~

~~(18) [(19)] Respondent--The Texas Rehabilitation Commission (TRC).~~

(19) [(20)] Rule--Any written commission statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures. The term does not include certain proceedings excluded by the Act.

(20) [(21)] Standard of review--The criteria for a court to remand or overturn a final decision of the Commission. In any such action the court will receive the records relating to the hearing, will hear additional evidence at the request of a party to the action; and

basing the decision of the court on the preponderance of the evidence, will grant such relief as the court determines to be appropriate.

(21) [(22)] State plan--The commission is required by the Act to submit to the Department of Education a state plan covering a three-year period which describes the state's vocational rehabilitation and independent living programs and the plans and policies to be followed in carrying out those programs.

(22) [(23)] Rehabilitation Council of Texas--The council created in accordance with United States Code, Title 29, Section 725.

#### §104.3. General Provisions.

(a) General. The due process hearing [formal appeal] and mediation process commences with the filing of a Petition for Due Process [Administrative] Hearing with the Office for Administrative Hearings and Subrogation. Appeals of determinations made by personnel of the commission that affect the provision of vocational rehabilitation services to applicants or eligible individuals may be made concerning:

- (1) applicants for vocational rehabilitation services; and
  - (2) clients.
- (b) Jurisdiction.

(1) The Impartial Hearing Officer acquires jurisdiction over a case after a client files a Petition for Due Process [Administrative] Hearing and the IHO is appointed pursuant to these rules.

(2) A Petition for Due Process [Administrative] Hearing shall be considered filed on the date the Petition is received and date-stamped by the Office for Administrative Hearings and Subrogation.

(3) The IHO's authority is limited to a review of a client's dissatisfaction with the furnishing or denial of services by personnel of the Commission. The IHO does not have authority to:

- (A) change or alter rules, policies, or procedures of the Commission;
- (B) hear alleged violations of the Americans with Disabilities Act, §504 of the Act, or other federal laws; or
- (C) hear or decide class actions.

(c) Conduct and Decorum. Appropriate conduct and decorum shall be maintained and enforced by the IHO. Every party, witness, attorney, or other representative shall participate in all proceedings with proper dignity, courtesy, and respect for the Commission, the IHO, and all other parties. Attorneys and other representatives or parties shall observe and practice a high standard of ethical behavior.

(d) Computation of Time.

(1) Unless otherwise required by law in computing any period of time prescribed or allowed by these rules, the date of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless such day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. Unless specifically stated otherwise, "days" as used in these policies refer to calendar days.

(2) Unless otherwise provided by statute, the time for filing any pleading may be extended by order of the IHO at the request of any party upon written motion duly filed with the Office for Administrative Hearings and Subrogation prior to the expiration of the applicable period of time for the filing of same. Said motion shall include a showing that there is good cause for such extension of time and that the need therefor is not caused by neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other

parties of record to the proceeding contemporaneously with the filing thereof. Any party may file written pleadings contesting a motion to extend which shall be served upon all other parties contemporaneously with the filing thereof.

(3) The date upon which a pleading or motion is filed is the date on which it is received and date-stamped by the Office for Administrative Hearings and Subrogation.

(e) Appearances and right to representation. Any party may appear on his/her own behalf or may be represented by an attorney at law in good standing with the State Bar of Texas or by an authorized representative. The IHO may require any person appearing in a representative capacity to provide such evidence of his authority as the IHO may deem necessary.

(f) Notification.

(1) An applicant or eligible individual or, as appropriate, the individual's representative will be provided notice of the right to obtain review of TRC determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing under §104.4 [§104.5] of this chapter; the right to pursue mediation under §104.4(c) [§104.5(e)] of this chapter with respect to determinations made by TRC personnel that affect the provision of vocational rehabilitation services to an applicant or eligible individual; the names and addresses of individuals with whom requests for mediation or due process hearings may be filed; the manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of §104.4 [§104.5] of this chapter; and the availability of the client assistance program, established under 34 CFR part 370, to assist the applicant or eligible individual during mediation sessions or impartial due process hearings. The notice will be provided in writing at the time the individual applies for vocational rehabilitation services under this part; at the time the individual is assigned to a category in the State's order of selection, for programs within which an order of selection has been established; at the time the IPE is developed; and whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

(2) The IHO shall issue notice of the date, time, and location for the hearing.

(g) Evidence and representation. An applicant or an eligible individual, or, as appropriate, the applicant's representative or individual's representative, will be provided with an opportunity to submit at the mediation session or hearing evidence and information to support the position of the applicant or eligible individual, and may be represented in the mediation session or hearing by a person selected by the applicant or eligible individual.

(h) Hearings.

(1) Hearing officer. A due process hearing shall be conducted by an impartial hearing officer who shall issue a decision based on the provisions of the approved state plan, the Rehabilitation Act of 1973, as amended (including regulations implementing the Act), and state regulations and policies that are consistent with the Rehabilitation Act and its implementing regulations. The impartial hearing officer shall provide the decision in writing to the applicant or eligible individual, or, as appropriate, the applicant's representative or individual's representative, and to the commission.

(2) List. The commission will maintain a list of qualified impartial hearing officers who are knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under the Rehabilitation Act of 1973, as amended, from which hearing officers will be selected. For the purposes of maintaining such



list, impartial hearing officers shall be identified jointly by the Commission, and by members of the Rehabilitation Council of Texas.

(3) Selection. An impartial hearing officer shall be selected to hear a particular case relating to a determination on a random basis.

(i) Confidentiality. All personal information regarding applicants or clients in the possession of the commission must be used only for purposes directly connected with the administration of the Act. Information may not be shared with advisory or other bodies which do not have official responsibility for administration of the Act.

(j) Testimony under oath or affirmation. In any hearing, the IHO shall administer an oath or affirmation before permitting testimony from any witness.

(k) Class actions. Class actions are not permitted under these rules.

(l) Reasonable accommodation. The commission shall provide reasonable accommodation to the client or other individuals with disabilities, upon request, for purposes of the appeal process as required by the Americans with Disabilities Act of 1990, 42 United States Code §12101 et seq. and the Act, §504.

(m) Stay of official acts or services. A request for ~~[an informal or formal appeal]~~ due process hearing does not of itself stay an official act of or the provision of services by the commission unless the official act or services are stayed by controlling law.

(n) Limitations on number of witnesses. The IHO has the right in any proceeding under these rules to limit the number of witnesses whose testimony will be repetitious and to set time limits in order to exclude irrelevant, immaterial, or unduly repetitious testimony, so long as all viewpoints are given a reasonable opportunity to be heard.

(o) Mileage and Witness fees.

(1) An individual who is not an employee of TRC and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give testimony or to produce documents is entitled to receive:

(A) mileage, in the same amount per mile as the mileage travel allowance for state employees, for traveling to and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the individual's place of residence; and

(B) a fee of not less than \$10 a day for each day or part of a day the individual is required to be present or a fee equal to the per diem and travel allowances of a state employee, if an overnight stay is required.

(2) Mileage and fees to which a witness is entitled under this rule shall be paid by the party at whose request the individual appears or at whose request the deposition is taken.

(p) Impact on provision of services. Unless the individual with a disability so requests, or, in an appropriate case, the individual's representative so requests, pending a decision by a mediator or impartial hearing officer under subsection (h)(1) of this section or §104.5 [~~§104.6~~] of this title (relating to Motion for Reconsideration), the commission will not institute a suspension, reduction, or termination of services being provided for the individual, including evaluation and assessment services and plan development, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual, or the individual's representative. In the case of a client who has completed a term of training or similar services prior to the appeal, and the next term has not yet begun (prior to the current appeal), it is understood that such training or services are not "being provided."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

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Sylvia F. Hardman

Deputy Commissioner for Legal Services

Texas Rehabilitation Commission

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 424-4050



## CHAPTER 104. INFORMAL APPEALS, AND MEDIATION BY APPLICANTS/CLIENTS OF DETERMINATIONS BY AGENCY PERSONNEL THAT AFFECT THE PROVISION OF VOCATIONAL REHABILITATION SERVICES

### 40 TAC §§104.4 - 104.9

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Rehabilitation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

§104.4. *Informal Appeal.*

§104.5. *Formal Appeal and Mediation.*

§104.6. *Motion for Reconsideration.*

§104.7. *Finality of the Decision of the Commission.*

§104.8. *Civil Action/Judicial Review.*

§104.9. *Time for Hearing.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

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Sylvia F. Hardman

Deputy Commissioner for Legal Services

Texas Rehabilitation Commission

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For further information, please call: (512) 424-4050



## CHAPTER 104. DUE PROCESS HEARINGS, AND MEDIATION BY APPLICANTS/CLIENTS

OF DETERMINATIONS BY AGENCY  
PERSONNEL THAT AFFECT THE PROVISION  
OF VOCATIONAL REHABILITATION  
SERVICES

**40 TAC §§104.4 - 104.8**

The new sections are proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

§104.4. Due Process Hearings and Mediation.

(a) The due process hearing appeal commences with the filing of a Petition for Due Process Hearing with the Office for Administrative Hearings and Subrogation.

(b) Role of Office for Administrative Hearings and Subrogation. Upon receipt of the Petition for Due Process Hearing, the Office for Administrative Hearings and Subrogation shall:

(1) acknowledge receipt of the petition for due process hearing (via certified mail, return receipt requested) and advise the appellant of the availability of the Client Assistance Program, including the address and telephone number;

(2) date-stamp the Petition and record a docket control number for the appeal;

(3) select the impartial hearings officer (IHO), who is appointed by the commissioner, on a random basis from a pool of qualified persons identified jointly by TRC and the Rehabilitation Council of Texas in accordance with the Rehabilitation Act and forward a copy of the Petition for Due Process Hearing to the IHO;

(4) forward a copy of the Petition for Due Process Hearing to the Office of the General Counsel, Deputy Commissioner for Rehabilitation Services and Commission Representative immediately upon receipt;

(5) provide administrative support to the IHO:

(A) serve as the custodian of records for all documents, motions, and pleadings directed to the IHO;

(B) coordinate and schedule all dates, meetings, hearings;

(C) make all necessary arrangements for the due process hearing:

(i) schedule and set up the hearing location;

(ii) if required, retain the services of a certified shorthand reporter to prepare a transcript of the proceedings;

(iii) provide any requested reasonable accommodations;

(6) compile and maintain the official record of the appeal;

(7) accompany IHO to prehearing conference, administrative hearing and provide necessary assistance during the proceedings;

(c) Mediation.

(1) An applicant or eligible individual and the State may elect to resolve disputes involving TRC determinations that affect the provision of vocational rehabilitation services through a mediation

process whenever an applicant or eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section.

(2) The following apply to mediation.

(A) Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of TRC;

(B) Use of the mediation process will not be used to deny or delay the applicant's or eligible individual's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in section 104.8 of this chapter, or any other rights provided under this chapter. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing;

(C) The mediation process will be conducted by a qualified and impartial mediator who is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education); is not a member of the Rehabilitation Council of Texas; has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services; has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings. An individual serving as a mediator is not considered to be an employee of the designated State agency or designated State unit for the purposes of this definition solely because the individual is paid by the designated State agency or designated State unit to serve as a mediator. The mediator will be selected from a list of qualified and impartial mediators maintained by the TRC on a random basis; or by agreement between TRC and the applicant or eligible individual or, as appropriate, the individual's representative; or in accordance with a procedure established by TRC for assigning mediators which ensures the neutrality of the mediator assigned.

(D) Mediation sessions will be scheduled and conducted in a timely manner and will be held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the mediation process will be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the mediation process will be described in a written mediation agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement will be sent to both parties.

(5) The costs of the mediation process will be paid by TRC. However, TRC will not pay for any costs related to the representation of an applicant or eligible individual by counsel or other advocate selected by the applicant or eligible individual.

(d) Impartial Hearing Officer.

(1) Qualifications. The IHO:

(A) cannot be an employee of a public agency;

(B) cannot be a member of the Rehabilitation Council of Texas (the Act, §105, as amended in 1992); and

(C) must have knowledge of the delivery of vocational rehabilitation services, the state plan under the Act, §101, the federal regulations, and commission rules governing the provision of such services and training with respect to the performance of official duties;

(D) must not have been involved in previous decisions regarding the vocational rehabilitation of the applicant or client;

(E) must have no personal or financial interest that would conflict with his/her objectivity;

(F) must have successfully completed impartial hearings training presented by the commission; and

(G) must not be a client of TRC.

(2) Powers and Duties.

(A) The IHO shall have the authority and duty to:

(i) conduct a full, fair, and impartial hearing;

(ii) take action to avoid unnecessary delay in the disposition of the proceeding;

(iii) maintain order; and

(iv) permit deviations from the rules and procedures prescribed in subsections (f)-(j) of this section, except subsection (j)(4)(F), in the interest of justice or to expedite the proceedings. If prior to adjournment of a hearing either party disagrees with a ruling or otherwise so requests, the IHO shall include in the written record a justification, and an explanation of how the decision is in the interest of justice and/or reasonably necessary to expedite the proceedings. Actions taken under this subsection shall be limited to procedural matters, and no party shall lose any substantive rights.

(B) The IHO shall have the power to regulate the course of the hearing and the conduct of the parties and authorized representative(s), including the power to:

(i) administer oaths;

(ii) take testimony;

(iii) rule on questions of evidence;

(iv) rule on discovery issues;

(v) issue orders relating to hearing and prehearing matters, including orders granting permission to subpoena witnesses and imposing sanctions regarding discovery;

(vi) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(vii) admit or deny party status;

(viii) grant continuance(s);

(ix) require parties to submit legal memoranda, proposed findings of fact, and conclusions of law;

(x) make findings of fact and conclusions of law; and

(xi) issue decisions.

(C) An IHO shall disqualify him/herself if the IHO has directly or indirectly had prior involvement with any issues that are the basis for the hearing, or if the IHO has a personal relationship or familial relationship with any party or witness.

(D) Substitution of impartial hearing officers.

(i) If for any reason an IHO is unable to continue presiding over a pending hearing or issue a decision after the conclusion of the hearing, another IHO may be designated as a substitute in accordance with applicable law and these rules.

(ii) The substitute IHO may use the existing record and need not repeat previous proceedings, but may conduct further proceedings as necessary and proper to conclude the hearing and render a decision.

(e) Ex Parte Communications. Unless required for the disposition of ex parte matters authorized by law, the IHO may not communicate, directly or indirectly, in connection with any issue of fact or law with the commissioner or any party or a party's representative, except upon notice to all parties.

(f) Prehearing Procedures.

(1) Prehearing Conference(s).

(A) When appropriate, the IHO may hold a prehearing conference to resolve matters preliminary to the hearing.

(B) A prehearing conference may be convened to address preliminary matters including the following listed in clauses (i)-(xv) of this subparagraph:

(i) issuance of subpoenas;

(ii) factual and legal issues;

(iii) stipulations;

(iv) clarification of the issues at the discretion of the

IHO;

(v) requests for official notice;

(vi) identification and exchange of documentary evidence;

(vii) admissibility of evidence;

(viii) identification and qualification of witnesses;

(ix) motions;

(x) discovery disputes;

(xi) order of presentation;

(xii) scheduling;

(xiii) settlement conferences;

(xiv) mediation; and

(xv) such other matters as will promote the orderly and prompt resolution of the issues and conduct of the hearing.

(C) Among other matters, as stated in subsection (b) of this section, an IHO may order:

(i) that the parties jointly discuss the prospects of settlement or stipulations or other dispute resolution methods approved herein and be prepared to report thereon at the prehearing conference;

(ii) that the parties file and be prepared to argue preliminary motions at the prehearing conference;

(iii) that the parties be prepared to specify the controlling factual and legal issues in the case at the prehearing conference; and

(iv) that the parties make a concise statement of undisputed facts and issues at the prehearing conference.

(D) All or part of the prehearing conference may be recorded or transcribed.

(E) The IHO may, after acquiring jurisdiction, issue an order requiring a prehearing "statement of the case." The parties shall file a statement specifying the party's present position on any or all of the following listed in clauses (i)-(v) of this subparagraph as required by the IHO. Parties shall supplement this statement on a timely basis. The statement may include:

(i) the disputed issues or matters to be resolved;

(ii) a brief statement of the facts or arguments supporting the party's position in each disputed issue or matter;

(iii) a list of facts or exhibits to which a party will stipulate; and

(iv) a list of the witnesses which each party intends to call at the hearing, including a designation of each as either a fact or expert witness, and a brief statement summarizing the testimony and/or opinions (experts) of each witness.

(2) Prehearing Orders.

(A) The IHO may issue a prehearing order reciting the actions taken or to be taken with regard to any matter addressed at the prehearing conference.

(B) The prehearing order shall be a part of the hearing record.

(C) If a prehearing conference is not held, the IHO may issue a prehearing order to regulate the conduct of the proceedings of the formal hearing.

(3) Stipulations.

(A) The parties, by stipulation, may agree to any substantive or procedural matter.

(B) A stipulation shall be filed in writing or entered on the record at the prehearing (or hearing).

(C) The IHO may require additional development of stipulated matters.

(g) Pleadings.

(1) In a due process hearing all pleadings, including the Petition for Due Process Hearing, shall contain:

(A) the name of the party making the pleading;

(B) the names of all other known parties;

(C) a concise statement of the facts alleged and relied upon;

(D) a statement of the type of relief, action, or order desired;

(E) any other matter required by law;

(F) a certificate of service, as required by these rules; and

(G) the signature of the party making the pleading or the party's authorized representative.

(2) Any pleading filed for a due process hearing may be amended up to 14 days prior to the hearing. Amendments filed after that time will be accepted at the discretion of the IHO.

(3) Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files

and records of the Commission. All pleadings relating to any matter pending before the Commission shall be filed with the IHO through the Office for Administrative Hearings and Subrogation.

(4) All pleadings shall be typed or printed on 8 1/2 by 11 inch paper with a one-inch margin. Reproductions are acceptable, provided all copies are clear and permanently legible.

(5) Pleadings shall contain the name, address, and telephone number of the party filing the document or the name, telephone number, and business address of the authorized representative.

(6) The party or the party's designated representative filing the pleading shall include a signed certification that a true and correct copy of the pleading has been served on every other party.

(h) Dismissal. After giving notice and hearing, the IHO may upon the motion of any party or the IHO's own motion, dismiss the appeal upon showing of any one of the following:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal;

(4) moot questions;

(5) lack of jurisdiction;

(6) failure to raise a material issue in the pleading;

(7) failure of a party to appear at a scheduled hearing.

(i) Motions.

(1) Unless otherwise provided by these rules, the following shall apply.

(A) A party may move for appropriate relief before or during a hearing.

(B) A party shall submit all motions in writing or orally at a hearing.

(C) Written motions shall:

(i) be filed no later than 15 days before the date of the hearing, except where good cause is stated in the motion, the IHO may permit a written motion subsequent to that time;

(ii) state concisely the question to be determined;

(iii) be accompanied by any necessary supporting documentation; and

(iv) be served on each party.

(D) An answer to a written motion shall be filed on the earlier of:

(i) seven days after receipt of the motion; or

(ii) on the date of the hearing.

(E) On written notice to all parties or with telephone consent of all parties, the IHO may schedule a conference to consider a written motion.

(F) The IHO may reserve ruling on a motion until after the hearing.

(G) The IHO may issue a written decision or state the decision on the record.

(H) If a ruling on a motion is reserved, the ruling shall be in writing and may be included in the IHO's decision.

(1) The filing or pendency of a motion does not alter or extend any time limit otherwise established by these rules.

(2) Continuance(s) may be granted by the IHO in accordance with applicable law. Motions for continuances shall be in writing or stated in the record and shall set forth the specific grounds upon which the party seeks the continuance.

(3) Unless made during a prehearing or hearing, a party seeking a continuance, cancellation of a scheduled proceeding, or extension of an established deadline must file such motion no later than 10 days before the date or deadline in question. A motion filed less than 10 days before the date or deadline in question must contain a certification that the movant contacted the other party(ies) and whether or not it is opposed by any party(ies). Further, if a continuance to a certain date is sought, the motion must include a proposed date or dates and must indicate whether the party(ies) contacted agree on the proposed new date(s).

(j) Hearing.

(1) The IHO shall set the date and time for the hearing. The location shall be the Commission's regional or area office nearest the Appellant's residence or as agreed to by the parties.

(2) Order of procedure at the hearing.

(A) The appellant may state briefly the nature of the claim or defense, what the appellant expects to prove, and the relief sought. Immediately thereafter, the respondent may make a similar statement, and any other parties will be afforded similar rights as determined by the IHO. Each party is allowed 10 minutes for such statement.

(B) Evidence shall then be introduced by the appellant. The respondent and any other parties shall have the opportunity to cross-examine each of the appellant's witnesses.

(C) Cross-examination is not limited solely to matters raised on direct examination. Parties are entitled to redirect and recross-examination.

(D) Unless the statement has already been made, the respondent may briefly state the nature of the claim or defense, what the respondent expects to prove, and the relief sought.

(E) Evidence, if any, shall be introduced by the respondent. The appellant and any other parties shall have the opportunity to cross-examine each of the respondent's witnesses.

(F) Any other parties may make statements and introduce evidence. The appellant and respondent shall have opportunity to cross-examine the other parties' witnesses.

(G) The parties may present rebuttal evidence.

(H) The parties may be allowed closing statements at the discretion of the IHO.

(I) The IHO may permit deviations from this order of procedure in the interest of justice or to expedite the proceedings.

(J) Parties shall provide four copies of each exhibit offered.

(3) No evidence shall be admitted which is irrelevant, immaterial, or unduly repetitious.

(4) Documentary evidence and official notice.

(A) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request,

parties shall be given an opportunity to compare the original and the copy or excerpts.

(B) When numerous similar documents which are otherwise admissible are offered into evidence, the IHO may limit the documents received to those which are typical and representative. The IHO may also require that an abstract of relevant data from the documents be presented in the form of an exhibit, provided that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made.

(C) The following laws, rules, regulations, and policies are officially noticed:

(i) the Rehabilitation Act of 1973, as amended, 29 United States Code, §701 et seq.;

(ii) Department of Education regulations, 34 Code of Federal Regulations, Part 361;

(iii) Texas Human Resources Code, Title 7, §111 et seq.;

(iv) TRC State Plan for Vocational Rehabilitation Services;

(v) TRC Rehabilitation Services Manual; and

(vi) TRC Administrative Policies and Procedures Manual.

(D) Exhibits.

(i) Exhibits shall not exceed 8 1/2 by 11 inches (unless they are folded to that size). Maps, drawings, and other exhibits which are not the required size shall be rolled or folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(ii) Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(iii) The original of each exhibit offered shall be tendered to the court reporter for identification.

(iv) In the event an exhibit has been identified, objected to, and excluded, the IHO shall determine whether or not the party offering the exhibit withdraws the offer, and, if so, permit the return of the exhibit. If the excluded exhibit is not withdrawn it shall be given an exhibit number for identification, shall be endorsed by the IHO with a ruling, and shall be included in the record for the only purpose of preserving the exception.

(E) Offer of proof. When testimony on direct examination is excluded by ruling of the IHO, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing. The IHO may ask such questions of the witness as deemed necessary to satisfy that the witness would testify as represented in the offer of proof.

(5) Failure to attend hearing and default. If, after receiving notice of a hearing, a party fails to attend a hearing, the IHO may proceed in that party's absence and, where appropriate, may issue a decision against the defaulting party.

(k) Impartial Hearing Officer Decision.

(1) Within 30 days of the hearing completion date, the IHO shall issue a decision based on the provisions of the approved State plan, the applicable regulations, and the Act which shall contain separately stated:

- (A) findings of fact;
- (B) conclusions of law; and
- (C) decision.

(2) The Office for Administrative Hearings and Subrogation shall submit the IHO opinion to the Commissioner with a copy to each party.

§104.5. Motion for Reconsideration.

Either party to a hearing may file a motion for reconsideration with the Office for Administrative Hearings and Subrogation within 20 days after issuance of the decision of the impartial hearing officer. The motion for reconsideration must specify the matters in the decision of the impartial hearing officer which the party considers to be erroneous. Any response to the motion for reconsideration must be filed no later than seven days after service of the motion. The impartial hearing officer shall rule on the motion for reconsideration no later than 15 days after receipt of the motion. If the motion is granted, the IHO shall issue a decision upon reconsideration within an additional 15 days. If the impartial hearing officer fails to rule on the motion for reconsideration within 15 days, the motion is denied as a matter of law.

§104.6. Finality of the Decision of the Commission.

The decision of the impartial hearing officer under §104.5 of this title (relating to Motion for Reconsideration) is the final decision of the Commission. A decision dismissing the case under §104.3(h)(1) of this title (relating to General Provisions) or §104.4(j)(5) of this title (relating to Due Process Hearings and Mediation) becomes the final decision of the Commission if a timely motion for reconsideration is not filed.

§104.7. Civil Action/Judicial Review.

(a) General. Any party aggrieved by a final decision of an impartial hearing officer may bring a civil action for review of such decision. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. In any such action the court will receive the records relating to the hearing, will hear additional evidence at the request of a party to the action; and basing the decision of the court on the preponderance of the evidence, will grant such relief as the court determines to be appropriate.

(b) Exhaustion of administrative remedies, including a Motion for Reconsideration, is a prerequisite to judicial review.

(c) A party seeking judicial review of the final Commission decision shall commence his civil action no later than 30 days after the date of the final decision.

(d) Implementation. If a party brings a civil action to challenge a final decision of a hearing officer under §104.3(h)(1) of this title (relating to General Provisions) or §104.5 of this title (relating to Motion for Reconsideration), the final decision involved shall be implemented pending review by the court.

§104.8. Time for Hearing.

A hearing conducted by an impartial hearing officer, selected in accordance with §104.4 of this chapter, will be held within 60 days of an applicant's or eligible individual's request for review of a determination made by personnel of TRC that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300653  
 Sylvia F. Hardman  
 Deputy Commissioner for Legal Services  
 Texas Rehabilitation Commission  
 Earliest possible date of adoption: March 9, 2003  
 For further information, please call: (512) 424-4050

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## PART 5. TEXAS VETERANS LAND BOARD

### CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

#### SUBCHAPTER B. MORTGAGE FINANCING

#### 40 TAC §175.52

The Veterans Land Board of the State of Texas (board) proposes an amendment to, Texas Administrative Code, Title 40, Part 5, Chapter 175, §175.52 related to Borrower's Eligibility and Number of Loans. This amendment proposes a new subsection, §175.52(d), for the land mortgage program. The purpose of the proposed amendment is to provide for the conversion of existing Land Contracts for Sale and Purchase to Land Mortgage Loans. The proposed amendment is required by Texas Natural Resources Code §§161.501 through 161.513 relating to Purchase of Land Secured by Mortgage, Deed of Trust, or Other Lien on Land.

The present method of financing the purchase by a Texas veteran is by a contract of sale and purchase and has been used since the inception of the Veterans Land Board. Chapter 175, Subchapter B related to Mortgage Financing contains rules governing the new method of financing the purchase of land by eligible Texas veterans using a mortgage. The proposed amendment, related to the conversion of contracts to mortgages, will allow purchasers to convert their contracts for sale and purchase to a mortgage loan. The conversion will replace one set of security documents with another. Financing with a mortgage gives the purchasers advantages over financing with a contract for sale and purchase.

The proposed new 175.52(d) authorizes the chairman to establish the procedures and requirements for conversion of contracts to mortgages under the new veterans land mortgage program.

Douglas Oldmixon, Executive Secretary of the Veterans Land Board, has determined that for each year of the first five years that the section as proposed will be in effect, there will be no significant fiscal implication to state or local government as a result of administering this section as amended.

Douglas Oldmixon, Executive Secretary of the Veterans Land Board, has determined that for each year of the first five years that the section as proposed will be in effect, the public will benefit because mortgages give purchasers greater flexibility in the use of their property than do contracts.

Mr. Oldmixon has determined that the proposed amendment will have no significant effect on small businesses during each year of the first five years the section is in effect and the anticipated impact on local employment will be insignificant. Mr. Oldmixon

has also determined that during each year of the first five years the proposed amendment is in effect, the anticipated economic cost to persons who request a conversion will be insignificant.

Comments may be submitted to Melinda Tracy, Texas Registrar Liaison, Texas General Land Office, P.O. Box 12873, Austin Texas, 78711-2873, or by facsimile at (512) 463-6311 by no later than 30 days after publication.

The amendments to this section are proposed under the Natural Resources Code, Title 7, Chapter 161, §§161.063, 161.503, 161.504, 161.506, 161.508, 161.511 and 161.513 which authorizes the Board to adopt rules that it considers necessary and advisable for the Veterans Land Program and the Veterans Land Mortgage Program.

Texas Natural Resources Code §§161.221 to 161.230 and 161.501 to 161.513 are affected by this proposed action.

*§175.52. Borrower's Eligibility and Number of Loans.*

(a) The Board shall be the final authority in defining and interpreting all eligibility requirements, and whether a prospective borrower has actually satisfied those requirements. The Board may by resolution prescribe the procedures and forms to be used in mortgage loan transactions.

(b) A person is eligible to apply for a loan under the provisions of this subchapter if he or she satisfies the requirements of §175.2(c), relating to Loan Eligibility Requirements.

(c) A person may only have one loan at a time as a veteran. However, once that loan is paid in full he or she may apply for an additional loan as a veteran. The foregoing notwithstanding, an individual who is currently participating in the program as a veteran may assume a loan, or take an assignment of a contract of sale as a non-veteran and may bid on a tract or tracts at a forfeited land sale as a non-veteran.

(d) Notwithstanding anything to the contrary in this chapter, a purchaser under an executory Veterans Land Board Contract of Sale and Purchase may refinance the obligation represented by the Contract of Sale and Purchase by substituting a purchase money Veterans Land Board mortgage loan. No additional funds may be advanced except for expenses incident to the transaction, as provided in Tex. Nat. Res. Code §161.508(b). The chairman may establish procedures, documents, and policies to accomplish transactions authorized by this section. To the maximum extent possible, the substitute loans must retain the terms of the original Contracts of Sale and Purchase and must comply with the requirements for new Veterans Land Board mortgage loans. All liens securing the substitute loans relate back to the date of the original Contracts of Sale and Purchase.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300671

Larry L. Laine

Chief Clerk, Deputy Commissioner

Texas Veterans Land Board

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 305-9129



**40 TAC §175.61, §175.62**

The Veterans Land Board of the State of Texas (board) proposes new Texas Administrative Code, Title 40, Part 5, Subchapter B, §175.61, relating to Delinquencies, Acceleration and Foreclosures and §175.62, relating to Trustee's Sale. The purpose of the proposed new rules is to provide fair notice to all parties of the board's procedures for delinquency, acceleration, foreclosure and post foreclosure measures. The proposed new rules are required by Texas Natural Resources Code §§161.501 - 161.513, relating to Purchase of Land Secured by Mortgage, Deed of Trust, or Other Lien on Land.

The land mortgage program is subject to the Texas Property Code regarding procedures for foreclosure and to the Texas Business and Commerce Code regarding filing and priority of security instruments. Other state and federal laws also apply to mortgages issued under the board's land mortgage program. The legal procedures for foreclosure are specified in other laws and these proposed rules do not purport to affect any legally required procedure for mortgages, notes, deeds of trust or foreclosures.

Proposed new §175.61, states that the board, under the new veterans land mortgage program, will follow the foreclosure procedures according to the terms of the note and deed of trust for each loan or any other lien document associated with each loan, and according to state and federal law, as applicable.

Proposed new §175.62, provides for the board's procedures at any trustee's sale of a foreclosed mortgage loan, and for disposition of land by the board after foreclosure and purchase by the board.

Douglas Oldmixon, Executive Secretary of the Veterans Land Board, has determined that for each year of the first five years that the sections as proposed will be in effect, there will be no significant fiscal implication to state or local government as a result of administering the new sections.

Mr. Oldmixon, has determined that for each year of the first five years that the new sections will be in effect, the public will benefit because the proposed sections will allow the Board to proceed to change its program to allow mortgages.

Mr. Oldmixon has determined that the proposed new rules will have no significant effect on small businesses during each year of the first five years the new sections are in effect and the anticipated impact on local employment will be insignificant.

Mr. Oldmixon has also determined that during each year of the first five years the proposed sections are in effect, the anticipated economic cost to persons who are required to comply with the sections will be insignificant.

Comments may be submitted to Melinda Tracy, Texas Registrar Liaison, Texas General Land Office, P.O. Box 12873, Austin Texas, 78711-2873 or by facsimile at (512) 463-6311 by no later than 30 days after publication.

The new sections are proposed under the Natural Resources Code, Title 7, Chapter 161, §§161.063, 161.319, 161.503, 161.504, 161.506, 161.508, 161.511 and 161.513 which authorizes the Board to adopt rules that it considers necessary and advisable for the Veterans Land Program and to provide for Land Mortgage Program foreclosure and for resale of land.

Texas Natural Resources Code §161.319 and §§161.501 - 161.513 are affected by this proposed action.

*§175.61. Delinquencies, Acceleration and Foreclosures.*

(a) The chairman is authorized to enter into any modification of the debtor's obligation if it is in the best interest of the program.

(b) The terms of each note and deed for trust or any other lien document shall determine acceleration and foreclosure requirements and procedures, unless modified under subsection (a) of this section.

(c) The chairman must approve the initiation of all foreclosure proceedings. All foreclosures shall be conducted in strict compliance with applicable federal and state laws and the note and the deed of trust or other lien document, or any modification thereof.

§175.62. Trustee's Sale.

(a) The chairman may bid for the land at any trustee's sale for any amount that the chairman deems to be in the best interest of the program. All land purchased by the Board at a foreclosure sale shall be resold in the same manner as forfeited land under §175.18 of this title.

(b) The chairman may collect any deficiencies as allowed by law.

(c) "Trustee's sale" means any foreclosure sale under this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300670

Larry L. Laine

Chief Clerk, Deputy Commissioner

Texas Veterans Land Board

Earliest possible date of adoption: March 9, 2003

For further information, please call: (512) 936-4179





# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 1. ADMINISTRATION

### PART 13. TEXAS INCENTIVE AND PRODUCTIVITY COMMISSION

#### CHAPTER 273. STATE EMPLOYEE INCENTIVE PROGRAM

##### 1 TAC §273.7, §273.9

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section's, submitted by the Texas Incentive and Productivity Commission have been automatically withdrawn. The amended section's as proposed appeared in the July 19, 2002 issue of the *Texas Register* (27 TexReg 6481).

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300482



## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER F. LANDSCAPE ARCHITECT'S SEAL

##### 22 TAC §3.106

The Texas Board of Architectural Examiners has withdrawn from consideration the proposed new §3.106 which appeared in the December 6, 2002, issue of the *Texas Register* (27 TexReg 11365).

Filed with the Office of the Secretary of State on January 23, 2003.

TRD-200300460

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: January 23, 2003

For further information, please call: (512) 305-8535



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

##### SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

##### 31 TAC §65.601

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Parks and Wildlife Department have been automatically withdrawn. The amended section as proposed appeared in the July 19, 2002 issue of the *Texas Register* (27 TexReg 6492).

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300483



# 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 as published in 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 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 251. REGIONAL PLANS--STANDARDS

##### 1 TAC §251.3

The Commission on State Emergency Communications (CSEC) adopts the repeal of §251.3, concerning guidelines for addressing funds, without changes to the adopted rule that was published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9902).

The rule is being repealed because the rule is no longer applicable. The rule provides guidance for funding of county addressing projects through the completion of the initial phase of addressing. The second phase of addressing is database maintenance, for which a separate rule exists.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to the Health and Safety Code, Chapter 771, §§771.072, 771.073, 771.074, 771.075, 771.078 and Title 1 Texas Administrative Code, Part 12.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2003.

TRD-200300321

Paul Mallett

Executive Director

Commission on State Emergency Communications

Effective date: February 10, 2003

Proposal publication date: October 25, 2002

For further information, please call: (512) 305-6933



##### 1 TAC §251.8

The Commission on State Emergency Communications (CSEC) adopts an amendment to §251.8, concerning adopted guidelines for the procurement of equipment services with 9-1-1 funds, without changes to the adopted rule that was published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9903).

The adopted amendment clarifies the language regarding competitive procurement requirements by simplifying the language

and delete the language regarding the Y2K compliance since it is no longer applicable.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, 771.075, and Title 1 Texas Administrative Code, Part 12, which authorize the Commission to provide policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2003.

TRD-200300322

Paul Mallett

Executive Director

Commission on State Emergency Communications

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Proposal publication date: October 25, 2002

For further information, please call: (512) 305-6933



##### 1 TAC §251.12

The Commission on State Emergency Communications (CSEC) adopts an amendment to §251.12, concerning contracts for 9-1-1 services, without changes to the adopted rule that was published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9905).

As a Result of a review of CSEC's financial policies and procedures by the Management Advisory Services (MAS) of the State Auditor's office, changes to the various disbursement methods of 9-1-1 funds to the Regional Planning Councils (RPCs) are adopted.

The adopted amendment will follow the MAS' recommendations that quarterly disbursements be made on a reimbursement basis and be substantiated by RPC documentation; that RPC advances be referred to as start up funds; and that RPC advances be distinguished from emergency funding. The adopted changes will be incorporated into the example contract contained within this rule. Additionally, at the recommendation of the MAS, CSEC developed formal Program Policy Statements (PPS), which support these adopted contract revisions and provide more specific guidance to the RPCs.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Health and Safety Code, Chapter 771, §§771.071, 771.0711, 771.072, 771.073, 771.075, 771.078, 771.055, 771.056, and Title 1 Texas Administrative Code, Part 12, which authorizes the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2003.

TRD-200300323

Paul Mallett

Executive Director

Commission on State Emergency Communications

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Proposal publication date: October 25, 2002

For further information, please call: (512) 305-6933



## CHAPTER 252. ADMINISTRATION

### 1 TAC §252.2

The Commission on State Emergency Communications (CSEC) adopts new §252.2, concerning the purchase of goods and services by CSEC, without changes to proposed text as published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9906).

The guidelines serve to promote inclusion of Historically Underutilized Businesses (HUBs) for procurement purposes.

No comments were received regarding adoption of the new section.

The new section is adopted under Health and Safety Code, Chapter 771, §§771.051, 777.051(a)(7), 771.055, 771.056, 771.057, and 771.075; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission with the authority to plan, develop, provide provisions for the enhancement of effective and efficient 9-1-1 service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 21, 2003.

TRD-200300324

Paul Mallett

Executive Director

Commission on State Emergency Communications

Effective date: February 10, 2003

Proposal publication date: October 25, 2002

For further information, please call: (512) 305-6933



## CHAPTER 255. FINANCE

### 1 TAC §255.10

The Commission on State Emergency Communications (CSEC) adopts the repeal of §255.10, concerning notification of untimely remittance of fees, without changes to the proposed rule that was published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9907).

The section is being repealed to reflect consistency with the 77th Texas Legislature's passage of HB 2914 which gave the State Comptroller's Office authority for collection of 9-1-1 service fees. The CSEC is no longer responsible for the collection or follow up on remittance variances and notification of delinquent fees.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to the Health and Safety Code, Chapter 771, §§771.072, 771.073, 777.074, 771.075, 771.078 and Title 1 Texas Administrative Code, Part 12.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200300325

Paul Mallett

Executive Director

Commission on State Emergency Communications

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Proposal publication date: October 25, 2002

For further information, please call: (512) 305-6933



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 80. MANUFACTURED HOUSING SUBCHAPTER E. GENERAL REQUIREMENTS

##### 10 TAC §80.136

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) adopts new §80.136 with changes to the proposed rules as published in the September 20, 2002 issue of the *Texas Register* (27 TexReg 8845). The text will be republished.

The effective date of the rule is thirty (30) days following the date of publication with the *Texas Register* of notice that the rule has been adopted.

The following is a restatement of the rules' factual basis:

New §80.136 is adopted (*with changes*) to address certain logistical issues that have arisen with respect to the administration of the Texas Manufactured Housing Standards Act (the "Act") as amended by HB 1869 (77th Legislature, 2001). The Department requires current information on the installation of manufactured

homes to enable it to schedule the newly installed homes for inspections and to enable it to administer the Act with complete and current information as to manufactured homes that have become real property.

Section 80.136(a) is adopted (*with changes*) to explain that the rule applies when a retail sale of a manufactured home occurs and that home will be treated as real property.

Section 80.136(a)(1) is adopted (*with changes*) to clarify that the closing of the sale of a manufactured home that is deemed to be real property must occur at one of three prescribed locations: a title company, an attorney's office, or the offices of a federally insured financial institution.

Section 80.136(a)(2) is adopted (*without changes*) and §80.136(a)(3) is adopted (*with changes*) to provide that when a retailer engages a third party, such as a title company or an attorney, to surrender documents in accordance with §19(l) of the Act, they must do so under written instructions, and the surrender of required documents must be done on a timely basis. This will enable the Department to assemble and maintain current and accurate data regarding the installation of manufactured homes as real property and to schedule timely inspections of installations, as required by the Act. This is intended to address those situations where the documents are being obtained at closing but are not being surrendered on a timely basis.

Section 80.136(a)(4) is adopted (*without changes*) and §80.136(a)(5) is adopted (*without changes*) to restate the statutory requirements for the manner of installation of manufactured homes as real property and require the installer to document the manner in which they determine that a home has, in fact, been installed as required.

Section 80.136(b) is adopted (*without changes*) that would require the installer of a manufactured home to determine who owns the real property on which the home will be situated. This is essential for determining if the installation requirements of §80.136(a)(4) are applicable, and it would enable the Department to obtain information to enable it to determine if installation as real property has triggered an inspection as such, along with the payment of the required fee.

When §80.136 was initially proposed for public comment and a hearing was held there were three comments, one in writing and two provided verbally at the public hearing. The written comment expressed concern over a number of the specific things that the section would accomplish if adopted as originally proposed. It raised issues regarding the logistical concerns in surrendering title documents within the proposed time frames, and based on those concerns a non-substantive revision has been prepared to clarify that it is the later of closing or installation that triggers the requirement to file the documents. This is to accommodate the situation where the installation occurs well after the closing, a fairly common occurrence.

In subsection (a) the second word "the" was deleted, which is a non-substantive change.

The two public comments made at the hearing were made by organizations believed to represent larger constituencies. Both the Texas Manufactured Housing Association ("TMHA") and the Consumers Union expressed support for the rule, as proposed. However, following the hearing the TMHA received additional feedback from its membership indicating that there were additional concerns that they would like to have addressed. The

TMHA made additional comments at the November 5, 2002, meeting of the Board of Directors (the "Board") of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Division") and it was announced at that meeting that the public comment period would be held open until November 11, 2002. Additional written comments were provided, and a total of 164 comments, including the three verbal comments (one by Consumers Union and two by TMHA) were received.

The vast majority of the comments received are directed at the issue of requiring that the closing of a transaction for the acquisition for a manufactured home that would be deemed to be real property under §19A of the Texas Manufactured Housing Standards Act, Texas Revised Civil Statutes, Article 5221f (the "Act") be closed at either a title company, an attorney's office, or an insured financial institution. This was covered in §80.136(a)(1) of the proposed rule. Specific issues raised regarding this section included (1) objecting to the need to add cost, delay, and inconvenience in moving the closing to another site, (2) the high costs associated with such closings, even if the closing does not include the obtaining of any title policy, (3) the purported unwillingness of title companies to close "cash" transactions, and (4) a perception that cash transactions in general are not subject to being viewed as real property and, therefore, should not be subject to these closing requirements. In reviewing the statutory authority for the proposed rule, there does not appear to be a clear exception for cash transactions. Furthermore, there does not appear to be any basis for not treating a manufactured home as real property if it is permanently attached to real estate owned by the same person as the owner of the home, even if it is purchased for cash. While there does not appear to be any statutory basis for treating a cash transaction differently from a financed transaction, there is a concern about adopting any rule that would increase costs to consumers without obtaining any meaningful protections or other benefits, and there is a concern over promulgating any rule that might create an "impossible" situation for a retailer if they could not find a title company willing to close cash transactions.

One commenter questioned what constituted a "closing," arguing that if a home was sold for cash there was no "closing." In looking for authority to support this conclusion, everything that the Division has found indicates that a closing occurs when consideration is exchanged and the ownership of the manufactured home passes to the purchaser.

After receiving these comments the Division began receiving information about situations where licensees were unable to find qualified third parties to conduct closings on cash sales, and after investigating these circumstances, the Division has found that there are, in fact, instances where title companies, financial institutions, and attorneys will not close cash sale transactions. Furthermore, in those situations where title companies have been identified that would close such transactions, the fees charged are significant but no significant services that would promote consumer protection, such as ensuring proper disclosures, providing a policy of title insurance, or providing any advice or guidance to the consumer appeared to be involved. Presumably the same level of services found in a financed transaction could be obtained, but it was viewed as probable that these would entail additional fees.

In light of the foregoing concerns and in light of comments attributed to various legislators that it was never intended that this

provision apply to cash transactions, §80.136(a)(1) has been reworded to reflect what is stated in the statute.

A number of commenters objected to the proposed language of §80.136(a)(2), arguing against imposing a compliance responsibility on a party, in this case a retailer, when they are not in a position to comply, since it is a third party, such as a title company, that is in a position to surrender title documents for cancellation. It is not the intention of the Division to pursue enforcement action against retailers who take all reasonable steps to comply but have ultimate compliance thwarted by third parties who do not surrender title documents. Rather, it is the Division's intent to be sure that retailers have a clear understanding with their third party closers wherein those third parties are instructed, in writing, as to their responsibilities. That way, if a third party, such as a title company, receives documents that must be surrendered for cancellation or filing and it fails to do so, the retailer will have a basis for taking action with respect to them to ensure that compliance is achieved.

With respect to §80.136(a)(3), a number of commenters expressed concern over the logistical problem of surrendering documents within 31 days of closing if the installation occurs substantially later. This has been revised to clarify that the transaction that gives rise to the requirement to surrender the documents is the later of the sale or the installation.

There were comments concerning §80.136(a)(4) that centered chiefly on two issues: confusion as to which requirements were applicable and a request that the rule go on to state that a foundation that met the state's "generic" requirements for installation would satisfy the requirements for FHA Title II. The reference to FHLMC are references to the Federal Home Loan Mortgage Corporation, also known as Freddie Mac. The references to FNMA are to the Federal National Mortgage Association, also known as Fannie Mae. FHA, the Federal Housing Administration, offers two basic group of mortgage programs known as Title I and Title II. In order to meet the requirements of §19A of the Act, a manufactured home installed as real property must meet any one of these requirements. If the purchase is financed and the lender has other requirements, they, too must be met. It is the Division's understanding that at present FNMA will accept a foundation that meets the state's "generic" installation requirements, but it is not believed appropriate to state this in a rule since FNMA, FHLMC, and FHA may change their requirements at anytime.

Several commenters voiced concern over the documentation requirements set forth in §80.136(a)(5), indicating that in a cash transaction these documents would not be present and it would entail additional expense to produce a third party report to substantiate the method of installation. The documentation listed is illustrative. The rule clearly states this. The requirement is simply that the installer maintain files to show the basis for deciding that the installation, as performed, discharged his or her legal obligations.

Several concerns over §80.136(b) were voiced. There were concerns that installers would be required to conduct title research in order to verify ownership. All that was intended was, in those instances where the documentation already obtained did not address the matter that the installer as the owner, "Do you own the real estate on which I will be installing this home or does someone else own it? If it is someone else, who is the owner?" The installer would then record the homeowner's response. No independent research or additional cost would be involved.

Concerns were also expressed over the requirement that a secondary move and installation be handled in the same way. When an installer is installing a manufactured home it is the Division's belief that the installation should be in accordance with all applicable legal requirements. On secondary installations, unless the installer determines whether the home is to be installed as real property, that installer will not know what those requirements are. The Division believes that if a manufactured home is to be moved and re-installed as real property, the installer should verify the applicable requirements and comply with them.

One commenter noted that HB 1869 (77th Legislature), which amended the Act, applied to situations where "a sale" occurs. Based on that, the Division should not be concerned with secondary moves that do not involve sales. Section 19A(a) of the Act defines those homes that are classified and taxed as real property, and that section does not require that a sale occur. Section 19A(c) describes the installation requirements for all homes meeting the definitional requirements of §19A(a). The Division believes that the requirements of the law apply to both initial and secondary installations and that the rule is appropriate to clarify this.

One commenter objected to the requirement that when a retailer receives a home on trade-in it cannot be moved without checking and paying any real property taxes that are due. The proposed rule does not address this requirement of law. The Division does not believe that it would have any latitude to alter or suspend this requirement of law.

Several commenters expressed overall support for the rule, as proposed. One such commenter asked that the Division consider addressing by rule instances where a consumer and/or licensee takes measures to circumvent the law, such as situations where real estate is transferred out of the home buyer's name, a title to the manufactured home is obtained, and the underlying real estate is conveyed back to the homeowner, leaving a homeowner with a manufactured home that is classified and taxed as real property under §19A of the Act still in possession of a title document rather than evidencing ownership in the county deed records.

The new section is adopted under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, §9, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted section.

§80.136. *Homes Acquired on or after January 1, 2002.*

(a) When a retail sale of a manufactured home occurs and that home will be treated as real property under §19A of the Standards Act:

(1) The closing of that sale must occur at either a title company authorized to do business in Texas, an attorneys' office, or an office of a federally insured depository institution, regardless of whether the manufactured home or the real property on which it will be located is or will be the homestead of the purchaser.

(2) It is the responsibility of the seller of the home to surrender the document of title or Manufacturer's Certificate of Origin for cancellation in accordance with §19(l) of the Standards Act. If the

document of title or Manufacturer's Certificate of Origin has been delivered to a third party, such as an inventory lender or a title company, that third party must agree, in writing, to act as the retailer's agent and surrender such documents as required by §19(l) of the Standards Act and these rules.

(3) If §19(l) of the Standards Act requires a document of title or Manufacturer's Certificate of Origin to be surrendered for cancellation, the surrender is to be effected not later than one calendar month, not to exceed thirty-one (31) days, from the later of the date of the closing of the transaction or the date of actual installation and availability for occupancy that gave rise to the requirement of surrendering for cancellation.

(4) The installation must occur in a manner that satisfies either:

(A) the requirements for Federal Housing Administration (FHA) Title I mortgage insurance;

(B) the requirements for FHA Title II mortgage insurance;

(C) the requirements of Federal Home Loan Mortgage Corporation (FHLMC) for long term mortgages, or

(D) the requirements of Federal National Mortgage Association (FNMA) for long term mortgages.

(5) The method or manner of installation must be supported by documentation establishing the particular requirement with which it complies and the basis on which it was concluded that such particular requirement and particular department standard were met, such as a report by;

(A) an FHA, FNMA, or FHLMC approved inspector;

(B) an engineer, architect, real estate inspector, or appraiser licensed by the state of Texas; or

(C) an inspector employed by and inspecting for the state of Texas or a local government in Texas.

(b) When a manufactured home is installed or re-installed, the licensed installer (or, in the case of a retail sale of a new home, the retailer) shall provide to the Department a statement as to the name of the legal owner(s) of the property on which such manufactured home is being installed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300484

Bobbie Hill

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: March 9, 2003

Proposal publication date: September 20, 2002

For further information, please call: (512) 475-2206



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

## CHAPTER 101. ASSESSMENT SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF TESTING PROGRAM

### 19 TAC §101.3001, §101.3003

The Texas Education Agency (TEA) adopts new §101.3001 and §101.3003, concerning assessment, without changes to the proposed text as published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11028) and will not be republished. The new sections are adopted to implement certain requirements for the new testing program, called the Texas Assessment of Knowledge and Skills (TAKS), as specified by Acts of the 76th Texas Legislature, 1999, Chapter 397, Section 9, and to clarify transitional issues related to this new testing program.

The adopted new 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of Testing Program, was developed in response to statute. Texas Education Code, §39.023, requires the commissioner to adopt rules for implementing the new testing program set forth in 19 TAC Chapter 101, Subchapters A-E. In addition, 19 TAC Chapter 101, Subchapter CC, addresses a transitional issue regarding the first cohort required to meet the TAKS Grade 11 exit level testing requirements.

No comments were received regarding adoption of the new rules.

The new sections are adopted under Senate Bill 103, Section 9, 76th Texas Legislature, 1999 (Acts of the 76th Texas Legislature, 1999, Chapter 397), which authorizes the commissioner of education to adopt rules for the implementation of the Texas Education Code, §39.023.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300661

Cristina De La Fuente-Valadez

Manager, Policy Planning

Texas Education Agency

Effective date: February 16, 2003

Proposal publication date: November 29, 2002

For further information, please call: (512) 463-9701



## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

### 22 TAC §3.66

The Texas Board of Architectural Examiners adopts an amendment to §3.66, pertaining to the certification and annual registration of landscape architects. This amendment will ensure that the language of the rule is consistent with statutory amendments enacted during the last legislative session. The proposal to amend this rule was published in the December 6, 2002, issue of the *Texas Register*, (27 TexReg 11365). The amendment is being adopted without changes and the text will not be republished.

The amendment will cause the language in the rules to be consistent with statutory amendments enacted during the most recent legislative session.

The amendment to the rule will have no significant impact on small business, and there will be no significant change in the cost to persons required to comply with the section.

The agency received no comments pertaining to the proposal to amend this rule.

The amendment is adopted pursuant to Section 4(a) and Section 2(b) of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules as necessary to administer Article 249c, including rules related to restrictions on the use of the term "landscape architect" and related terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2003.

TRD-200300459  
Cathy L. Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners  
Effective date: February 12, 2003  
Proposal publication date: December 6, 2002  
For further information, please call: (512) 305-8535



## SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

### 22 TAC §§3.121 - 3.124

The Texas Board of Architectural Examiners adopts amendments to §§3.121 - 3.124, pertaining to compliance with and enforcement of the rules regulating the practice of landscape architecture: §3.121, which describes the agency's general authority to investigate apparent violations of the Act and the rules regulating the practice of landscape architecture and describes the methods for disposing of violations which cannot be resolved through settlement; §3.122, which requires a landscape architect who forms a business association with any unregistered person(s) for the purpose of offering landscape architectural services to enter into a written agreement of association with the unregistered person(s); identifies the parties who must sign the agreement and describes the information that must be included in the agreement; requires documents prepared pursuant to the agreement to be sealed, signed, and dated in accordance with the landscape architectural sealing rules; and requires that copies of all documents prepared

pursuant to the agreement must be maintained for ten years from the date of substantial completion of the project; §3.123, which describes the restrictions on the use of landscape architectural titles; and §3.124, which describes the business registration requirements for businesses that offer or provide landscape architectural services in Texas. This amendment will ensure that the language of the rule is consistent with statutory amendments enacted during the last legislative session. The amendment to §3.122 will ensure that the language of the rule is consistent with statutory amendments enacted during the last legislative session and will clearly identify a defined term used within the rule. The amendment to §3.123 will ensure that the language of the rule is consistent with statutory amendments enacted during the last legislative session and will clearly identify a defined term used within the rule. The amendment to §3.124 will ensure that the language of the rule is consistent with statutory amendments enacted during the last legislative session. The proposal to amend these rules was published in the December 6, 2002, issue of the *Texas Register*, (27 TexReg 11365 through 11366). The amendments are being adopted without changes and the text will not be republished.

The amendments make language in the rules more consistent with statutory amendments enacted during the most recent legislative session and result in more clearly identified defined terms.

The amendments to the rule will have no significant impact on small business, and there will be no significant change in the cost to persons required to comply with the sections.

The agency received no comments pertaining to the proposal to amend these rules.

The amendments are adopted pursuant to Section 4(a) and Section 2 of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to restrictions on the practice of landscape architecture and the use of the title "landscape architect" and related titles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2003.

TRD-200300461  
Cathy L. Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners  
Effective date: February 12, 2003  
Proposal publication date: December 6, 2002  
For further information, please call: (512) 305-8535



## SUBCHAPTER H. PROFESSIONAL CONDUCT

### 22 TAC §3.148

The Texas Board of Architectural Examiners adopts an amendment to §3.148, pertaining to the prevention of the unauthorized practice of landscape architecture. This amendment will ensure that the language of the rule is consistent with statutory amendments enacted during the last legislative session. The proposal

to amend this rule was published in the December 6, 2002, issue of the *Texas Register*, (27 TexReg 11368). The amendment is being adopted without changes and the text will not be republished.

The amendment will cause the language in the rules to be consistent with statutory amendments enacted during the most recent legislative session.

The amendment to the rule will have no significant impact on small business, and there will be no significant change in the cost to persons required to comply with the section.

The agency received no comments pertaining to the proposal to amend this rule.

The amendment is adopted pursuant to Section 4(a) and Section 2(b) of Article 249c, Vernon's Texas Civil Statutes, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to restrictions on the use of the term "landscape architect" and related terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2003.

TRD-200300462

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: February 12, 2003

Proposal publication date: December 6, 2002

For further information, please call: (512) 305-8535



## PART 5. STATE BOARD OF DENTAL EXAMINERS

### CHAPTER 101. DENTAL LICENSURE

#### 22 TAC §101.9

The State Board of Dental Examiners adopts amendments to §101.9, Dental Profiles without changes to the text as published in the November 22, 2002, issue of the *Texas Register* (27 TexReg 10861).

Senate Bill 187, 77th Legislature provided for a profile system and directed licensing agencies to gather specific data and make it available to the public no later than January 1, 2005.

The State Board of Dental Examiners amended §101.9 at subsection (a) to reflect this time requirement to begin gathering profile data from all applicants renewing their dental licenses no later than January 1, 2004.

No comments were received regarding adoption of the amendment.

The amended rule is adopted under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, Senate Bill 187, §11, 77th Legislature, 2001,

which requires the Board to adopt rules to establish a profile system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300362

Bobby Schmidt

Executive Director

State Board of Dental Examiners

Effective date: February 11, 2003

Proposal publication date: November 22, 2002

For further information, please call: (512) 463-6400



## CHAPTER 107. DENTAL BOARD PROCEDURES

### SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

#### 22 TAC §107.100

The State Board of Dental Examiners (Board) adopts amendments to §107.100, Receipt, Processing and Coordination of Complaints without changes to the text published in the November 22, 2002, issue of the *Texas Register* (27 TexReg 10862).

The Sunset Advisory Commission in its June 2002 report, at Recommendation 3.8, recommended that the Board adopt rules that allow for the acceptance of anonymous complaints and to relay this policy to the public. The Board agreed with that recommendation and adopted new language at subsection (c) establishing procedures for the receipt and processing of all complaints, including anonymous written complaints filed by patients, and/or other members of the general public or dental professions against Texas dentists and dental hygienists and/or dental laboratory registrants.

Comments were received from the Texas Dental Association (TDA). In its comments, the TDA requested that additional language be added to 107.100 (c) to clarify that anonymous written complaints will be logged and filed for information purposes. The TDA stated further that the suggested revision would reflect the current policy of at least two other licensing agencies and would also reflect the difficulty of successfully pursuing complaints in cases where the person making the complaint is unwilling to testify.

The Board appreciates the comments of the TDA however, no additional changes will be made to the rule. The policy of the Board has always been to accept written anonymous complaints. The current rule makes clear that written anonymous complaints will be processed in the same manner as all other complaints to the Board. The rule, as it is written, also complies with the recommendations of the Sunset Advisory committee.

The amended rule is adopted under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to



perform its duties, and §255.006 which provides that the Board shall adopt rules concerning filing complaints.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300363

Bobby Schmidt

Executive Director

State Board of Dental Examiners

Effective date: February 11, 2003

Proposal publication date: November 22, 2002

For further information, please call: (512) 463-6400



## 22 TAC §107.102

The State Board of Dental Examiners (Board) adopts amendments to §107.102, Procedures in Conduct of Investigation without changes to the text published in the November 22, 2002, issue of the *Texas Register* (27 TexReg 10863).

The Sunset Advisory Commission in its June 2002 report, at Recommendation 3.9, recommended that the Board adopt rules that specify a reasonable time frame for the PEC to review those dismissed complaints on the request of the complainant. The Board agreed with that recommendation and amended §107.102 by adding new subsection (i) to ensure that dismissed complaints that are to be reconsidered by the Board's Professional Evaluation Committee (PEC) at the request of the complainant are done so in a reasonable time frame.

The Board also amended §107.102 at subsections (f), (g), (h) and (j) by clarifying language regarding the handling of dismissals and the complaint review process in general. Specifically, language at subsection (g) now provides that a case dismissed by the Board Secretary or designee is reviewed by at least two members of the Enforcement Committee and subsection (h) now provides that once a complaint is dismissed the Board shall notify the complainant within ten days from the date of the Board action thereby allowing the complainant the right to appeal the dismissal.

No comments were received regarding adoption of the amendment.

The amended rule is adopted under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties and §255.006 which provides that the Board shall adopt rules concerning disposition of complaints.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300364

Bobby Schmidt  
Executive Director

State Board of Dental Examiners

Effective date: February 11, 2003

Proposal publication date: November 22, 2002

For further information, please call: (512) 463-6400



## SUBCHAPTER C. ADMINISTRATIVE PENALTIES

### 22 TAC §107.200

The State Board of Dental Examiners adopts the repeal of §107.200, Administrative Penalty without changes as noticed in the November 22, 2002, issue of the *Texas Register* (27 TexReg 10865).

Rule 107.200 was repealed as it was obsolete, redundant and irrelevant. Specifically, subsection (a) referenced §107.201 which was repealed in 2001, and subsection (c) referenced violation categories that were reclassified in §107.101 (of this title relating to Guidelines for the Conduct of Investigations). Language defining circumstances under which an administrative penalty may be imposed as well as criteria for determining the amount of penalty is found in new §107.202, Disciplinary Guidelines and Administrative Penalty Schedule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300366

Bobby Schmidt

Executive Director

State Board of Dental Examiners

Effective date: February 11, 2003

Proposal publication date: November 22, 2002

For further information, please call: (512) 463-6400



### 22 TAC §107.202

The State Board of Dental Examiners (Board) adopts new §107.202, Disciplinary Guidelines and Administrative Penalty Schedule, without changes to the text published in the November 22, 2002, issue of the *Texas Register* (27 TexReg 10865).

The State Auditor's Office conducted an internal and financial audit of the State Board of Dental Examiners, April 2002. The State Auditor's Office in its June 5, 2002 report cited that "the Board's inconsistent application of rules and policies and flawed investigation process severely weaken its oversight of dental professionals." At Chapter 1.1, Failure to Enforce Criteria Impairs Consistency it was noted "...while the Board adopted specific

guidelines for sanctions in 2001, these guidelines are not codified in the Texas Administrative Code." The State Auditor's Office recommended that the Board codify in the Texas Administrative Code suggested sanctions they may levy against license holders or unlicensed individuals for specific infractions. The Board agreed with the State Auditor's recommendation and adopted new §107.202 that sets forth disciplinary guidelines and administrative penalties.

Comments were received from the Texas Dental Hygienists' Association (TDHA). In its comments, the TDHA requested the deletion of the professional conduct violation language in Section 107.202(d)(4)(C) regarding the application of pit and fissure sealants and site specific subgingival medicaments by dental hygienists while outside the dental office and not under the general supervision or direction of a dentist. The TDHA also suggested adding language regarding retaliation against a person who files a complaint and further requested the addition of language regarding violations as they relate to dental assisting.

The Board appreciates the comments of the TDHA, however, no additional changes will be made to the rule. The Board believes the current language in Section 107.202(d)(4)(C) adds clarity to the rules. Additionally, the proposed rules were not intended to address the issue of retaliation. The rules were proposed to add clarity and consistency to the Board's processes in light of the recommendation of the State Auditor's Office. The Board's rules currently require all dental assistants' to act under the direct supervision of a licensed dentist who is directly responsible for the actions of the dental assistant.

The new rule is adopted under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, §264.001 which provides the Board with the authority to impose an administrative penalty, and §263.002 which provides grounds for disciplinary action in general.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300367  
Bobby Schmidt  
Executive Director  
State Board of Dental Examiners  
Effective date: February 11, 2003  
Proposal publication date: November 22, 2002  
For further information, please call: (512) 463-6400



## CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

### 22 TAC §114.2

The State Board of Dental Examiners adopts amendments to §114.2, Definition without changes to the text published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9532).

Chapter 114, Extension of Duties of Auxiliary Personnel - Dental Assistants, establishes permissible duties for dental assistants. House Bill 3507, 77th Legislature, 2001, and §114.3 of this title (relating to Application of Pit and Fissure Sealants), provide that a Texas licensed dentist who is enrolled as a Medicaid Provider with appropriate state agencies may delegate the application of a pit and fissure sealant to a dental assistant, if the dental assistant is employed by and works under the direct supervision of the licensed dentist and is certified. Further, § 114.3(d) establishes requirements for a dental assistant wishing to obtain the necessary certification to apply pit and fissure sealants. One such requirement is the completion of a minimum of 16 hours of clinical and didactic education in pit and fissure sealants taken through a Commission on Dental Accreditation (CODA) accredited dental hygiene program.

The amendments made to §114.2, provide definitional terms that ensure uniformity and similarity in the training and education given to dental assistants and dental hygienists under §115.2 of this title (relating to Permitted Duties). These new definitions include at paragraph (2) didactic education--requires the presentation and instruction of theory and scientific principles; at paragraph (3) clinical education--requires providing care to patient(s) under the direct supervision of a dentist or dental hygienist instructor; and at paragraph (4) direct supervision--the instructor responsible for the procedure shall be physically present during patient care and shall be aware of the patient's physical status and well being.

No comments were received regarding adoption of the amendment.

The amended rule is adopted under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry, and with the provisions of House Bill 3507, Article 4, 77th Legislature, 2001

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300369  
Bobby Schmidt  
Executive Director  
State Board of Dental Examiners  
Effective date: February 11, 2003  
Proposal publication date: October 11, 2002  
For further information, please call: (512) 463-6400



## CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

### 22 TAC §115.10

The State Board of Dental Examiners (Board) adopts amendments to §115.10, Radiologic Procedures, without changes to the text published in the November 22, 2002, issue of the *Texas Register* (27 TexReg 10868).

The State Board of Dental Examiners entered into a contract with an independent testing organization for the purpose of administering the radiologic examination to a dental assistant seeking certification to perform radiologic procedures. Language was amended at subsection (e), paragraph (3) to reflect that the Board's radiology examination is no longer administered by a licensed Texas dentist.

No comments were received regarding adoption of the amendment.

The amended rule is adopted under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300368

Bobby Schmidt

Executive Director

State Board of Dental Examiners

Effective date: February 11, 2003

Proposal publication date: November 22, 2002

For further information, please call: (512) 463-6400



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 505. THE BOARD

#### 22 TAC §505.12

The Texas State Board of Public Accountancy (Board) adopts new §505.12, concerning Enforcement Committee Member Recusals without changes to the proposed text as published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11036). The text of the rule will not be republished.

The new rule reduces to writing the Board's recusal practice of not voting on a matter that was previously considered by a Board member during an enforcement committee meeting.

The new rule will function by putting the Board's recusal practice into a rule form.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2003.

TRD-200300475

Amanda G. Birrell  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: February 12, 2003  
Proposal publication date: November 29, 2002  
For further information, please call: (512) 305-7848



## CHAPTER 511. CERTIFICATION AS A CPA SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

### 22 TAC §511.57

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.57, concerning Definition of Accounting Courses with changes to the proposed text as published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11037). The changes are all in the first paragraph of the rule. The changes are in response to public comments and further review by staff and are intended to simplify and clarify the amendments. The sentence structure of the first paragraph has been reorganized and divided into subsections (a), (b) and (c) for ease of understanding. The effective date of the amendment was changed to January 1, 2004 in new subsection (c). Because the changes clarify the rule and the effective date of the change was in response to comments, the changes are not substantive.

The amendment allows the Board to accept some courses that have been taken in community colleges and Management Information System ("MIS") courses and positions the timing or scheduling of internships in a student's college career.

The amendment will function by allowing students to receive credit for some courses that have been completed at community colleges and MIS courses and by having internships scheduled for a time in a student's college career that the Board considers to be most beneficial to the student.

The Board received several comments on the proposed rule during the comment period. The comments and responses are listed in the next section.

**Comment:** A commenter stated that changing the definition of accounting courses to include courses offered at community colleges may be confusing to students because the courses would not be accepted by degree granting institutions and this would confuse students. The addition of community college programs would be detrimental to the accounting programs throughout the state because most degree granting institutions offer post baccalaureate certificates that allow students with bachelor's degrees in other areas to obtain accounting hours to take the exam.

**Response:** There are a limited number of community colleges that offer a CPA certification program. To insure that these programs meet the rigors of upper division accounting course work offered at degree granting institutions, the Board will complete a process that reviews and evaluates various aspects of the CPA certification program offered at community colleges prior to acceptance. Those community colleges offering less than a full CPA certification program will not meet this definition. However, they may still provide lower division courses to prepare students for entry into degree granting institutions, as well as accounting technician programs which serve the business community in the area. It is not the intent of this requirement to cause hardships to students or degree granting institutions of the State. It is the

Board's responsibility to insure that students are prepared for the rigors of the accounting profession, so that they may meet the demands of the business community and the people of Texas.

Comment: Another commenter noted that the proposed new requirements to the internship program are too restrictive to accommodate the needs of diverse student populations. The commenter stated that the changes may mean fewer opportunities for students to be able to experience an internship.

Response: By design the internship program should be as demanding as traditional classroom curriculum. The Board has identified areas of abuse in this program and, in an attempt to tighten controls added these amendments to its current definition.

Comment: One commenter suggested the proposed rule should include references to graduate degrees in addition to baccalaureate degrees and to graduate courses in addition to upper division courses where these terms appear. Since the implementation of the 150-hour requirement, many candidates are involved in graduate programs.

Response: The Committee agrees with the commenter's suggestion, however, restrictions should be placed so that graduate level accounting courses without an accounting prerequisite do not satisfy this definition. This restriction is similar to disallowing lower-division accounting courses.

Comment: One commenter stated the proposed changes would significantly weaken accounting programs across the state at the university level because students could earn a bachelor's degree in any field and take accounting courses at community colleges.

Response: There are a limited number of community colleges that offer a CPA certification program. To insure that these programs meet the rigors of upper division accounting course work offered at degree granting institutions, a Board-designed accreditation process must be completed prior to acceptance. Those community colleges offering less than a full CPA certification program will not meet this definition. However, they may still provide lower division courses to prepare students for entry into degree granting institutions, as well as accounting technician programs which serve the business community in the area. It is not the intent of this requirement to create hardships on the students or the degree granting institutions of the State. It is the Board's responsibility to insure that students are prepared for the rigors of the accounting profession, so that they may meet the demands of the business community and the people of Texas.

Comment: One commenter objected that the Board is not an accrediting agency and that it is inappropriate for the Board to take on that function.

Response: The Board is aware of its position, and does not purport to be an accrediting agency. However, Section 901.254 of the Public Accountancy Act requires that the Board determine by rule the accounting and other courses it will accept. In order to make this determination, and to make the examination available to all socio-economic groups within the state, the Board must use some of the criteria currently used by accrediting bodies.

Comment: One commenter said the proposed changes in the courses seemed appropriate but suggested "graduate" should be included in accounting courses and degree, since some students are obtaining master's degrees.

Response: The Committee agrees with the commenter's suggestion, however, restrictions should be placed so that

accounting courses including graduate level courses, without an accounting prerequisite do not satisfy this definition. This restriction is similar to disallowing lower-division accounting courses.

Two commenters asked several questions:

Comment: Does the additional text concerning the internship not being taken until a minimum of 12 hours of upper division coursework has been completed refer to accounting coursework?

Response: The intent is that the internship be performed after the student has completed 12 semester hours of upper division accounting courses.

Comment: Does "full semester" mean full time credit hour course load?

Response: Yes.

Comment: Does "semester" include summer session?

Response: No.

Comment: Must the internship be taken before a student has fulfilled all of the requirements to be awarded a degree?

Response: No. The internship may be taken before or after awarding of the BBA degree. The limitations of taking the internship course after completing 12 semester hours of accounting gives the student a basis of knowledge on which to build experiences from the internship. The requirement that the internship be taken prior to the last full semester allows the student an opportunity to integrate the internship experience into the remaining accounting courses that must be completed.

Comment: Could the internship be taken after completing the BBA as part of the additional courses required to accumulate 150 hours?

Response: No. The internship may be taken before or after awarding of the BBA degree. The limitations of taking the internship course after completing 12 semester hours of accounting gives the student a basis of knowledge on which to build experiences from the internship. The requirement that the internship be taken prior to the last full semester allows the student an opportunity to integrate the internship experience into the remaining accounting courses that must be completed.

Comment: Will the proposed changes limit internships to summer and fall?

Response: No. Internships could be taken during any semester, provided the qualifications mentioned in the response to the previous question are met.

Comment: Will the rule changes apply to students enrolled in an internship during spring semester 2003?

Response: No. The rule will not become effective until January 1, 2004.

Comment: Can an internship be included in the "other areas related to accounting"?

Response: No.

Comment: Could six semester hours of an internship be counted under the definition of Related Business Subjects?

Response: No. The Board limited an internship to 3 semester hours as an accounting course.

Comment: One commenter noted that the rule as written, referring to online courses, would permit students to complete too much of their accounting education via online coursework because there is no effective way to ensure that the person receiving the credit actually did the work. Students do not receive the benefit of observing and participating in classroom discussions in the online class. Candidates should be required to complete at least 85% of their accounting coursework in classes that require physical attendance. The physical attendance threshold is too low.

Response: This comment does not address a proposed amendment. The text he is referring to has been in this rule since 1999. However, to respond to his comment: With the limitation of 15 hours of accounting from online coursework, the faculty who teach students in classroom settings should be able to determine if the course curriculum typically taught in the online setting was learned and could be applied to higher order cognitive skills in the advanced accounting classes.

Comment: One commenter objected that because the concept of "core" accounting is being dropped, a candidate could write the examination without having completed significant auditing coursework. At least one auditing course should be required.

Response: The core accounting courses listed do not require that an auditing course be taken. This listing only provides the student and the university with various courses that would meet the core accounting requirement.

Comment: One commenter suggested Grandfathering students who are currently pursuing a degree in accounting because it is unfair to change the eligibility when so close to completion.

Response: The effective date of the proposed amendment has been changed to January 1, 2004. The content of the CPA examination is changing to be more comprehensive. The business community is demanding that CPAs are knowledgeable and skilled in various aspects of accounting. Grandfathering creates several negatives for the profession and the business community. (1) Students would continue to take courses that did not prepare them for the CPA exam or professional responsibilities with businesses. (2) Grandfathering could delay the implementation of curriculum changes at colleges and universities. (3) Businesses might seek accounting employees from outside the state because their skill and knowledge level is aligned to current accounting practices. (4) Grandfathering might delay the implementation of needed changes for 4-5 years.

Comment: One commenter stated that not permitting lower level accounting courses for those without a degree in accounting but permitting them for non-degreed persons is a double standard because qualifying courses should be the same for everyone.

Response: It is not the Board's intent to create a double standard for individuals who want to take the CPA examination, but rather to level the playing field. Currently, there are students who enter four-year colleges to obtain a business or accounting degree, take the requisite coursework to earn the degree and qualify for the CPA exam. There are also students who have a degree in another field and want to take the CPA exam. These students amass the required number of semester hours at various institutions in order to take the exam. The majority of the courses that are taken are offered at community colleges and are designed for an accounting technician, not for a professional designation. The Board found that students who take lower division courses are not as successful on the CPA exam as those with upper division courses that demand higher order thinking.

It is the Board's intent to evaluate community colleges that offer a full program that will prepare its students for the CPA exam. If through this process, the Board determines that the curriculum offered is equal to that which is available at a degree-granting institution, then it can recognize the CPA certificate program. Currently, there are a limited number of community colleges that offer the broad array of courses that are found at degree granting institutions.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.254 which authorizes the Board to promulgate rules regarding education requirements.

§511.57. *Definition of Accounting Courses.*

(a) An individual who holds a baccalaureate degree from a recognized educational institution may enter into a course of study at an accredited community college, provided that the accounting program offered at the community college was reviewed and accepted by the board.

(b) Credit for hours taken at recognized colleges and universities using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(c) Effective January 1, 2004 the board will accept not fewer than 30 passing semester hours of upper division accounting courses without repeat from the courses listed below. A recognized educational institution must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript. At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of any transcript-issuing institution.

- (1) intermediate accounting, advanced accounting;
- (2) cost accounting;
- (3) auditing, internal accounting control and evaluation;
- (4) report writing (principally writing financial reports, internal control reports, and management letters);
- (5) financial statement analysis;
- (6) accounting theory, standards, and analysis;
- (7) up to twelve semester hours of income tax;
- (8) accounting for governmental and/or other nonprofit organizations;
- (9) up to twelve semester hours of accounting systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the college or university accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;
- (10) fraud examination; and
- (11) an accounting internship program (not to exceed 3 semester hours) which meets the following requirements:

(A) the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;

(B) the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(C) the internship plan is approved in advance by the faculty coordinator;

(D) the employing firm provides a significant accounting work experience with adequate training and supervision of the work performed by the student;

(E) the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(F) the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(G) the student writes a paper demonstrating the knowledge gained in the internship;

(H) the student and/or faculty coordinator provides evidence of all items upon request by the board;

(I) the internship course shall not be taken until a minimum of 12 semester hours of upper division course work has been completed; and

(J) the internship course shall be taken prior to completing the last full semester of course work in order to integrate the knowledge gained during the internship into the curriculum requirements for the degree program.

(12) any other course which is principally accounting or auditing in nature but which may be designated by some other name (and the verification of which is obtained in writing from the particular college or university). After the November 1997 examination, elementary accounting may not be considered under this rule; and

(13) any CPA review course offered by an educational institution or of a proprietary nature may not be considered in meeting the requirements under this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## 22 TAC §511.58

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.58, concerning Definitions of Related Business Subjects with changes to the proposed text as published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11038). The changes made to the proposed rule are in response to public comments received and also based upon further review by staff, to simplify and clarify the rules. The rule has been changed by dividing and rearranging subsection (a) into subsection (a) and (b), and as a result of this change, old subsection (b) is now subsection (c), and old subsection (c) is now subsection (d). As a result of the comments received, the Board has

also made a change to the effective date from January 1, 2004 to July 1, 2005. Because the change clarifies the rule and the effective date of the change is more liberal to the regulated population than the proposed rule, the changes are not substantive and the Board will not re-publish the proposed rule.

The amendment will require 21 hours of upper division courses instead of 20, will accept some community college courses under certain conditions, requires the business law course to study the Uniform Commercial Code, requires the communications course to be business communications and will require completion of a three hour ethics course.

The amendment will function by directing students' courses toward those areas the Board believes will be most beneficial to the student and to consumers.

The Board received several comments on the proposed rule during the comment period. The comments and responses are listed in the next section.

Comment: One commenter questioned whether ethics, of the nature that the Board apparently has in mind, can be taught. The commenter said some authorities contend the answer is "no" and suggested the subject needs more thorough study by the Board and accounting academics in Texas.

Response: Given the unethical practices that recently surfaced in businesses it is prudent for the Board to require individuals aspiring to enter the accounting profession to have knowledge of ethical reasoning, integrity, objectivity, independence and other core values. This knowledge can best be measured by a course of study in ethics as part of the higher education curriculum. Both the business community and the public demand ethical business practices of accounting professionals. The Board is aware that ethical practices cannot be mandated, however it does require its licensed CPAs and non-CPA owners to take a Board-approved course on business or accounting ethics. For many years various curricula for Ethics courses have been available in other fields of study, and at some higher education institutions ethics courses are also available in various areas of business.

Comment: Several commenters said the curriculum could not be implemented efficiently and effectively to meet the January 1, 2004 deadline and requested the Board delay the implementation of this section of rule 511.58 until January 1, 2005. The commenters said there is insufficient time to design the curriculum and implement the course so that students can enroll for the Fall 2003 semester and that this would adversely effect December 2003 graduates. Students who graduate in Spring or Summer 2003 would only have one opportunity to apply for the CPA exam prior to the implementation date of this rule. The commenters said the current implementation date places an undue hardship on CPA exam candidates.

Response: The Committee is aware of the hardship that the January 1, 2004 implementation date may create for higher education as well as future accounting graduates. Therefore, it recommends that the implementation date be changed to July 1, 2005. This change will: (1) allow universities additional time to develop curriculum and implement the courses; (2) identify courses currently offered that meet the Board's requirements; (3) incorporate the requirement in college catalogs; and (4) advise students of the necessity to take the course. It may also be possible that students could take a course that meets the Board's requirements at another university.

Comment: One commenter said that accreditation has required AACSB schools to integrate ethics into the curriculum for the past 10 years.

Response: The Committee considered the AACSB accounting requirement for accreditation. This policy does not mandate the type of curriculum recommended by the Committee. Not all colleges and universities in Texas carry the AACSB accreditation. For an ethics course to be effective from the Board's perspective it should be quantifiable. By requiring a 3 semester hour ethics course that contains specific components, the Board has some assurance that universities are providing a measurable course that meets government, business and public concerns.

Comment: A commenter said that integrating discussions about ethical issues in the classroom focus attention on ethical decision-making situations that accounting students will encounter in the real world.

Response: The Board concurs with the method of integration of ethical decision-making situations into accounting curriculum. However, not all universities use this method. Refer to the previous response.

Comment: A commenter noted that mandating the passing of a 3 semester hour course in ethics would not be a very effective solution to the perceived problem because there is no evidence that proves the current systems of teaching ethics in universities are not working.

Response: The Board is not suggesting that the current system of teaching ethics is not working. It wants to insure that all individuals aspiring to enter the accounting profession have knowledge of ethical reasoning, integrity, objectivity, independence and other core values. The best way of making this assurance is by requiring an ethics course.

Comment: A commenter said the proposed rules would increase the legislative appropriated support for the accounting curriculum across the state. He noted that the requirement may be worth the additional costs but that it needs to be documented.

Response: Universities should consider courses that are currently offered which could meet the Board's requirements. This requirement may not be a financial burden to the university.

Comment: One commenter questioned whether the requirement of an ethics course would have an impact on behavioral patterns. He noted that this is a controversial issue among experts in ethics. He suggested the Board solicit input from experts in the field of philosophy and ethics before we commit ourselves to devoting resources to the requirement of an ethics course.

Response: The Committee will consult with experts in the fields of philosophy and ethics about the benefit to the Board, the profession, the public and the individual.

Comment: Several commenters said that community college coursework cannot be accepted as upper division courses at BBA granting institutions and suggested that the following text be stricken from the proposed rule, "provided they are recognized as upper division courses for a 4 year BBA degree from an institution recognized by the board."

Response: The Committee is aware that community colleges by design may not offer upper division course work. The intent of this text is to insure that the related business courses taken at community colleges for the purpose of taking the CPA examination meets the same rigors as those upper division courses offered at degree granting institutions.

Comment: One commenter said that acceptable related business courses are becoming narrower and a higher barrier to those persons with non-business degrees. He also said that a person with a broad education who wants to take coursework to enter the accounting profession should be able to accomplish this as quickly as possible. The logic for the 150 hour requirement should not be based on increasing the accounting and related business courses to take the exam.

Response: The 150 hour requirement was implemented in 1991 to insure that any person who enters the accounting profession must have a broad and well-rounded education. Since that time the profession and the business community have experienced many changes. Significant changes were identified in the *Practice Analysis of the Profession - 2000*. Based on this analysis changes were incorporated into the Uniform CPA Examination. With the advent of the computer-based CPA examination all entry-level accountants must demonstrate knowledge, skills and abilities that were identified in the Practice Analysis. A significant component is the addition of expanded business and economic concepts as well as information technology. The Board wants to insure that all individuals who take the CPA examination are prepared in this area. That is the basis for the more stringent requirements of the related business coursework.

Comment: One commenter said that the proposed rules may not be sufficient to achieve the intent of the Board and that instructors may teach "issue recognition" rather than "values-based" ethics courses.

Response: Instructors may have several methods of presenting the ethics curriculum so that students receive information about the concepts that were defined by the Board, while teaching issue recognition and discussing conceptual value systems that are acceptable to the business community, governmental entities and public concerns. It would not be improper for an instructor to use their value system during classroom discussions so that students may have other means of developing and/or enhancing their own value systems.

Comment: One commenter said that ethics is currently covered in the auditing class at his university. He suggested that a separate ethics course should be dropped in favor of a rule specifying that candidates must have ethics education somewhere in their college education. He cautioned that the recent negative publicity and scandals are not a failure of ethics education.

Response: Given the unethical business practices that recently surfaced it is prudent for the Board to require individuals aspiring to enter the accounting profession to have knowledge of ethical reasoning, integrity, objectivity, independence and other core values. This knowledge can best be measured by a course of study in ethics as part of the higher education curriculum. Both the business community and the public demand ethical business practices of accounting professionals. The Board is aware that ethical practices cannot be mandated, however it does require its licensed CPAs and non-CPA owners to take a Board-approved course on business or accounting ethics. For many years various curricula for Ethics courses have been available in other fields of study and at some higher education institutions ethics courses are also available in various areas of business.

Comment: One commenter said that some universities may not offer an ethics course. He opined that if an ethics course were added it would be an elective for graduate students, and that there may not be a sufficient number of students to justify offering the course each semester.

Response: It may be possible that students could take a course that meets the Board's requirements at another degree granting university.

Comment: One commenter suggested the requirement of upper division related business courses be deleted from the rule because this would impact 40% of the "stand-alone" MPA students.

Response: The Board was unaware that an MPA degree at this university did not require the same rigorous coursework that the BBA or PPA degrees demand. It is recommended that all degree plans be equalized from the standpoint of acceptable coursework to take the CPA exam.

Comment: A commenter suggested the rule allow up to 9 semester hours of lower division coursework in related business courses. He said this would accommodate the "stand-alone" students.

Response: The Board must evaluate all related business courses taken at Texas universities in an equitable manner. Economics and statistics courses identified as lower division coursework will be accepted from all colleges and universities, which will rectify this problem.

Comment: One commenter suggested the Board give double credit for related business courses taught at the graduate level. He said graduate courses should be more heavily weighted than undergraduate courses because of the increased rigor and content.

Response: Not all Texas universities offer more rigorous graduate courses. There must be equity in the Board's assessment of college courses. Therefore, the Board uses the semester hours credit as indicated on the transcript by the Registrar. If three semester hours are awarded for a graduate course, the Board cannot arbitrarily award three additional semester hours simply because the course is taken at a particular university.

Comment: One commenter asked whether more than one course devoted to social/business responsibility and ethics could be used to fulfill the ethics requirement. He said that ethics has traditionally been incorporated throughout the curriculum rather than in a specialized course.

Response: The Board would accept one three-hour course that covers the concepts identified in the definition in meeting the requirement.

Comment: One commenter suggested that the ethics requirement should include an option for documented integration of ethics material within the curriculum.

Response: Not all colleges and universities in Texas integrate ethics in their curriculum. For an ethics course to be effective from the Board's perspective it should be quantifiable. By requiring a 3 semester hour ethics course that contains specific components the Board has some assurance that universities are providing a measurable course that meets government, business and public concerns.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.254 which authorizes the Board to promulgate rules regarding education requirements.

§511.58. *Definitions of Related Business Subjects.*

(a) An individual who holds a baccalaureate degree from a recognized educational institution may take related business courses offered at an accredited community college, provided they are recognized as upper division courses for a 4-year BBA degree from an institution recognized by the board.

(b) Effective July 1, 2005, the board will accept not fewer than 21 passing semester hours of upper division courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas. Not more than 6 semester hours taken in any subject area may be used to meet the minimum hour requirement.

- (1) business law, including study of the Uniform Commercial Code;
- (2) economics;
- (3) management;
- (4) marketing;
- (5) business communications;
- (6) statistics;
- (7) technical writing (covering subjects such as opinions, tax planning reports, and management advisory services reports and management letters);
- (8) finance;
- (9) information systems or technology; and
- (10) other areas related to accounting.

(c) In addition to the 21 hours required in subsection (b) of this section, effective July 1, 2005, the board requires that 3 passing semester hours be earned as a result of taking a course in ethics. The course must be taken at a recognized educational institution and should include ethical reasoning, integrity, objectivity, independence and other core values.

(d) Credit for hours taken at recognized colleges and universities using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER F. EXPERIENCE  
REQUIREMENTS**

**22 TAC §511.122**



The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.122, concerning Acceptable Work Experience without changes to the proposed text as published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11040). The text of the rule will not be republished.

The amendment redefines what is required to supervise CPA applicants, defines non-routine accounting, recognizes that experience may be obtained in a non-CPA firm, deletes the definition of commercial enterprise practice of accountancy and defines acceptable industry work experience.

The amendment will function by allowing applicants to acquire work experience in professional settings that the board believes will be beneficial to applicants and consumers.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.256 which authorizes the Board to promulgate rules regarding acceptable work experience.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**22 TAC §511.124**

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.124, concerning Acceptable Supervision without changes to the proposed text as published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11041). The text of the rule will not be republished.

The amendment to §511.124 requires a supervising CPA to be experienced in non-routine accounting and be an actively licensed CPA, it rewrites part of the rule for clarity and prohibits supervision in situations where independence is required.

The amendment will function by enabling applicants to be supervised in a manner that the Board believes will be beneficial to the applicant and to consumers.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.256 which authorizes the Board to promulgate rules regarding acceptable work experience.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION**  
**SUBCHAPTER E. REGISTERED CONTINUING EDUCATION SPONSORS**

**22 TAC §523.74**

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.74, concerning Registry of Continuing Education Sponsors with one change to the proposed text as published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11042). In subsection (b) the Board deleted all the language after the words "with the board," including the numbered subparagraphs.

The Board made this change to defer the implementation of the sponsor review oversight program. The Board is deferring the implementation of this program because the recommendations of the Sunset Commission have placed in question the Board's ability to pay the members of the oversight board. Over the past six months the Board has proposed a series of amendments to its Continuing Professional Education (CPE) rules which would establish a sponsor review oversight board (SROB) to review all CPE providers to determine whether the CPE meets Board standards. SROB would be funded with the proceeds of a contracting program between the Board and CPE sponsors. Therefore, effective January 31, 2003, amendments to §523.63 limited acceptable CPE to either Board contracted sponsors or CPE authorized by Board rule. Amendments to §523.71 required CPE sponsors to contract with the Board, and new §523.75 created SROB.

However, the Sunset Commission, on December 10, 2002 voted not to continue the Board's semi-independent status. The Board must have either semi-independent status or an appropriation to fund the sponsor review oversight program. Until the legislative session is completed, the Board will not know whether its semi-independent status will continue or whether it will receive an appropriation to fund this project. Therefore, the Board wishes to defer implementation of this program

The Board adopts the rule with a change that broadens the category of CPE sponsors who qualify for registration to permit registration by any sponsor who will comply with Board standards. All CPE offered by registered sponsors will be acceptable under §523.63 because it is authorized by §523.74. This adopted rule therefore effectively continues the Board current program of registering sponsors. Because the effect of the change is to

continue the status quo, and because the effect of the change is more liberal to the regulated population than the proposed rule, the Board will not publish the rule for public comment.

The amendment to §523.74 is necessary or advisable to delete the word "National" from the rule caption and describe the circumstances under which the Board will accept CPE courses. The Board recently amended §523.63 to limit sponsors of acceptable CPE in Texas. The amendments to §523.74 will identify one of the groups of accepted sponsors.

The amendment will function by making CPE sponsors aware of the circumstances that are required for CPE to be accepted by the Board.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the Board to promulgate rules regarding continuing professional education.

*§523.74. Registry of Continuing Professional Education Sponsors.*

(a) The board shall accept courses offered by sponsors shown as being in good standing on the National Association of State Boards of Accountancy's National Registry of Continuing Professional Education Sponsors; however, organizations are not required to register with the National Association of State Boards of Accountancy.

(b) The board shall accept courses offered by CPE sponsors that have registered with the board.

(c) CPE sponsors registered with the board shall:

- (1) comply with all board standards for CPE sponsors; and
- (2) cooperate with the board's sponsor review oversight program, including but not limited to providing information, records and access to programs and instructors as requested.

(d) The board may revoke the registration of any CPE sponsor registered under this section for failure to comply with board standards or board rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**TITLE 25. HEALTH SERVICES**  
**PART 1. TEXAS DEPARTMENT OF HEALTH**  
**CHAPTER 56. FAMILY PLANNING**

The Texas Department of Health (department) adopts new §§56.1 - 56.19 and the repeal of §§56.101 - 56.104, 56.201 - 56.209, 56.301 - 56.306, 56.401 - 56.404, 56.501 - 56.525, 56.601 - 56.607, 56.701 - 56.703, 56.801, 56.802, and 56.901 - 56.904, concerning the Family Planning Program. Sections 56.1, 56.4, 56.7, 56.9, 56.12, 56.14, 56.16, and 56.17 are adopted with changes to the proposed text as published in the August 23, 2002, issue of the *Texas Register* (27 TexReg 7733) as a result of comments received during the 30-day comment period. The repeals and new §§56.2, 56.3, 56.5, 56.6, 56.8, 56.10, 56.11, 56.13, 56.15, 56.18, and 56.19 are adopted without change, and therefore the sections will not be republished.

Specifically, the new sections concern applicability of family planning requirements; definitions; purposes; family planning advisory committee; maximum rates and specific codes; range of methods; abortion statement; requirements for reimbursement of family planning services; records retention; prompt service; freedom of choice; confidentiality; eligibility for family planning services; consent; family planning for adolescents; and civil rights.

Government Code, Chapter 2110 requires that each state agency adopt rules on advisory committees. The rules must state the purpose of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will automatically be abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1998, the board adopted §56.104 of this title (relating to Family Planning Advisory Committee). The committee has provided advice to the Texas Board of Health (board) and the department relating to comprehensive family planning services. Section 56.104 states that the committee will automatically be abolished on January 1, 2003. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until January 1, 2007.

New §56.4 updates provisions relating to the operation of the committee. Specifically, the new section provides that the committee shall continue in existence until January 1, 2007; provides that the committee shall appoint the presiding officer; and establishes the Informational and Educational Subcommittee.

Government Code, §2001.039 also requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 56.101 - 56.104, 56.201 - 56.209, 56.301 - 56.306, 56.401 - 56.404, 56.501 - 56.525, 56.601 - 56.607, 56.701 - 56.703, 56.801, 56.802, and 56.901 - 56.904 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. However, all the existing rules in Chapter 56 are being repealed, and new rules are being proposed to make them more accessible, understandable, and usable.

The department published a Notice of Intention to Review the sections as required by Government Code §2001.039 in the *Texas Register* on May 19, 2000 (25 TexReg 4598). No comments were received.

The department is making the following minor changes to clarify the intent and improve the accuracy of the sections.

Change: Concerning §56.1, the erroneous reference to the "Title V Manual, September, 2002" has been corrected as "Title V Policies and Procedures Manual, September, 2002".

Change: Concerning §56.4(f)(2)(B)(vi), the reference to "one representative of client self support services from DHS" has been updated to "one representative from the DHS Texas Works Program".

Change: Concerning §56.4(n)(5), the paragraph has been amended to clarify that advisory committee members may neither exercise their official powers or duties in favor of or against another person in exchange for a benefit.

Change: Concerning §56.9, the erroneous reference to 1 Texas Administrative Code §354.1003 (relating to Medical Records) has been corrected as "1 Texas Administrative Code §354.1004 (relating to Medical Records)".

Change: Concerning §56.16, the word "must" was inadvertently omitted from the first sentence of the section as proposed, and has been added to clarify that all the provisions of §56.16 are intended to be mandatory.

Change: Concerning §56.17(a)(1), the department has restated the professional qualifications of a clinical geneticist serving as a genetic service agency provider's medical director more specifically.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting changes.

Comment: Concerning the chapter as a whole, several commenters stated that the rules should be amended to assure that family planning providers report sexual abuse and assault of minors as required by state law.

Response: The department agrees and has amended §56.12 to incorporate the essence of the commenters' suggested language. As a result of the amendment, the sentence concerning access to client records by department staff or their authorized representatives has been rephrased and added to §56.12(3) for clarity.

Comment: Concerning the chapter as a whole, one commenter stated that the rules should be amended to require family planning providers to document reports of abuse of minors in the clients' medical records.

Response: The department already requires all family planning providers by contract to document reports of abuse of minors, but not necessarily in clients' medical records. No change was made as a result of this comment.

Comment: Concerning the chapter as a whole, one commenter recommended that the rules be amended to prohibit family planning providers from advising a minor not to reveal the name or other identifying information concerning the client's sexual partner, or informing a client that a report must be made if there is reason to believe that a sexual assault or other abuse has occurred.

Response: The department disagrees because §56.12 as amended already requires providers to show a good faith effort to comply with all child abuse reporting guidelines and requirements in order to receive appropriated funds. Any activities by providers inconsistent with their obligations under §56.12 are therefore prohibited by law, regulation, or by contract without

specific enumeration. No changes were made as a result of this comment.

Comment: Concerning the chapter as a whole, one commenter suggested that the rules should be amended to require that audits of family planning providers should include review of a representative sample of client files to confirm that the provider is complying with child abuse reporting requirements.

Response: The department currently conducts on-site monitoring of family planning providers to assure they are making a good faith effort to comply with all abuse reporting guidelines and requirements, as required by the providers' contracts with the department. Monitoring procedures include review of a random sample of all client records, as well as a targeted review of the records of all unmarried minors under the age of 14 who are pregnant or who have a confirmed sexually transmitted disease. No changes were made as a result of this comment.

Comment: Concerning §56.1, one commenter suggested that the Family Planning Program Policies Manual and Title V Manual should be identified by date.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §56.4(n), one commenter stated that by-laws for all the department's advisory committees should include clarification of members' responsibilities concerning conflict of interest and acceptance of benefits.

Response: The department agrees, and the addition of §56.4(n)(3) - (6) clarifies these member responsibilities.

Comment: Concerning §56.7, several commenters stated that the rules should be amended to clarify that state funds shall not be used to pay the direct or indirect costs of abortion procedures provided by contractors.

Response: The department agrees and has amended the section with clarifying language concerning the use of state funds for contractors that provide abortion procedures.

Comment: Concerning §56.7, one commenter stated that the department's financial audits of family planning providers should include a determination of whether state funds have been used to pay the direct or indirect costs of abortion procedures provided by department contractors.

Response: Department policy concerning audits of family planning contractors already includes review for compliance with state and federal regulations that prohibit funding of costs related to abortion procedures. No changes were made as a result of this comment.

Comment: Concerning §56.14, several commenters stated that the department should deny compensation for provision of family planning services to minors unless consent has been obtained pursuant to Chapter 32 of the Texas Family Code.

Response: Federal law does not authorize states to require the consent of a parent or another adult for provision of family planning services to minors eligible for Medicaid. Additionally, several federal courts have held that regulations concerning Title X of the Public Health Service Act prohibit state parental consent requirements for family planning services provided to minors. Section 56.14 has been amended to clarify that providers must obtain consent in accord with Chapter 32, Family Code, unless federal law or regulations provide otherwise, before a minor may receive family planning services.

The comments on the proposed rules received by the department during the comment period were submitted by the Office of the Governor of Texas, Representative Charlie Howard, Representative Leo Berman, Representative John Shields, Representative Sid Miller, Representative Arlene Wohlgemuth, Representative Phil King, Representative Joe Nixon, Representative Rick Green, the Texas Alliance for Life, department staff, and individuals. The comments were neither for nor against the rules in their entirety; however, they raised questions, offered comments for clarification purposes, and suggested clarifying language concerning specific provisions in the rules.

## 25 TAC §§56.1 - 56.19

The new sections are adopted under Health and Safety Code, §12.001, that provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

### §56.1. *Applicability of Family Planning Requirements.*

The requirements in each section apply to Titles V, X, XIX (Medicaid), and XX family planning programs unless otherwise specified within the section. Family planning contractors are also required to observe all guidelines and operating procedures outlined in the Family Planning Program Policies Manual, February, 2003, and/or Title V Policies and Procedures Manual, September, 2002, as required by their contracts. In addition to the requirements set out in Chapter 56, Title XIX (Medicaid) providers must comply with the terms and conditions of the Provider Agreement signed by all providers as a condition of participation in the Texas Medical Assistance Program.

### §56.4. *Family Planning Advisory Committee.*

(a) An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Family Planning Advisory Committee.

(2) The committee is established under the Health and Safety Code, §11.016 which allows the board to establish advisory committees.

(3) The committee shall comply with the requirements of 42 United States Code §300a-4, 42 Code of Federal Regulations §59.6, and the Title X Program Guidelines for Project Grants for Family Planning Services by appointment of a subcommittee to review and approve informational and educational materials developed or made available under Title X of the Public Health Service Act.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board and program staff in the area of comprehensive family planning services. The committee process affords the opportunity for participation in the development, implementation, and evaluation of the program by persons broadly representative of all significant elements of the population to be served, and by persons in the community knowledgeable about the needs for family planning services.

(d) Tasks.

(1) The committee shall evaluate, on an ongoing basis, the family planning needs of the state and the family planning program; make recommendations for the program's improvement; and review and make recommendations regarding proposed rules, policy revision and development.

(2) The committee shall advise the board concerning rules relating to the family planning program.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Committee abolished. By January 1, 2007, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 15 members.

(1) The composition of the committee shall include five family planning consumer representatives and ten non-consumer representatives. The composition of the committee shall reflect the diversity of the state's citizens and consumers, with regard to ethnicity, race, age, gender, geographic location, and economic status. Each member shall represent all the citizens of the state in all the committee's deliberations and decisions.

(2) The members of the committee shall be appointed by the board as follows:

(A) five family planning consumers, with at least one male representative; and

(B) ten non-consumer members, including the following:

(i) two primary care physicians currently licensed by the Texas State Board of Medical Examiners and currently involved in the delivery of family planning services. One physician must be certified by the American College of Obstetricians and Gynecologists or its equivalent and one physician must have a practice that includes adolescents;

(ii) one women's health care nurse practitioner with family planning experience, currently licensed by the Board of Nurse Examiners for the State of Texas;

(iii) four family planning provider agency administrators;

(iv) one reproductive health educator;

(v) one presiding officer of the Regional Coordinating Chairpersons' Subcommittee;

(vi) one representative from the DHS Texas Works Program.

(g) Terms of office. The term of office of each member shall be six years, except for the presiding officer of the Regional Coordinating Chairpersons' Subcommittee, who shall be appointed for a two-year term.

(1) Members shall be appointed for staggered terms so that the terms of members shall expire on December 31st of each even-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall select from its members the presiding officer and assistant presiding officer.

(1) Each officer shall serve until December 31st of each even-numbered year. Each officer may holdover until his or her replacement is elected.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. If the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled by vote of the committee.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet at least semiannually to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an opportunity for any person to address the committee on matters relating to committee business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the members are assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(k) Staff. Staff support for the committee and its subcommittees shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once a quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(4) The committee shall have a standing subcommittee to coordinate the activities of family planning providers at a regional level. The Regional Coordinating Chairpersons' Subcommittee (RCCS) shall be comprised of chairpersons of the Regional Coordinating Committees (RCC). The regional committees shall be comprised of representatives from the family planning providers in the region.

(A) The RCCS shall elect a presiding officer (chairperson) and assistant presiding officer from its membership to serve a two-year term to begin serving on January 1 of each odd-numbered year. Each officer shall serve until December 31st of each even-numbered year.

(B) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint workgroups of the committee as necessary, and cause proper reports to be made to the committee.

(C) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. If the office of the presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to

complete the unexpired portion of the term of the office of presiding officer.

(D) A member shall not serve consecutive terms as presiding officer and/or assistant presiding officer.

(E) RCCS members are elected from each of the Regional Coordinating Committees to serve two-year terms to begin serving on January 1 of each even-numbered year. Each member shall serve until December 31st of each even numbered year. A member shall serve no more than two consecutive terms.

(5) The committee shall appoint a standing subcommittee of five to nine members who are broadly representative of the state to review and approve prior to their distribution, as required by federal law, Title X informational and educational material developed or made available under the project. The subcommittee will be known as the Informational and Educational Subcommittee.

(A) The Reproductive Health Educator from the committee shall serve as the presiding officer.

(B) Members will serve two-year terms to begin serving on January 1 of each odd-numbered year. Each member shall serve until December 31st of each even-numbered year.

(C) A member shall serve no more than two consecutive terms. Any vacancies shall be filled by appointment of the committee.

(D) The Informational and Educational Subcommittee may delegate responsibility for the review of the factual, technical, and clinical accuracy to appropriate project staff. However, final approval of the Informational and Educational materials rests with the committee.

(6) The Informational and Educational Subcommittee must:

(A) consider the educational and cultural backgrounds of the individuals to whom the materials are addressed;

(B) consider the standards of the population or community to be served with respect to such materials;

(C) review the content of the material to assure that the information is factually correct;

(D) determine whether the material is suitable for the population or community to which it is to be made available; and

(E) establish a written record of its determinations.

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of or against another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) The report shall cover the meetings and activities in the immediately preceding 12 months and shall be filed with the board by January 31st of each year. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process and following the department requirements.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

#### §56.7. *Abortion Statement.*

Abortion is not considered a method of family planning and no state funds appropriated to the department shall be used to pay the direct or indirect costs (including overhead, rent, phones and utilities) of abortion procedures provided by contractors.

#### §56.9. *Records Retention.*

Providers must maintain for the time period specified by the department all records pertaining to client services, contracts, and payments. Title XIX (Medicaid) record retention requirements are found in 1 Texas Administrative Code §354.1004 (relating to Retention of Records). The

department contractors must follow contract provisions and the department's Retention Schedule for Medical Records. All records relating to services must be accessible for examination at any reasonable time to representatives of the department and as required by law.

*§56.12. Confidentiality.*

The department and providers must ensure the safeguarding of client family planning information. Clients must give written permission prior to the release of any personally identifying information except reports of child abuse required by Chapter 261 of the Texas Family Code, and as required or authorized by other law. The department may distribute appropriated funds only to contractors that show good faith efforts to comply with all child abuse reporting guidelines and requirements.

(1) The provider must ensure client confidentiality and provide safeguards for clients against the invasion of personal privacy.

(2) All personnel (both paid and volunteer) must be informed during orientation of the importance of keeping information about a client confidential.

(3) Clients' records must be monitored to ensure access is limited to appropriate staff and to department staff or their authorized representatives.

(4) The client's preference of methods of follow-up contact must be documented in the client's record.

(5) Each client must receive verbal assurance of confidentiality and an explanation of what confidentiality means.

*§56.14. Consent.*

The department and providers may provide family planning services, including prescription drugs, without the consent of the minor's parent, managing conservator, or guardian only as authorized by Chapter 32 of the Texas Family Code or by federal law or regulations. A provider may not require consent for family planning services from the spouse of a married client.

*§56.16. Civil Rights.*

The department and providers must make family planning and genetic services available without regard to marital status, parenthood, handicap, age, color, religion, sex, ethnicity, or national origin. The provider must comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352); §504 of the Rehabilitation Act of 1973 (Public Law 93-112); The Americans with Disabilities Act of 1990 (Public Law 101-336), including all amendments to each; and all regulations issued pursuant to these Acts.

*§56.17. Contract Requirements for the Title XIX (Medicaid) Family Planning Genetics Program.*

(a) A genetic service agency provider may contract with the department for Title XIX reimbursement for family planning genetic diagnostic and counseling services under the following conditions.

(1) The medical director of the genetic services agency provider is a clinical geneticist (MD or DO). The clinical geneticist must be board eligible or board certified in clinical genetics by the American Board of Medical Geneticists (ABMG).

(2) A team of professionals provides the genetic diagnostic and counseling services. The team must consist of at least a clinical geneticist and at least one of the following: a nurse (RN), a genetic associate (MS), a social worker (MSW), a medical geneticist (PhD), or a genetic counselor (MS). The members of the team must meet the criteria established by ABMG or work under the direct supervision of a clinical geneticist. Administrative and support staff may also be involved.

(3) The agency provider's records must contain multiple indexing for easy retrieval of information (by client name, by client number, and by syndrome, according to the International Classification of Diseases (current edition) with Clinical Modifications), and must comply with the department's records requirements.

(4) The agency provider must arrange for full medical referral services since genetic disorders often encompass several health problems. Independent consultant, laboratory, and radiology services must be billed through the genetic services agency provider under contract with the department.

(5) Genetic counseling must be provided face-to-face by a clinical geneticist or under the direct supervision of a clinical geneticist.

(6) Services provided by a specialized genetics agency provider must be under a written subcontractual agreement with the prime contractor. The department has the right to approve all subcontractual agreements.

(7) Any applicable state licensure or certification requirements must be met.

(b) Clinical laboratories that are part of the genetic services agency provider and external clinical laboratories used by genetic services agency providers must be directed by a clinical laboratory geneticist as defined by the ABMG. In some cases, the department may approve selected laboratory tests to be conducted by regular clinical laboratories if these laboratories demonstrate the ability to perform these tests. All clinical laboratories must be certified by Title XVIII for services provided and further approved for participation in the Title XIX program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

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Susan K. Steeg  
General Counsel  
Texas Department of Health  
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Proposal publication date: August 23, 2002  
For further information, please call: (512) 458-7236

◆ ◆ ◆  
**CHAPTER 56. FAMILY PLANNING**  
**SUBCHAPTER A. PROGRAM INFORMATION**  
**25 TAC §§56.101 - 56.104**

The repeals are adopted under Health and Safety Code, §12.001, that provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. CLIENT RIGHTS AND ELIGIBILITY

### 25 TAC §§56.201 - 56.209

The repeals are adopted under Health and Safety Code, §12.001, that provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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## SUBCHAPTER C. PROVIDER PROGRAM REQUIREMENTS

### 25 TAC §§56.301 - 56.306

The repeals are adopted under Health and Safety Code, §12.001, that provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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## SUBCHAPTER D. PURCHASED SERVICES

### 25 TAC §§56.401 - 56.404

The repeals are adopted under Health and Safety Code, §12.001, that provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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## SUBCHAPTER E. FAMILY PLANNING AGENCY STANDARDS TITLES V, X, XIX, AND XX

### 25 TAC §§56.501 - 56.525

The repeals are adopted under Health and Safety Code, §12.001, that provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. ADMINISTRATIVE REQUIREMENTS FOR AGENCY PROVIDERS

### 25 TAC §§56.601 - 56.607

The repeals are adopted under Health and Safety Code, §12.001, that provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.



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## SUBCHAPTER G. GENETIC SERVICES

### 25 TAC §§56.701 - 56.703

The repeals are adopted under Health and Safety Code, §12.001, that provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. FAMILY PLANNING PROGRAM SERVICES PROVIDED BY TEXAS DEPARTMENT OF HEALTH DIRECT DELIVERY STAFF, FAMILY HEALTH SERVICES NURSES, AND CONTRACTED HEALTH PROVIDERS

### 25 TAC §§56.801, §56.802

The repeals are adopted under Health and Safety Code, §12.001, that provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300649

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: February 13, 2003

Proposal publication date: August 23, 2002

For further information, please call: (512) 458-7236



## SUBCHAPTER I. TEXAS DEPARTMENT OF HEALTH AIDS PREVENTION

### 25 TAC §§56.901 - 56.904

The repeals are adopted under Health and Safety Code, §12.001, that provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg

General Counsel

Texas Department of Health

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For further information, please call: (512) 458-7236



## PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

### CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES

#### SUBCHAPTER B. INTERAGENCY AGREEMENTS

##### 25 TAC §411.56

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §411.56, governing memorandum of understanding (MOU) on coordinated services to children and youths of Chapter 411, Subchapter B, concerning interagency agreements, without changes to the proposal as published in the November 22, 2002, issue of the *Texas Register* (27 TexReg 10890).

Senate Bill 1468 (77th Legislative Session) repealed Family Code, §264.003, which required TDMHMR and seven other health and human services agencies to adopt by rule the Memorandum of Understanding for Coordinated Services to Children and Youths. In §411.56, TDMHMR adopted by reference the rule of the Texas Department of Protective and Regulatory Services (40 TAC §736.701), which included the Memorandum of Understanding for Coordinated Services to Children and Youths as required by the Texas Family Code, §264.003. The

MOU remained in effect until the new MOU required by the Government Code, §531.055, (relating to Memorandum of Understanding on Services for Persons Needing Multiagency Services) was signed by the final party in early March 2002. The new MOU was distributed to interested parties as an attachment to a For Your Information document in September 2002.

Comments from the public were not received.

The repealed section is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and Senate Bill 1468 (77th Legislative Session) that repealed Texas Family Code, §264.003, which required TDMHMR to adopt the MOU by rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300347

Andrew Hardin

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: February 11, 2003

Proposal publication date: November 22, 2002

For further information, please call: (512) 206-4516



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER FF. CREDIT LIFE AND ACCIDENT AND HEALTH INSURANCE DIVISION 11. POLICY AND CLAIMS RESERVES

###### 28 TAC §3.6101

The Commissioner of Insurance adopts an amendment to §3.6101, concerning policy reserves. The amended section is adopted without changes to the proposed text published in the October 18, 2002, issue of the *Texas Register* (27 TexReg 9694) and will not be republished.

The adopted amendment is necessary to implement Texas Insurance Code Article 3.28, §3(h). Subsection (h) was added to Article 3.28, §3 by Acts 20010, 77th Legislature in House Bill (HB) 2159. That subsection addresses minimum reserve requirements applicable to credit life policies and certificates issued under Insurance Code Article 3.53 and provides that reserve requirements for payment of benefits are met if, in aggregate, the reserves are maintained at 100% of the 1980 Commissioner's Standard Ordinary (CSO) Mortality Table, with interest not to exceed 5.5%.

Prior to the enactment of HB 2159, §3.6101 provided minimum reserves applicable to credit life insurance policies and certificates for premium refunds and payment of benefits to be at 130% of the reserves computed on the 1958 CSO Mortality Table with interest not to exceed 5.5%; or at 100% of the reserves computed on the 1941 CSO Mortality Table, with interest not to exceed 5.5%; or at 100% of the reserves computed on the 1958 Commissioner's Extended Term (CET) Mortality Table, with interest not to exceed 5.5%; or at 150% of the reserves computed on the 1980 CSO Mortality Table, with interest not to exceed 5.5%.

The adopted amendment continues to allow the use of any of those minimum credit life reserve levels. However, this amendment also includes the proviso that notwithstanding other law, the minimum reserve requirements applicable to credit life policies and certificates are met if, in aggregate, the reserves are maintained at 100% of the 1980 CSO Mortality Table, with interest not to exceed 5.5%. The amendment makes clear that the policy reserves must not, in aggregate, be less than the premium refund liability, which may include consideration of commission, premium tax and other expenses recoverable.

No comments were received regarding the amendment.

The amendment is adopted under the Insurance Code Article 3.28 and §36.001. Article 3.28(h) provides that, notwithstanding any other law, the minimum reserve requirements for payment of benefits applicable to credit life policies and certificates issued under Article 3.53 are met if, in aggregate, the reserves are maintained at 100% of the 1980 CSO Mortality Table, with interest not to exceed 5.5%. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2003.

TRD-200300665

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: February 16, 2003

Proposal publication date: October 18, 2002

For further information, please call: (512) 463-6327



## CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

### SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

#### DIVISION 6. MANUAL

##### 28 TAC §5.4501

The Commissioner of Insurance adopts amendments to §5.4501, concerning the adoption by reference of the rule manual governing the writing of windstorm and hail insurance coverage by the Texas Windstorm Insurance Association (Association or TWIA). The amendments to §5.4501 are adopted with

changes to the proposed text published in the December 13, 2002, issue of the *Texas Register* (27 TexReg 11717) and with changes to the new table for the one-half percent deductibles that has been adopted by reference in the Manual.

The purpose of the Association is to provide windstorm and hail insurance coverage to coastal residents who are unable to obtain such coverage in the voluntary market. The Manual of the Texas Windstorm Insurance Association (Manual) governs the writing of new policy forms and endorsements by the Association. The amendments to §5.4501 adopt by reference revisions to the Manual that increase the minimum deductible level on commercial policies. On January 22, 2002, the Association petitioned the Department to amend General Rule J.2 (Deductibles for Commercial Risks and Public Buildings) in the Manual which outlines the deductible options and corresponding premium credits that are available for commercial policies (Ref. No. P-0102-2). The Commissioner held a public hearing on the proposed amendments on January 8, 2003, Docket No. 2541. It is the Association's long range plan to increase the minimum deductible level on commercial policies to one percent which is the current minimum deductible level on residential policies. The Association's rationale for increasing the minimum commercial deductible level is to reduce the overall exposure of TWIA by reducing the frequency of small, non-catastrophic claims. The Association plans to make the transition to the one percent deductible level in two or three steps in order to minimize the adverse rate impact on policyholders. The amendments that have been adopted implement the first step of this plan. The first step in the process is to establish a new one-half percent deductible level and raise the minimum deductible from \$250 to \$500.

The adopted amendments delete the flat amount deductible options and replace them with new deductible options that are based on one-half percent of the limit of insurance for the policy written with a schedule of premium credits that correspond to specific ranges based on the insured limit of insurance. The new table for one-half percent deductibles contains seventeen ranges for the amount of insurance of the policy with corresponding credits for each range, beginning with \$0 to \$100,000 with a credit of 6% and ending with \$25,000,001 and over with a credit of 37%. The new table specifies that all one-half percent deductibles are subject to a \$500 minimum.

The key change to the deductible credits is a reduction in the credit for the \$1,000 deductible. As a result of the adoption of these amendments, the credit on amounts of insurance above \$20,000 is 10%. To offset the premium impact of this decrease in the credit, some of the credits in the tables for those deductible options that are higher than \$1,000 were increased. Changes have been made to the rule as proposed. The table for one-half percent deductibles, as proposed, contained sixteen ranges for the amount of insurance of the policy with corresponding credits for each range. However, in response to staff comments a deductible option range of \$0 to \$100,000 with a premium credit of 6% was added to the table, thus, increasing the number of ranges in the table from sixteen to seventeen. In addition, the effective date of the adoption by reference of the Manual has been changed from March 1, 2003 to May 1, 2003. This change was made at the request of TWIA to allow the Association additional time to perform the programming changes and arrange the administrative details that are necessary to make these changes to the Manual.

The purpose of §5.4501 is to adopt by reference the Manual of the Texas Windstorm Insurance Association. The Manual provides policy writing rules, rating rules, and other information that is necessary for the Association to write the different coverages that it offers. The adopted amendments to §5.4501 adopt by reference the updated Manual containing the new deductible options and corresponding premium credits that are available for commercial risks and public buildings. General Rule J.2.a provides a new table for one-half percent deductibles that contains seventeen ranges for the amount of insurance of the policy with corresponding credits for each range. General Rule J.2.b provides nine large deductible options with a corresponding table for each of the deductible options that lists the amount of premium credit based on the amount of insurance purchased by the insured.

No comments were received on the section.

The amendments are adopted pursuant to the Insurance Code Article 21.49 and §36.001. Article 21.49 §8 authorizes the Commissioner of Insurance to approve, modify, or disapprove every manual of classification, rules, rates, rating plans, and every modification of any of the foregoing used by the Association. Article 21.49 §5A authorizes the Commissioner of Insurance to issue after notice and hearing, any orders which are considered necessary to carry out the purposes of Article 21.49 including maximum rates, competitive rates, and policy forms. Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute.

*§5.4501. Rules for the Texas Windstorm Insurance Association.*

The Texas Department of Insurance adopts by reference a rules manual for the Texas Windstorm Insurance Association as amended effective, June 15, 1999. The Texas Department of Insurance adopts by reference amendments effective May 1, 2001, October 15, 2002, and May 1, 2003, to the rules manual. Copies of the rules manual may be obtained by contacting the Automobile and Homeowners Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300626

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: February 13, 2003

Proposal publication date: December 13, 2002

For further information, please call: (512) 463-6327

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**TITLE 30. ENVIRONMENTAL QUALITY**

**PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**CHAPTER 37. FINANCIAL ASSURANCE**

The Texas Commission on Environmental Quality (commission) adopts amendments to §§37.131, 37.141, 37.151, 37.251, 37.261, 37.301, 37.311, 37.321, 37.331, 37.341, 37.351, 37.361, 37.371, 37.381, 37.551, 37.601, 37.611, 37.621, 37.631, 37.641, 37.651, 37.661, 37.671, 37.825, 37.830, 37.835, 37.840, 37.845, 37.855, 37.1001, 37.2001, 37.2003, 37.2011, 37.3001, 37.5011, 37.7021, 37.7041, 37.8061, 37.8071, and 37.9070.

Sections 37.361 and 37.825 are adopted *with changes* to the proposed text as published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9932). Sections 37.131, 37.141, 37.151, 37.251, 37.261, 37.301, 37.311, 37.321, 37.331, 37.341, 37.351, 37.371, 37.381, 37.551, 37.601, 37.611, 37.621, 37.631, 37.641, 37.651, 37.661, 37.671, 37.830, 37.835, 37.840, 37.845, 37.855, 37.1001, 37.2001, 37.2003, 37.2011, 37.3001, 37.5011, 37.7021, 37.7041, 37.8061, 37.8071, and 37.9070 are adopted *without changes* and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted amendments to Chapter 37 are as a result of the quadrennial review of this chapter (Rule Log Number 2002-016-037-AD), which was adopted by the commission on October 10, 2002, and published in the October 25, 2002 issue of the *Texas Register* (27 TexReg 10056). The revisions correct typographical errors, clarify current requirements, change the commission's name, and incorporate exemptions for Class A or B petroleum-substance contaminated soil storage, treatment, and reuse facilities, scrap tire sites, and used oil recycling facilities.

Amendments to sections relating to inflation and changes in cost estimates are necessary to clarify long-standing, common sense financial practices, and allow the commission to fulfill its mission of requiring financial assurance, which is to require a permittee to pay for the closure and clean-up of its own facility and not burden the taxpayer, other generators, and industry with the cost. These amendments accomplish this mission by requiring that decreases to cost estimates or recalculation of cost estimates by a permittee must be approved by the executive director. Annual inflation adjustments must be made using an annual inflation factor. State and federal financial assurance regulations have conservative safeguards built in so that they are conservative by nature. Examples of these safeguards include requiring the cost estimate to be based on closure by an unrelated third-party, and clauses in financial assurance mechanisms which do not allow cancellation without the executive director's consent and/or the option to call on the mechanism and convert it to cash assets. Therefore, conservatism and common sense have dictated commission policy, which requires that after the executive director approves a cost estimate, his approval is also required to decrease the cost estimate or to recalculate costs in lieu of using an annual inflation factor. Additionally, amendments to these sections are justified and needed to clearly identify the relationship between cost estimates and financial assurance. The amendments require that an increase to cost estimates must result in an increase in financial assurance, and if a decrease in cost estimates is approved by the executive director, financial assurance may be decreased.

The rulemaking amends the applicability sections for Class A or B petroleum-substance contaminated soil storage, treatment, and reuse facilities; used oil recycling facilities; and scrap tire facilities. The amendments exempt state and federal facilities conducting these activities in the same manner the state and federal

facilities are exempted from financial assurance requirements for underground storage tanks (USTs), hazardous waste, and municipal solid waste. The primary reason for this amendment is that the required financial assurance mechanisms were not created with state and federal facilities in mind and these facilities cannot obtain financial assurance as required under this chapter. Therefore, the amendments provide for consistency among all program areas by exempting state and federal facilities from all financial assurance requirements in this chapter.

#### SECTION BY SECTION DISCUSSION

During the 77th Legislature, 2001, the agency underwent the sunset review process, culminating in the enactment of House Bill (HB) 2912, which among other things, extended the term of the agency to September 1, 2013, and changed its name to the Texas Commission on Environmental Quality. HB 2912, §18.01(a), states that: "Effective January 1, 2004: 1) the name of the Texas Natural Resource Conservation Commission is changed to the Texas Commission on Environmental Quality, and all the powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission are the powers, duties, rights and obligations of the Texas Commission on Environmental Quality;...." Throughout the chapter, "TNRCC," "TNRCC's," or the "Texas Natural Resource Conservation Commission" is changed to either "TCEQ," "TCEQ's," or the "Texas Commission on Environmental Quality," as appropriate, to conform with the requirements of HB 2912.

Other administrative changes are adopted throughout the sections for consistency with other commission rules.

##### *Subchapter B - Financial Assurance Requirements for Closure*

Due to an administrative oversight, the title to Subchapter B, as it exists in current rule, is changed from "Financial Assurance Requirements for Closure" to "Financial Assurance Requirements for Closure, Post Closure, and Corrective Action."

Adopted §37.131, Annual Inflation Adjustments to Closure Cost Estimates, corresponds with existing language in the section and addresses a common question of the regulated community regarding whether a factor other than an annual factor can be used. The word "annual" is added to describe the federal data from which the annual inflation factor is derived in §37.131. The adopted language reads as follows: "...an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product...." Additionally, language that states the adjustment may be made by recalculating the maximum costs of closure, post closure, or corrective action, in current dollars, is deleted within the section to reflect the commission's interpretation and long-held practice of requiring annual inflation adjustments using an inflation factor, unless recalculated cost estimates in current dollars are approved by the executive director. The adopted text reads, "The adjustment must be made using an inflation factor...." A new paragraph is added at the end of the section to further clarify the requirements of the inflation adjustment.

Adopted §37.141, Increase in Current Cost Estimate, deletes the phrase "as a result of changes in the closure, post closure, or corrective action, plan or activities," to clarify that annual inflation adjustments to cost estimates addressed in §37.131 must result in an increase in the financial assurance mechanism. With the phrase deleted, any time the current cost estimate increases, the financial assurance mechanism must increase to equal the current cost estimate within 60 days. The adopted language reads as follows: "Whenever the current cost estimate increases

to an amount greater than the amount being provided in the financial assurance mechanism(s), the owner or operator must...." The last sentence of the section is deleted because the adopted amendments to §37.131 make this sentence redundant and unnecessary.

Adopted §37.151, Decrease in Current Cost Estimate, adds language to clarify the linkage between adjustments to cost estimates and adjustments to financial assurance. The current rule discusses obtaining the executive director's approval for a decrease in financial assurance, but a decrease in the current cost estimate must precede this request. Therefore, the adopted additional language states that a written request to decrease the current cost estimate may be submitted to the executive director for approval, and only upon approval is it considered to be a revised current cost estimate. Consequently, it is the revised current cost estimate that may result in a written request to the executive director for approval of a reduction in financial assurance. The rulemaking adds new language to the end of the section to allow the owner or operator to simultaneously request approval of both a revised current cost estimate and a reduction in financial assurance. In order for §37.151 to be consistent with the adopted change to §37.141, the phrase "as a result of changes in the closure, post closure, or corrective action, plan or activities" is deleted. The adopted language reads as follows: "Whenever the revised current cost estimate decreases to an amount less than the amount being provided in the financial assurance mechanism(s), the owner or operator may...." In addition, the last sentence of the section is deleted because the adopted amendments to §37.131 make this sentence redundant and unnecessary.

#### *Subchapter C - Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action*

Adopted §37.261, Corporate Guarantee, adds the following language to the end of subsection (d) to decrease the annual filing burden on guarantors with a substantial business relationship if they can certify that there has been no change in their substantial business relationship with the business organization they are guaranteeing: "After the initial submission of these items to demonstrate a substantial business relationship, if there has been no change in the substantial business relationship, the chief financial officer may submit a letter attesting that there has been no change." This adopted amendment will also reduce the review time expended by staff by reducing the number of documents to review.

#### *Subchapter D - Wording of the Mechanisms for Closure, Post Closure, and Corrective Action*

Adopted §37.361, Corporate Guarantee, is adopted *with change* to delete redundant language in the figure for the corporate guarantee financial assurance mechanism because this language was incorrectly repeated in the originally adopted rule and inadvertently left in the proposal. The adopted language in the figure will read as follows: "Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the State of (insert name of State), herein referred to as guarantor."

#### *Subchapter F - Financial Assurance Mechanisms for Liability*

Adopted §37.551, Corporate Guarantee for Liability, adds a new subsection (e) to decrease the annual filing burden on guarantors with a substantial business relationship if they can certify that there has been no change in their substantial business relationship with the business organization they are guaranteeing.

As a result of adding the new subsection, subsequent subsections are relettered and a rule citation is corrected to accurately reflect the relettering.

#### *Subchapter G - Wording of the Mechanisms for Liability*

Adopted §37.651, Financial Test for Liability, deletes an asterisk within the figure for the financial test for liability coverage that was inadvertently placed in the originally adopted rule.

#### *Subchapter I - Financial Assurance for Petroleum Underground Storage Tank Systems*

Adopted §37.825, Financial Test of Self-Insurance, adds language to the figure for USTs that was inadvertently left out of the originally adopted rule. The adopted language is necessary to clarify whether a dollar amount must be inserted in the form or whether a question must be answered "yes" or "no." The figure contained in 37.825(d) is adopted *with change* to correct formatting errors and remove underlines that were inadvertently included during this proposal. Grammatical corrections were also made in §37.825(b)(1) - (5).

Adopted §37.855, Standby Trust Fund, adds language to the figure contained in subsection (b) under Section 13 for USTs that was inadvertently left out of the originally adopted rule. The adopted language is necessary to identify for the trustee, who may provide written instructions to the trustee on behalf of the commission.

For Subchapters K, L, and M, federal and state regulations currently provide for exemptions to state and federal entities from financial assurance for USTs, hazardous waste, and municipal solid waste. Chapter 37 identifies these exemptions in the applicability section of the applicable subchapters related to these programs. Language is added in §§37.1001, 37.2001, and 37.3001 to incorporate these exemptions.

#### *Subchapter K - Financial Assurance Requirements for Class A or B Petroleum-Substance Contaminated Soil Storage, Treatment, and Reuse Facilities*

Adopted §37.1001, Applicability, adds language to incorporate exemptions for Class A or B petroleum-substance contaminated soil storage, treatment, and reuse facilities in order to demonstrate consistency with other subchapters of this chapter.

#### *Subchapter L - Financial Assurance for Used Oil Recycling*

Adopted §37.2001, Applicability, adds language to incorporate exemptions for used oil recycling facilities in order to demonstrate consistency with other subchapters of this chapter.

General financial assurance requirements and mechanisms throughout Chapter 37 refer to "closure" while 30 TAC Chapter 324 (which is referenced within §37.2003, Definitions) refers to requiring financial assurance for "soil remediation." In order to clarify that "soil remediation" as used in Chapter 324 has the same meaning as "closure" as used in §37.2003, the amendment adds the following language, "except the term 'closure' for purposes of this subchapter includes the term 'soil remediation' as used in Chapter 324 of this title." This will simplify paperwork for the oil recycling industry since it will be able to use the standard mechanism without change to reflect industry-specific terminology.

Adopted §37.2011, Financial Assurance Requirements for Used Oil Handlers, deletes language which requires the oil recycling industry to modify the standard mechanism language; therefore,

simplifying paperwork for the oil recycling industry since the affected industry will be able to use the standard mechanism without having to change it to reflect industry-specific terminology. The amendment mirrors the amendment in §37.2003.

#### *Subchapter M - Financial Assurance Requirements for Scrap Tire Sites*

Adopted §37.3001, Applicability, adds language to incorporate exemptions for scrap tire storage sites in order to demonstrate consistency with other subchapters of this chapter.

#### *Subchapter O - Financial Assurance for Public Drinking Water Systems and Utilities*

Adopted §37.5011, Financial Assurance for a Public Water System or Retail Public Utility, deletes language in subsection (a) that requires a reference in a financial assurance mechanism to the appropriate statutory reference to public drinking water or utility regulation because this language is unnecessary and causes confusion.

#### *Subchapter Q - Financial Assurance for Underground Injection Control Wells*

Adopted §37.7021, Financial Assurance Requirements for Plugging and Abandonment, deletes subsection (d) because this language is no longer applicable, as a result of the adopted amendments to §37.131. Due to the deletion of subsection (d), the subsequent subsection is relettered.

Adopted §37.7041, Financial Assurance Requirements for Liability, replaces the word "may" with "shall" in subsection (a) for clarification and consistency with program rules for underground injection control. This modification is consistent with technical requirements in accordance with §331.142(b), which require liability coverage. The permissive language used in the originally adopted rule was inadvertent and not intended to be at odds with the technical standards for hazardous waste injection wells.

#### *Subchapter U - Financial Assurance for Medical Waste Transporters*

Adopted §37.9070, Financial Assurance Requirements, changes the written cancellation notice requirement in subsection (d)(2) from 60 days to 30 days, to be equivalent with the Department of Transportation's (DOT's) requirements on Form E. The rulemaking includes an amendment to the insurance demonstration for medical waste transporters to reflect standard insurance practices, and to reduce staff time spent reviewing and seeking corrections on insurance certificates. In changing the cancellation notice requirement from 60 days to 30 days, the commission can require a form similar to the DOT's Form E, which is a standard familiar to the insurance industry.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the statutory requirements for a "major environmental rule." 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 principal intent of this rulemaking is to amend Chapter 37 due to the name change of the agency from the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality and to revise and clarify sections relating to financial assurance that owners and operators must provide for certain facilities. The adopted amendments will only conform the rules to agency policy. Therefore, this rulemaking does not 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 commission concludes that this rulemaking does not meet the definition of a major environmental rule.

Furthermore, even if the amendments did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because the adopted rules do not meet any of these four applicability requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, 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.

In this case, the adopted amendments to Chapter 37 do not meet any of these results. For all federally-authorized programs regulated by this chapter, federal authority on the issue of financial assurance has been delegated to the state, and the state legislature has enacted statutes that are consistent with the federal requirements. The state statutes require financial assurance for hazardous and municipal solid waste (Texas Health and Safety Code (THSC), §361.085), radioactive substances (THSC, §401.108), USTs (Texas Water Code (TWC), §26.352), and underground injection control (TWC, §27.073). The financial assurance in these delegated programs relate to radioactive substances (10 Code of Federal Regulations (CFR) Part 10, Appendix A, Criteria 9 and 10), underground injection control (40 CFR 144, Subpart F), municipal solid waste (40 CFR 258, Subpart G), hazardous waste (40 CFR 264, Subpart H; 40 CFR 265, Subpart H), and USTs (40 CFR Part 280, Subpart H). Therefore, the adopted rules do not exceed a standard set by federal regulations because the rules implement state statutes that are analogous to the federal regulations. Second, the adopted rules carry out the general state statutes that require financial assurance, and do not exceed an express requirement of state law. Third, the adopted rules clarify federal rules regarding financial assurance, and do not provide for additional substantive requirements. Therefore, no specific delegation agreement requirements would be exceeded by these adopted rules. Fourth, the commission adopts these rules in accordance with its requirements under specific state law, including TWC, §26.352 and §27.073 and THSC, §§341.035, 341.0355, 361.085 and 371.026. Therefore, the commission does not adopt the rules solely under the commission's general powers.

#### TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for this rulemaking in accordance with Texas Government Code, Chapter 2007. The principal intent of this rulemaking is to amend Chapter 37 due to the name change of the agency from the Texas

Natural Resource Conservation Commission to the Texas Commission on Environmental Quality and to revise and clarify sections relating to financial assurance requirements that owners and operators must provide for certain facilities. This rulemaking implements the requirements of TWC, §26.352 and §27.073 and THSC, §§341.035, 341.0355, 361.085, and 371.026. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). Chapter 37 implements the federal requirements found in 10 CFR Part 10, Appendix A, Criteria 9 and 10; 40 CFR 144, Subpart F; 40 CFR 258, Subpart G; 40 CFR 264, Subpart H; 40 CFR 265, Subpart H; and 40 CFR Part 280, Subpart H.

Nevertheless, the commission further evaluated this rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the adopted amendments only revise and clarify financial assurance requirements, and do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the adopted amendments. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC 505.11. Therefore, the adopted rules are not subject to the CMP.

#### PUBLIC COMMENT

The proposal was published in the October 25, 2002 issue of the *Texas Register* (27 TexReg 9932). The comment period closed on November 25, 2002, and the commission received no comments.

### SUBCHAPTER B. FINANCIAL ASSURANCE REQUIREMENTS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

#### 30 TAC §§37.131, 37.141, 37.151

##### STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendments are also adopted under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for USTs; TWC, §27.019, which provides the commission with the authority to

adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection well facilities; THSC, §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; THSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; THSC, §361.011, which provides the commission with the authority to manage municipal solid waste; THSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; THSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; THSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; THSC, §361.112, which provides the commission with the authority to regulate scrap tire facilities; THSC, §361.428, which provides the commission with the authority to regulate compost facilities; THSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; THSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and THSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

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### SUBCHAPTER C. FINANCIAL ASSURANCE MECHANISMS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

#### 30 TAC §37.251, §37.261

##### STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendments are also adopted under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for USTs; TWC,

§27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection well facilities; THSC, §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; THSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; THSC, §361.011, which provides the commission with the authority to manage municipal solid waste; THSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; THSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; THSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; THSC, §361.112, which provides the commission with the authority to regulate scrap tire facilities; THSC, §361.428, which provides the commission with the authority to regulate compost facilities; THSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; THSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and THSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### SUBCHAPTER D. WORDING OF THE MECHANISMS FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION

**30 TAC §§37.301, 37.311, 37.321, 37.331, 37.341, 37.351, 37.361, 37.371, 37.381**

##### STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendments are also adopted under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks;

TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for USTs; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection well facilities; THSC, §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; THSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; THSC, §361.011, which provides the commission with the authority to manage municipal solid waste; THSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; THSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; THSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; THSC, §361.112, which provides the commission with the authority to regulate scrap tire facilities; THSC, §361.428, which provides the commission with the authority to regulate compost facilities; THSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; THSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and THSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

##### §37.361. *Corporate Guarantee.*

A corporate guarantee for closure, post closure, or corrective action, as specified in §37.261 of this title (relating to Corporate Guarantee), must be worded as specified in the Corporate Guarantee in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

Figure: 30 TAC §37.361

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### SUBCHAPTER F. FINANCIAL ASSURANCE MECHANISMS FOR LIABILITY

**30 TAC §37.551**

##### STATUTORY AUTHORITY



The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendment is also adopted under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for USTs; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection well facilities; THSC, §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; THSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; THSC, §361.011, which provides the commission with the authority to manage municipal solid waste; THSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; THSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; THSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; THSC, §361.112, which provides the commission with the authority to regulate scrap tire facilities; THSC, §361.428, which provides the commission with the authority to regulate compost facilities; THSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; THSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and THSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER G. WORDING OF THE MECHANISMS FOR LIABILITY

**30 TAC §§37.601, 37.611, 37.621, 37.631, 37.641, 37.651, 37.661, 37.671**

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendments are also adopted under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for USTs; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection well facilities; THSC, §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; THSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; THSC, §361.011, which provides the commission with the authority to manage municipal solid waste; THSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; THSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; THSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities; THSC, §361.112, which provides the commission with the authority to regulate scrap tire facilities; THSC, §361.428, which provides the commission with the authority to regulate compost facilities; THSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; THSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; and THSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron  
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## SUBCHAPTER I. FINANCIAL ASSURANCE FOR PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS

**30 TAC §§37.825, 37.830, 37.835, 37.840, 37.845, 37.855**

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendments are also adopted under TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; and TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for USTs.

§37.825. *Financial Test of Self-Insurance.*

(a) An owner, operator, and/or guarantor, may satisfy the requirements of §37.815 of this title (relating to Amount and Scope of Required Financial Assurance) by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner, operator, and/or guarantor must meet the criteria of subsections (b) or (c) of this section based on year-end financial statements for the latest completed fiscal year.

(b) The owner, operator, and/or guarantor must meet the requirements of this subsection referred to as Alternative 1. The owner, operator, and/or guarantor must:

(1) have a tangible net worth of at least ten times:

(A) the total of the applicable aggregate amount required by §37.815 of this title based on the number of underground storage tanks for which a financial test is used to demonstrate financial assurance to the agency under this section;

(B) the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial assurance to the agency under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), 40 Code of Federal Regulations (CFR) Parts 264, 265, or state equivalent;

(C) the sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial assurance to the agency under Chapter 331 of this title (relating to Underground Injection Control), 40 CFR Part 144 or state equivalent;

(D) the sum of municipal solid waste cost estimates for which a financial test is used to demonstrate financial assurance to the agency under Chapter 330 (relating to Municipal Solid Waste), 40 CFR Part 258 or state equivalent;

(E) the sum of current polychlorinated biphenyl (PCB) cost estimates for which a financial test is used to demonstrate financial assurance to the EPA under 40 CFR Part 761; and

(F) the sum of additional financial assurance obligations not identified in subparagraphs (A) - (E) of this paragraph and for which a financial test or other form of self-insurance is used to meet financial assurance obligations under the commission or other federal or state environmental regulations;

(2) have a tangible net worth of at least \$10 million;

(3) have a letter signed by the chief financial officer as specified in subsection (d) of this section;

(4) either:

(A) file financial statements annually with the United States Securities and Exchange Commission (SEC), the Energy Information Administration, or the Rural Electrification Administration; or

(B) report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A;

(5) the firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c) The owner, operator, and/or guarantor must meet the requirements of this subsection referred to as Alternative 2.

(1) The owner, operator, and/or guarantor must meet the financial test requirements of §37.541(a) and (b) of this title (relating to Financial Test for Liability), substituting the appropriate amounts specified in §37.815(b)(1) and (2) of this title for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(A) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(B) The owner, operator, and/or guarantor, must have a letter signed by the chief financial officer as specified in subsection (d) of this section.

(3) If the financial statements of the owner, operator, and/or guarantor, are not submitted annually to the SEC, the Energy Information Administration or the Rural Electrification Administration, the owner, operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(A) the accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) in connection with that procedure:

(i) such amounts were found to be in agreement; or

(ii) no matters came to the attention of the independent certified public accountant which indicated that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under subsection (b) or (c) of this section, the chief financial officer of the owner, operator, and/or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in parentheses are to be replaced by the relevant information and the parentheses deleted.

Figure: 30 TAC §37.825(d)

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(f) The agency may require reports of financial condition at any time from the owner, operator, and/or guarantor. If the agency finds, on the basis of these reports or other information, that the owner, operator, and/or guarantor, no longer meets the financial test requirements of subsections (b) or (c) and (d) of this section, the owner or operator must obtain alternative coverage within 30 days after notification of this finding.

(g) If the owner or operator fails to obtain alternate financial assurance within 150 days of finding that he or she no longer meets

the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the executive director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the executive director of this failure within ten days.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron

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## SUBCHAPTER K. FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS A OR B PETROLEUM-SUBSTANCE CONTAMINATED SOIL STORAGE, TREATMENT, AND REUSE FACILITIES

### 30 TAC §37.1001

#### STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendment is also adopted under THSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; and THSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron

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## SUBCHAPTER L. FINANCIAL ASSURANCE FOR USED OIL RECYCLING

### 30 TAC §§37.2001, 37.2003, 37.2011

## STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendments are also adopted under THSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; and THSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER M. FINANCIAL ASSURANCE REQUIREMENTS FOR SCRAP TIRE SITES

### 30 TAC §37.3001

#### STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendment is also adopted under THSC, §361.112, which provides the commission with the authority to regulate scrap tire facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

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## SUBCHAPTER O. FINANCIAL ASSURANCE FOR PUBLIC DRINKING WATER SYSTEMS AND UTILITIES

### 30 TAC §37.5011

## STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendment is also adopted under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; THSC, §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; and THSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER Q. FINANCIAL ASSURANCE FOR UNDERGROUND INJECTION CONTROL WELLS

### 30 TAC §37.7021, §37.7041

#### STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendments are also adopted under TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; and TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection well facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER R. FINANCIAL ASSURANCE FOR MUNICIPAL SOLID WASTE FACILITIES

### 30 TAC §37.8061, §37.8071

#### STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendments are also adopted under THSC, §361.011, which provides the commission with the authority to manage municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and THSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER U. FINANCIAL ASSURANCE FOR MEDICAL WASTE TRANSPORTERS

### 30 TAC §37.9070

#### STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendment is also adopted under THSC, §361.011, which provides the commission with the authority to manage municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and THSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for permitted facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 230. GROUNDWATER AVAILABILITY CERTIFICATION FOR PLATTING

### 30 TAC §§230.1 - 230.4, 230.11

The Texas Commission on Environmental Quality (commission) adopts amendments to §§230.1 - 230.4 and 230.11. Sections 230.1 - 230.4 and 230.11 are adopted *without changes* to the proposed text as published in the November 8, 2002 issue of the *Texas Register* (27 TexReg 10568) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted amendments is to implement Senate Bill (SB) 405, 77th Texas Legislature, 2001, by adding a geoscientist licensed to practice in this state to the list of professionals allowed to certify that adequate groundwater is available for a subdivision under Texas Local Government Code, §212.0101 and §232.0031. Under those sections, a municipal authority responsible for approving plats by ordinance or the commissioners court of a county by order (respectively) may require a person who submits a plat application for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land to have attached to it a statement that: 1) is prepared by an engineer licensed to practice in this state or a geoscientist licensed to practice in this state; and 2) certifies that adequate groundwater is available for the subdivision. Sections 221.0101(b) and 232.0031(b) both require the commission, by rule, to establish the appropriate form and content of a certification to be attached to a plat application. SB 405 became effective on September 1, 2001.

#### SECTION BY SECTION DISCUSSION

For clarity, the references to Local Government Code are changed to Texas Local Government Code in these amendments.

Adopted amendments to §230.1, Applicability, add "Texas licensed professional geoscientist" to the list of individuals that must use Chapter 230 and the attached form to certify that adequate groundwater is available under the land of the subdivision subject to platting under Texas Local Government Code, §212.004 and §232.001.

Adopted amendments to §230.2, Definitions, add the definition "Licensed professional geoscientist" as new paragraph (8). A licensed professional geoscientist is defined as a geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice. Existing paragraph (8) has been renumbered as paragraph (9).

Adopted amendments to §230.3, Certification of Groundwater Availability for Platting, add licensed professional geoscientist to subsection (a) and to subsection (c) in the Certification of Groundwater Availability for Platting Form.

Adopted amendments to §230.4, Administrative Information, add the name, address, phone number, facsimile number, and registration number of the licensed professional geoscientist preparing the certification to the list of general administrative information to be provided for a proposed subdivision under paragraph (5).

Adopted amendments to §230.11, Groundwater Availability and Usability Statements and Certification, add a licensed professional geoscientist to the list of who can certify by signature, seal, and date that adequate groundwater is available from the underlying aquifer(s) to supply the estimated demand of the proposed subdivision, based upon best professional judgement, current groundwater conditions, and the information developed and presented in the form specified by §230.3(c). In addition, formatting revisions are adopted to conform with *Texas Register* and agency current style practices.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the statutory requirements for a "major environmental rule." 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 principal intent of this rulemaking is to amend Chapter 230 to allow a geoscientist licensed to practice in this state to prepare, as part of the plat application for the subdivision of land, a certification that adequate groundwater is available for the subdivision for which the source of the water supply intended for the subdivision is groundwater under that land. This certification may be required by either a municipal authority responsible for approving plats that has adopted this requirement by ordinance or a county commissioners court that has adopted this requirement by order. The adopted amendments implement SB 405, §2, passed during the 77th Texas Legislature, 2001. The adopted amendments do not impose any additional requirements on the preparation of these types of plats. Therefore, this rulemaking does not 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 commission concludes that this rulemaking does not meet the definition of "major environmental rule."

Furthermore, even if the adopted amendments did meet the definition of a "major environmental rule," the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, 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.

In this case, the adopted amendments to Chapter 230 do not meet any of these criteria. First, there are no applicable federal standards that are exceeded by the adopted amendments. Second, the adopted amendments carry out the requirements of state statutes relating to who can prepare a plat certification that adequate groundwater is available for a subdivision. Third, there are no applicable delegation agreements that apply to this situation. Therefore, no specific delegation agreement requirements will be exceeded by these adopted amendments. Fourth, the commission adopts these amendments in accordance with its requirements under specific state law, Texas Local Government Code, §212.0101 and §232.0031. Therefore, the commission does not adopt the rulemaking solely under the commission's general powers.

#### TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for these adopted amendments in accordance with Texas Government Code, Chapter 2007. The principal intent of this rulemaking is to amend Chapter 230 to allow a geoscientist licensed to practice in this state to prepare a certification that adequate groundwater is available for a subdivision as part of a plat application to either a municipal authority responsible for approving plats or the commissioners court of a county for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land. This platting requirement may be adopted by a municipal authority by ordinance or the commissioners court of a county by order. The adopted amendments implement SB 405, §2, passed during the 77th Texas Legislature, 2001. The commission's assessment indicates the adopted amendments do not constitute a takings under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted amendments will be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the adopted amendments do not add any additional requirements to the preparation of subdivision plats and do not affect a landowner's rights in private real property by burdening private real property, restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which will otherwise exist in the absence of the adopted amendments. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rulemaking is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action/authorization identified in §505.11(a)(6). Therefore, the adopted amendments are not subject to the Texas Coastal Management Program.

#### PUBLIC COMMENT

A public hearing was not held on this rulemaking, and public comments were not received during the comment period which closed December 9, 2002.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under

this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Local Government Code, §212.0101 and §232.0031, which requires the commission, by rule, establish the appropriate form and content of a certification to be attached to a plat application when required by the municipal authority responsible for approving plats or the commissioners court of a county to require an engineer or geoscientist licensed to practice in Texas to certify that adequate groundwater is available as part of a plat application for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300520  
Stephanie Bergeron  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
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Proposal publication date: November 8, 2002  
For further information, please call: (512) 239-0348

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 354. MEMORANDA OF UNDERSTANDING

The Texas Water Development Board (board) adopts the repeal of existing §354.4 and new §354.4 concerning a memorandum of understanding between the board and the Office of Rural Community Affairs. Section 354.4 is adopted with changes to correct typographical errors to the proposed text as published in the November 29, 2002 issue of the *Texas Register* (27 TexReg 11054).

New §354.4 is adopted to replace existing §354.4 of this title (relating to Memorandum of Understanding between Texas Water Development Board and the Texas Department of Housing and Community Affairs) which is being repealed in order to adopt this memorandum of understanding as part of Chapter 354. New §354.4 establishes a memorandum of understanding between the board and the Office of Rural Community Affairs (ORCA) and details the responsibility of each agency regarding the coordination of funds out of the Economically Distressed Areas Program, administered by the board, and the Colonia Fund, administered by the ORCA, in order to maximize delivery of the funds and minimize administrative delay in the expenditure of these funds. New §354.4 differs from the old version in that the responsibility of the administration of the Colonia Fund has been shifted from the Texas Department of Housing and Community Affairs to the ORCA and therefore the coordination of that fund with the Economically Distressed Areas Program can only be accomplished

with ORCA. It has been updated to delete the requirements of agencies to develop and provide information to the Senate Border Affairs Committee regarding the relative costs of providing water and wastewater services and the costs of relocating the residents of the area proposed to be served by the board financial assistance. The requirement to develop this information was removed because the legislature is no longer requesting the information. It has also removed the requirement of developing a joint report to the Legislative Budget Board because it has already been submitted.

There were no comments received on the proposed repeal and new section.

### 31 TAC §354.4

The repeal is adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and §6.104 which authorizes the board to enter into memorandum of understanding with other state agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300455

Suzanne Schwartz

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7981



### 31 TAC §354.4

The new section is adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and §6.104 which authorizes the board to enter into memorandum of understanding with other state agencies.

§354.4. *Memorandum of Understanding Between Texas Water Development Board and The Office of Rural Community Affairs.*

#### (a) Recitals.

(1) Pursuant to the 1995 Appropriations Act of the Texas Legislature, and continued in the 1997 and 1999 Appropriations Act of the Texas Legislature, the Texas Water Development Board (TWDB) and the Texas Department of Housing and Community Affairs (TDHCA) were required to develop a Memorandum of Understanding (Memorandum) to detail the responsibility of each agency regarding the coordination of funds of the Economically Distressed Areas Program (EDAP), administered by the TWDB, and the Colonia Fund of the Community Development Block Grant Program, administered by the TDHCA, so as to maximize delivery of the funds and minimize administrative delay in their expenditure. The TWDB and the TDHCA executed a Memorandum and performed pursuant to the terms of that Memorandum.

(2) Pursuant to the 2001 General Appropriations Act of the 77th Texas Legislature, the TWDB is required to continue the coordination with the TDHCA that commenced under the Memorandum with TDHCA. Pursuant to House Bill 7 (H.B. 7) of the 77th Texas Legislature, the Office of Rural Community Affairs (ORCA) was created and the functions and obligations of TDHCA related to the Colonia Fund were transferred to ORCA including the requirement to execute a Memorandum of Understanding to detail the responsibility of each agency regarding the coordination of funds out of the EDAP, administered by the TWDB, and the Colonia Fund of the Community Development Block Grant Program, now administered by ORCA.

(b) Parties. This Memorandum is made and entered into between the ORCA, an agency of the State of Texas, and the TWDB, an agency of the State of Texas.

(c) Purpose. The purpose of this Memorandum is to assure that none of the funds appropriated under the Colonia Fund are expended in a manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of the EDAP operated by the TWDB, so as to maximize delivery of the funds and minimize administrative delay in their expenditure.

(d) Period of performance. This Memorandum shall begin on December 1, 2002, and shall terminate on August 31, 2003. This Memorandum may be extended for additional period of time to ensure compliance with TDHCA Rider No. 4, the responsibility for which was assigned to ORCA by H.B. 7, and TWDB Rider No. 7 to the General Appropriations Act, 77th Legislature for the 2002-2003 Biennium.

(e) Performance. Each party to this Memorandum shall coordinate with the other in delivering water and sewer service lines, hook-ups, and plumbing improvements to residents of selected colonias in order to connect those residents' housing units to EDAP-funded water and sewer systems.

(1) ORCA responsibilities. The ORCA shall be responsible for the following functions:

(A) develop an application process for projects submitted by eligible units of local government;

(B) assist units of general local government in preparing an application to the Colonia Fund;

(C) determine whether projects meet federal requirements;

(D) select projects to receive funding in conjunction with the TWDB;

(E) make Colonia Fund grant awards for selected projects on an as-needed basis;

(F) prepare and execute contracts with units of general local government (Contractor localities);

(G) provide oversight and guidance to Contractor localities regarding applicable federal and state laws and program regulations (environmental, labor, acquisition of real property, relocation, procurement, financial management, fair housing, equal employment opportunity, etc.);

(H) provide on-site technical assistance if necessary to ensure that funds are efficiently and effectively used to accomplish the activities for which they were intended;

(I) review, approve, process, and honor valid reimbursement requests from Contractor localities;

(J) monitor each project prior to contract completion to ensure compliance with applicable federal and state laws and program regulations;

(K) consult with the TWDB regarding specific projects on an as-needed basis; and

(L) notify communities on list provided by the TWDB of the availability of funds.

(2) TWDB responsibilities. The TWDB shall be responsible for the following functions:

(A) provide the ORCA with descriptions of and schedules for EDAP-funded projects that need Colonia Fund assistance to provide connections and plumbing improvements at least six (6) weeks before such assistance would be required;

(B) assist eligible units of general local government in preparing an application for assistance through the ORCA's Colonia Fund;

(C) select projects to receive funding in conjunction with the ORCA; and

(D) provide assistance with technical project-related concerns brought forward by Contractor localities or the ORCA during the course of the project.

(f) Limitations. Eligible applicants shall be those counties eligible under both ORCA's Colonia Fund and TWDB's EDAP. Non-entitlement cities located within eligible counties are also eligible applicants. Eligible projects shall be located in unincorporated colonias identified by the TWDB and in eligible cities that annexed the colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. Eligibility shall be denied to any project in a county that has not adopted or is not enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code.

(g) Reporting requirements. Each party to this Memorandum shall submit, on or before the fifteenth day of the month following the end of the calendar quarter, to the other party a report of its activities and expenditures during the previous calendar quarter. The first such report shall be due January 15, 2003.

(h) Termination. This Memorandum shall terminate upon ten (10) days written notice by either party to the other party in this contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2003.

TRD-200300456

Suzanne Schwartz

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7981



## PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

### CHAPTER 517. FINANCIAL ASSISTANCE SUBCHAPTER B. COST-SHARE ASSISTANCE FOR BRUSH CONTROL

The Texas State Soil and Water Conservation Board (TSSWCB) adopts the repeal of 31 TAC §§517.22-517.30 and simultaneously adopts new 31 TAC §§517.22-517.37 concerning cost-share assistance for brush control. The existing rules are being repealed and new rules adopted due to the magnitude of rule changes resulting from Internal Audit Recommendations and comments received regarding proposed text published in the July 5, 2002 issue of the *Texas Register* (27 TexReg 5943). These changes are needed to achieve consistency between current policy, state law, the rules, and the State Brush Control Plan. The new §§517.22-517.37 is adopted with changes to the proposed text as published in the December 6, 2002 issue of the *Texas Register* (27 TexReg 11485).

The TSSWCB received formal written comments from the Foard County Soil and Water Conservation District, Texas Parks and Wildlife Department, Texas Department of Agriculture and Anderson-Houston Soil and Water Conservation District. As a result of the comments received, clarifying changes have been made to §§517.23(5), 517.25(a), 517.24(c) and 517.37(c) of the proposed rule since publication.

The Foard County SWCD opposed a 100% allocation to critical areas. However, §203.155(1) of the Agriculture Code states that cost-sharing is only available for projects that are implemented in critical areas as designated by the TSSWCB. As a result, no changes were made.

The TPWD recommended adding "TPWD will provide technical assistance to the critical area working group in the development and implementation of the brush control plans." to §517.37(c). The TSSWCB concurs with this clarification of the role of the TPWD and added the recommended wording.

The TPWD recommended adding the word "native" to §517.27(c)(5) so that it reads "will allow the revegetation of the area after the brush is removed with native plants that are beneficial to livestock and wildlife". The TSSWCB agrees that revegetation utilizing native plants should be encouraged, but not mandated. As a result, no change was made to §517.27(c)(5).

The TDA recommended clarifying the definition of brush control in §517.23(5) by replacing "brush" with "noxious brush such as mesquite, prickly pear, salt cedar, or other phreatophytes". The TSSWCB concurs with this clarification and added the recommended wording with the following change. "Prickly pear" was replaced with "juniper" in §517.23(5). Relative to juniper, prickly pear is not as significant of a water user and as such is not currently a species targeted for brush control.

The TDA recommended changing §517.25(a) to state, "Prior to designating a critical area, the State Board, in cooperation with affected SWCDs, other agencies, universities, and appropriate local interests, may study the feasibility of utilizing brush control to conserve water." The TSSWCB concurs with this change and added the recommended wording.

The TDA recommended that notice in the *Texas Register* be required in §517.24(c) regarding the public hearing to consider the



Brush Control Plan. The TSSWCB concurs with this change and added the recommended requirement.

The TDA recommended that §517.37(c) be expanded to include notification of working group meetings in the *Texas Register* and/or to other agricultural interests in the affected area. The TSSWCB concurs that other agricultural interests in the affected area should be provided notification of critical area working group meetings and added this requirement to §517.37(c). The Anderson-Houston SWCD is in concurrence with the Brush Control Rules as amended.

### 31 TAC §§517.22 - 517.30

The rule is adopted under Chapter 201.020 Agriculture Code which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300496

James M. Moore

Executive Director

Texas State Soil and Water Conservation Board

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Proposal publication date: December 6, 2002

For further information, please call: (254) 773-2250



### 31 TAC §§517.22 - 517.37

The rule is adopted under Chapter 201.020 Agriculture Code which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

#### §517.22. Purpose.

The purpose of this program is to provide the needed incentive to landowners or operators for the implementation of brush control consistent with the purpose of conserving water.

#### §517.23. Definitions.

For the purposes of these rules the following definitions shall apply.

(1) Allocated funds--Funds budgeted through the State Board to a critical area for cost-share assistance.

(2) Applicant--An eligible person who applies for cost-share assistance.

(3) Available funds--Allocated funds that have not been obligated.

(4) Average costs--The constructed cost, which is based on actual costs and current cost estimates, considered necessary to carry out a conservation practice.

(5) Brush control--The selective control, removal, or reduction of noxious brush such as mesquite, juniper, salt cedar, or other phreatophytes that, as determined by the State Board, consumes water to a degree that is detrimental to water conservation; and the revegetation of land on which this brush has been controlled.

(6) Brush control contract--A legally binding 10-year agreement between the applicant, Soil and Water Conservation District, and Texas State Soil and Water Conservation Board whereby the applicant agrees to implement all brush control practice(s) for which cost-share is to be provided in accordance with standards established by the Texas State Soil and Water Conservation Board. Only practice(s) that the Texas State Soil and Water Conservation Board has approved and are included in an approved brush control plan are eligible for inclusion in the brush control contract.

(7) Brush control plan--A site-specific plan for implementation of brush control, sound range management practices, and other soil and water conservation land improvement measures. It includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the Soil and Water Conservation District.

(8) Cost-share assistance--An award of money made to an eligible person for brush control pursuant to the purpose(s) for which the funds were appropriated.

(9) Cost-share rate--The percent of the cost of brush control to be awarded an eligible person based on actual cost not to exceed average cost.

(10) Critical area--An area of critical need designated by the Texas State Soil and Water Conservation Board in the State Brush Control Plan according to the criteria established in §517.25.

(11) Critical area working group--The working group established in each critical area to carry out the roles and responsibilities listed in §517.28(c). Membership is made up of Soil and Water Conservation District directors from each Soil and Water Conservation District in a critical area.

(12) Eligible land--Those lands within a designated critical area that are eligible for application of brush control using cost-share assistance.

(13) Eligible person--Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper participates in an agricultural or wildlife operation within a critical area and is a co-operator with the local Soil and Water Conservation District shall be eligible for cost-share assistance.

(14) Field Office Technical Guide, herein referred to as FOTG--The official Natural Resources Conservation Service guidelines criteria, and standards for planning and applying conservation practices, management measures, and works of improvement that have the purpose of solving or reducing the severity of natural resource use problems or taking advantage of resource opportunities.

(15) Natural Resources Conservation Service, herein referred to as NRCS--An agency of the United States Department of Agriculture.

(16) Operator--Any person(s), firm or corporation with a contractual arrangement with the owner of the land that grants operational control of an agricultural enterprise.

(17) Obligated funds--Monies from a critical area's allocated funds that have been committed to an applicant after final approval of the brush control contract by the Soil and Water Conservation District and Texas State Soil and Water Conservation Board.

(18) Performance agreement--A component of the brush control contract whereby the eligible person receiving the benefit of

cost-share assistance provides written agreement to the Soil and Water Conservation District to perform brush control in accordance with standards established by the Texas State Soil and Water Conservation Board and the terms of the brush control contract.

(19) Priority system--The system devised collectively by the critical area working group, under guidelines of the State Board, for ranking brush control applications and for facilitating the disbursement of allocated funds in line with the critical area's priorities.

(20) Program year--The period from September 1 through August 31.

(21) Soil and Water Conservation District, herein referred to as SWCD--A government subdivision of this state and a public body corporate and politic, organized pursuant to the Agriculture Code of Texas, Chapter 201.

(22) State Board--The Texas State Soil and Water Conservation Board organized pursuant to the provisions of the Agriculture Code of Texas, Chapter 201.

(23) Texas Parks and Wildlife Department, herein referred to as TPWD--The government agency of this state organized pursuant to the Parks and Wildlife Code of Texas, Title 2, Chapter 11.

(24) Water Conservation--The process of reducing water consumption and/or preventing future increases in water consumption. As related to the Brush Control Program, the process of reducing water consuming brush and subsequently, the enhancement of available water resources.

#### §517.24. State Brush Control Plan

(a) The State Board shall prepare and adopt a state brush control plan. The State Board shall review and may amend the plan at least every two years to take into consideration changed conditions.

(b) The State Brush Control Plan shall:

(1) include a comprehensive strategy for managing brush in areas of the state where brush is contributing to a substantial water conservation problem and

(2) designate areas of critical need in the state in which to implement the brush control program considering the criteria established in §517.25.

(c) Before the State Board adopts the plan, the State Board shall call and hold a public hearing to consider a proposed plan.

(1) In addition to providing notice in the Texas Register, the State Board shall mail written notice of the hearing to each SWCD in the state not less than 30 days before the date the hearing is to be held. The notice must include the date and place for holding the hearing and must state the purpose for holding the hearing.

(2) At the hearing, representatives of a SWCD and any other person may appear and present testimony including information and suggestions for any changes in the proposed plan.

(3) After the conclusion of the hearing, the State Board shall consider the testimony including the information and suggestions made at the hearing and, after making any changes in the proposed plan that it finds necessary, the State Board shall adopt the plan.

#### §517.25. Designation of Critical Areas

(a) Prior to designating a critical area, the State Board, in cooperation with affected SWCDs, other agencies, universities, and appropriate local interests, may study the feasibility of utilizing brush control to conserve water.

(b) Feasibility Studies.

(1) Feasibility studies shall, where appropriate, evaluate brush type, density, and location; management methods; revegetation options; geology and soils data; water needs or potential needs; hydrology; potential water yield; wildlife concerns; economics; and landowner interest. The TPWD shall be consulted when evaluating wildlife concerns.

(2) Feasibility studies shall be conducted in watersheds in the general brush control area as identified in the State Brush Control Plan or where designated by the State Board.

(3) Specific watersheds for studies will be determined by the State Board in consultation with SWCDs, other agencies, and universities. SWCDs may submit written requests to the State Board for feasibility studies.

(4) The State Board shall consider water needs of the area and potential for water yield when selecting watersheds for study.

(c) In designating critical areas, the State Board shall consider:

(1) the location of various brush infestations;

(2) the type and severity of various brush infestations;

(3) the various management methods that may be used to control brush;

(4) the severity of water conservation needs;

(5) the cost effectiveness of utilizing brush control to conserve water;

(6) the potential water quality impacts;

(7) the availability of funding; and

(8) any other criteria that the State Board considers relevant to assure that the brush control program can be most effectively, efficiently, and economically implemented.

(d) In designating critical areas, the State Board shall give priority to areas with the most critical water conservation needs and in which brush control and revegetation projects will be most likely to produce substantial water conservation.

(e) Request for designation as a critical area. SWCDs may submit written requests to the State Board for designation of areas for which the feasibility of brush control has been determined.

#### §517.26. Administration of Funds.

(a) Project Development.

(1) SWCDs or other agencies in cooperation with SWCDs may develop project proposals within critical areas in accordance with criteria established in the State Brush Control Plan.

(2) Project proposals shall be submitted to the State Board for its prioritization and approval.

(3) The State Board may initiate project development in cooperation with SWCDs.

(b) Priority of Projects.

(1) When prioritizing and approving projects, the State Board shall consider criteria established in the State Brush Control Plan.

(2) If the demand for funds under the cost-sharing program is greater than funds available, the State Board may establish priorities favoring the areas with the most critical water conservation needs and projects that will be most likely to produce substantial water conservation.

(3) The State Board shall give more favorable consideration to a particular project if the participants agree to a lesser cost-share rate than that established by the State Board.

(4) The amount of land dedicated to the project that will produce significant water conservation from the control of brush is a priority.

(c) Allocation of funds. The State Board may allocate funds only for projects in critical areas as designated by the State Board. Such allocations may be adjusted throughout the year as available funds and critical area needs and priorities change in order to achieve the most efficient use of state funds.

(d) Requests for allocations. Critical area working groups may submit written requests for cost-share allocations to the State Board.

(e) Approval of allocations. The State Board shall consider and approve, reject, or adjust allocations giving consideration to relative need for funding, workload and fund balances, as well as other information deemed necessary by the State Board.

#### §517.27. *Approval of Brush Control Methods*

(a) Cost sharing is available only for projects that use a method of brush control approved by the State Board.

(b) The State Board, in consultation with SWCDs, shall study and must approve all methods used to control brush considering the overall impact the project will have within critical areas.

(c) The State Board may approve a method for cost-sharing if the State Board finds that the proposed method:

- (1) has proven to be an effective and efficient method for controlling brush;
- (2) is cost efficient;
- (3) will have a beneficial impact on wildlife habitat;
- (4) will conserve topsoil to prevent erosion or silting of any river or stream; and/or
- (5) will allow the revegetation of the area after the brush is removed with plants that are beneficial to livestock and wildlife.

(d) Approved methods shall be designated in program guidance established by the State Board.

(e) Request for approval of brush control methods. Critical area working groups, as established by §517.28(b), may submit written requests to the State Board for approval of brush control methods for a critical area.

#### §517.28. *Powers and Duties of SWCDs*

(a) The State Board has delegated the responsibilities in this section to the SWCDs in which all or part of a critical area is located.

(b) Establishment and composition of critical area working group.

(1) In each critical area designated by the State Board, a critical area working group shall be established, composed of SWCD directors from each SWCD in which all or part of the critical area is located.

(2) The State Board shall serve as the facilitator for the critical area working group.

(3) Agencies, universities, landowners and appropriate local interests may serve in an advisory capacity to the critical area working group, but shall not have voting privileges.

(4) The critical area working group shall hold an organizational meeting to:

(A) establish final membership

(i) SWCDs may elect to not participate by providing written notification of their decision.

(ii) In establishing the membership, each participating SWCD shall have one vote.

(iii) As approved by participating SWCDs within a critical area, SWCDs may be allowed to have more than one SWCD director serve on the critical area working group.

(iv) Once final membership is established, each member shall have one vote only.

(B) establish operating procedures

(i) The critical area working group shall elect a chairman.

(ii) The critical area working group shall establish the quorum necessary for decision-making. Only those members present shall be eligible to vote. Voting by proxy shall not be allowed.

(iii) The critical area working group may establish attendance requirements and other necessary procedures.

(c) The critical area working group shall:

(1) designate, from the State Board approved list, those brush control methods that will be eligible for cost-share in the critical areas;

(2) establish maximum cost-share rates for critical area not to exceed maximums set by the State Board in §517.29(d);

(3) develop average cost annually for each practice on the critical area's approved practice list not to exceed costs established by the State Board;

(4) establish annually the maximum amount of cost-share available to each applicant not to exceed the maximum set by the State Board;

(5) administer the cost-share program within the funds allocated by the State Board;

(6) establish, under guidelines of the State Board, the priority system to be used for evaluation of applications;

(7) establish the period(s) of time for accepting applications;

(8) announce the cost-share program within the critical area;

(9) establish the minimum amount of brush acreage that must be enrolled within sub-basins of the critical area in order to qualify for funding;

(10) prioritize applications under the working group approved priority system for the critical area; and

(11) submit meeting minutes, membership, and established operating procedures to the State Board.

(d) Each SWCD within a critical area shall:

(1) accept and process cost-share applications;

(2) keep accurate records and logs of applications;

(3) determine eligibility for cost-share assistance according to the criteria listed in §517.30. If an applicant's land is in more

than one SWCD, the respective SWCDs will review the application and agree to oversee all works and administrate all contracts from one SWCD or prorate between the SWCDs;

(4) provide or arrange for technical assistance for eligible applicants according to priority established by the critical area working group;

(5) examine brush control plans and contracts to assure inclusion of all necessary information and exhibits and that the criteria established in §517.33 are met;

(6) prepare comments and recommendations relating to the brush control plan and contract for submittal to the State Board;

(7) approve brush control plans and contracts that meet FOTG requirements on management units included in the brush control plan;

(8) forward SWCD approved brush control plans and contracts to the State Board for quality control and execution of contract;

(9) once approved by the State Board, notify the applicant that his/her contract has been approved for cost-share and to proceed with implementation as outlined in the applicant's brush control plan;

(10) file a copy of the approved contract;

(11) certify to the State Board that conservation land treatment measures have been completed according to standards and specifications prior to payment;

(12) submit required reports to the State Board; and

(13) as directed by the State Board, manage any problem that arises under a cost-sharing contract for brush control in that SWCD and report to the State Board.

#### §517.29. *Cost-share for Brush Control*

(a) *Basis for cost-share.* Cost-share shall be based on actual cost not to exceed average cost.

(b) *Average costs.*

(1) The State Board, in consultation with SWCDs in which all or part of the critical area is located, shall establish average costs for each practice approved for the critical area considering the results of the feasibility studies.

(2) The critical area working group shall develop average costs annually for each practice on the critical area's approved practice list not to exceed the average costs established by the State Board.

(3) The critical area working group may submit a written request to the State Board to increase the average costs established for each practice.

(c) *Maximum cost-share amount available.*

(1) The maximum cost-share assistance that an eligible person may receive under the program in any one year, and the lifetime maximum cost-share assistance that an eligible person may receive is unrestricted by the State Board.

(2) The critical area working group may establish the maximum cost-share assistance that an eligible person may receive under the program in any one year, and the lifetime maximum cost-share assistance that an eligible person may receive.

(d) *Cost-share rates.* The State Board shall establish, in program guidance, the cost-share rate for each practice approved for the critical area considering the results of the feasibility studies. The total cost-share shall not exceed 80%. The critical area working group shall

establish cost-share rates, not to exceed those established by the State Board.

#### §517.30. *Eligibility for cost-share assistance.*

(a) *Eligible person.* Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper participates in an agricultural or wildlife operation within a critical area and is a cooperator with the local SWCD shall be eligible for cost-share assistance.

(b) *Ineligible person.*

(1) A person is not eligible to participate in the state brush control program or to receive money from the state brush control program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from a federal government program.

(2) The State Board may grant an exception if the State Board finds that joint participation of the state brush control program and any federal brush control program will enhance the efficiency and effectiveness of a project and lessen the state's financial commitment to the project.

(c) *Eligible land.* To be eligible for cost-share assistance, the land must be within a designated critical area and fall into any of the following categories:

(1) land within the state that is privately owned by an eligible person;

(2) land leased by an eligible person over which the applicant has adequate control extending through the term of the contract period and written permission of the landowner; or

(3) land owned by the state, a political subdivision of the state, or a nonprofit organization that holds land in trust for the state.

(d) *Ineligible lands.* Allocated funds shall not be used on land outside of a designated critical area or land not used for agricultural or wildlife production.

(e) *Eligible purposes.* Cost-share assistance shall be available only for brush control included in an approved brush control plan and contract and determined to be needed by SWCDs to conserve water.

(f) *Eligible practices.* Brush control methods, which the State Board has approved and which are included in the applicant's approved brush control plan and contract, shall be eligible for cost-share assistance. The critical area working group shall designate their list of eligible methods from those approved by the State Board.

(g) *Requirement to file an application.* In order to qualify for cost-share assistance, an eligible person shall file an application with the local SWCD.

(h) *Requirement to develop a brush control plan.* In order to qualify for cost-share assistance, an eligible person shall develop a brush control plan. Brush control plans shall meet resource management system requirements on acres planned, as set forth in the FOTG.

(i) *Persons authorized to sign applications and contracts.* All applications, contracts, and performance certifications shall be signed by:

(1) the eligible person;

(2) any person designated to represent the eligible person, provided an appropriate notarized durable power of attorney has been filed with the SWCD office; or

(3) the responsible person or administrator, in cases of trusts or estates, provided that letters of administration or letters of

testamentary have been submitted to the SWCD in lieu of a power of attorney.

§517.31. *Responsibility of applicants.*

- (a) Applicants shall complete and submit an application;
- (b) Applicants shall complete a SWCD cooperative agreement if the applicant is not already a SWCD cooperator;
- (c) Where an applicant does not have an approved brush control plan and has not determined the anticipated total cost of the proposed measure(s), he/she shall obtain a brush control plan approved by the local SWCD;
- (d) Applicants shall complete, sign, and submit a cost-share contract based on the approved brush control plan to the SWCD along with any amendments to the contract;
- (e) After being notified of approval, applicants may request technical assistance through the SWCD to design and lay out the approved brush control or request approval of alternate sources of technical assistance;
- (f) Applicants shall perform the approved brush control or secure any approved contractor(s) needed and all contractual or other agreements necessary to perform the approved brush control. Cost-share will not be allowed for work begun before the application is approved; and
- (g) Applicants shall supply the documents necessary to verify completion of the approved brush control along with copies of receipts for work to be cost-shared.

§517.32. *Applications for cost-share.*

- (a) A person who desires to participate with the state in a brush control project and to obtain cost-sharing participation by the state shall file an application with the SWCD in the SWCD in which the land on which the project is to be accomplished is located.
- (b) Applications held in abeyance because of lack of funds. In those cases where funds are not available, the applications will be held by the SWCD until allocated funds become available or until the end of the program year. The SWCD may shift all unfunded applications held in abeyance because of lack of funds that are on hand at the end of a program to the new program year or require all new applications, as it deems appropriate.
- (c) Applications denied for reasons other than lack of funds. Applications for funds, which are denied by the SWCD directors for other than lack of funds, shall be retained in the records of the SWCD in accordance with the SWCD's established record retention policy. Written notification of the denial shall be provided to the applicant along with the reason(s) that the application was denied.
- (d) Applications withdrawn. An application may be withdrawn by the applicant at any time prior to receipt of cost-share assistance by notifying the SWCD in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the SWCD in accordance with the SWCD's established record retention policy.

§517.33. *Contracts for cost-share.*

- (a) According to the priority of an application, the SWCD shall negotiate a ten-year brush control contract with the successful applicant in the critical area subject to:
  - (1) Guidelines established by the State Board.
  - (2) Development of a brush control plan. As a condition for receipt of cost-share assistance for brush control, the eligible person

receiving the benefit of such assistance shall agree to develop a brush control plan.

- (3) Signature of a performance agreement. As a condition for receipt of cost-share assistance for brush control, the eligible person receiving the benefit of such assistance shall agree to perform the brush control in accordance with standards established by the State Board and the terms of the cost-share agreement. Completion of the performance agreement and the signature of the eligible person are required prior to payment.

- (4) Management of treated areas.

- (A) Requirements for follow-up brush control will be included in the cost-share contract with management recommendations outlined in the eligible person's brush control plan. These will be reviewed with the eligible person prior to signature and initiation of the cost-share contract. Requirements for follow-up brush control are subject to funding availability.

- (B) The SWCD may require refund of any or all of the cost-share paid to an eligible person when acres where brush control was applied has not been managed in compliance with applicable standards and specifications for the practice in accordance with the terms of the cost-share contract as agreed to by the eligible person.

- (C) In cases of hardship, death of the participant, or at the time of transfer of ownership of land where brush control has been applied using cost-share assistance and the term of the contract has not expired, the participant, heir(s), or buyer(s) respectively, must agree to properly manage the treated area or the participant, heir(s) or the buyer by agreement with seller must refund all or a portion of the cost-share funds received for the practice as determined by the SWCD. The State Board, on a case-by-case basis in consultation with the SWCD, may grant a waiver to this requirement.

- (b) Criteria to consider. In approving a contract for cost sharing, the SWCD, in accordance with criteria established by the critical area working group, shall consider:

- (1) whether the brush control is to be carried out in a critical area;
  - (2) the method of control that is to be used by the applicant;
  - (3) the plans for revegetation;
  - (4) the total cost of the brush control;
  - (5) the amount of land to be included;
  - (6) whether the applicant is financially able to provide his share of the money for the brush control;
  - (7) the cost-share percentage, if an applicant agrees to a higher degree of financial commitment;
  - (8) any comments and recommendations of the TPWD;
- and
- (9) any other pertinent information considered necessary by the SWCD.

- (c) Approval of contracts. The SWCD may approve a contract if, after considering the factors listed in §517.33(c) and any other relevant factors, the SWCD finds:

- (1) the owner of the land fully agrees to cooperate in the project;
- (2) the method of control is a method approved by the critical area working group; and

(3) the brush control is to be carried out in a critical area designated under the State Brush Control Plan.

(d) On completion of the negotiations by the SWCD, it shall submit the proposed contract to the State Board for execution.

(e) The State Board shall examine the contract and if the State Board finds that the contract meets all the conditions established in this section and the guidelines, it shall execute the contract and provide to the individual on completion of the project the money that constitutes the state's share of the project.

(f) Amending contracts.

(1) In the event that an adjustment to the estimated cost of brush control is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment to his/her contract for cost-share to the SWCD for approval or denial by the SWCD.

(2) The amount of funds obligated for brush control may be adjusted, provided funds are available and the adjustment is considered a priority according to the critical area working group priority system.

(3) In the event additional funds are not available, the brush control may be redesigned, if possible, to a level commensurate with available funds, provided the redesign still meets standards established by the State Board; or the applicant can agree to assume full financial responsibility for the portion of the cost of brush control in excess of the amount authorized.

*§517.34. Payment to recipients.*

(a) The SWCD shall determine eligibility of the applicant to receive payment of cost-share assistance, and provide certification to the State Board that measure(s) have been installed consistent with the FOTG.

(b) The State Board shall cause payment for cost-share assistance to be issued to the applicant.

(c) Partial payment can be requested for brush control methods completed on identifiable land units as they are completed, provided required management can be applied.

(d) State money may not be provided in advance for work remaining to be done.

*§517.35. Determining status of brush control during transfer of land ownership.*

(a) A seller of agricultural land with respect to which a performance agreement is in effect may request the SWCD to inspect the practice. If the practice has been properly managed the SWCD shall issue a written statement that the seller has satisfactorily managed the treated area as of the date of the statement.

(b) The buyer of lands covered by a performance agreement may also request that the SWCD inspect the lands to determine whether the treated area has been properly managed as of the date of the inspection. If so, the SWCD will provide the buyer with a statement specifying the extent of compliance or noncompliance as of the date of the statement.

(c) The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance.

*§517.36. Reporting and accounting.*

The State Board shall receive and maintain required reports showing the unobligated balance of funds for each critical area as shown on each ledger at the close of the last day of each month.

*§517.37. Consultation with the TPWD.*

(a) The State Board shall consult the TPWD in regard to the effects of the brush control program on fish and wildlife.

(b) When assessing the feasibility of brush control in a watershed, the TPWD shall be consulted concerning the effects of brush control on fish and wildlife and shall be provided with an opportunity to review and comment on feasibility studies.

(c) The TPWD and other agricultural interests in the affected area shall be notified of all critical area working group meetings. The TPWD will provide technical assistance to the critical area working group in the development and implementation of the brush control plans.

(d) Comments and recommendations from the TPWD shall be considered when passing on applications for cost-share.

(e) Applicants shall be notified that the TPWD provides free technical guidance to landowners regarding the management of wildlife resources and habitats on their lands.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

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James M. Moore

Executive Director

Texas State Soil and Water Conservation Board

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For further information, please call: (254) 773-2250

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**CHAPTER 523. AGRICULTURAL AND  
SILVICULTURAL WATER QUALITY  
MANAGEMENT**

**31 TAC §523.8**

The Texas State Soil and Water Conservation Board (TSSWCB) adopts new §523.8, establishing a comprehensive nutrient management planning program for owners and operators of animal feeding operations in the North Bosque River watershed. The development of the program is in response to agency responsibilities resulting from the approval of the Implementation Plan for the North Bosque River Total Maximum Daily Loads (TMDLs) for Phosphorus. The new §523.8 is adopted with changes to the proposed text as published in the December 6, 2002 issue of the *Texas Register* (27 TexReg 11493).

The TSSWCB received no formal written comments. However, the following two clarifying changes have been made to the proposed rule since publication.

As proposed, §523.8(i) stated that the TSSWCB would maintain a list of watersheds that the TSSWCB had determined were characterized by intensive animal agriculture. Section 523.8(c) then stated that the CNMP program would be applicable for any animal feeding operation located within the geographic boundaries of a watershed that the TSSWCB determined was characterized by intensive animal agriculture. Because the proposed

rule is only in response to agency responsibilities resulting from the approval of the implementation plan for the TMDLs for phosphorus in the North Bosque River watershed, and there is currently no foreseeable similar TMDL situation developing for other watersheds, it is not necessary to provide for such flexibility in the rule. This modification will clarify the TSSWCB's intent that the program only be applicable in the North Bosque River watershed. The removal of this mechanism for determining applicability clarifies the TSSWCB's intent that the program only be applicable in the North Bosque River watershed. This modification resulted in the addition of the text "in the North Bosque River watershed" to the rule's title, §523.8(a), and §523.8(c). A definition for "North Bosque River watershed" was added to §523.8(b). Alphabetically placed, the new definition is located at §523.8(b)(5), which caused a cascading increase to the placement of the remaining definitions in §523.8(b). The modification also required the removal of text relating to "watersheds characterized by intensive animal agriculture" from §523.8(b), §523.8(c). In the rule as proposed, §523.8(i) dealt exclusively with "watersheds characterized by intensive animal agriculture." The removal of this section caused a change in the placement of the remaining two sections regarding the requirement for an implementation schedule and the applicability of state water quality standards. The subsequent numbering change, resulting in the section regarding the requirement for an implementation schedule being located at §523.8(i), caused a reference to the implementation plan in §523.8(f)(1)(B) and §523.8(f)(2) to be changed from §523.8(k) to §523.8(i).

The second clarifying revision is located in §523.8(d), regarding the process for obtaining a CNMP. The text "or component parts of CNMPs" is added to clarify that it is likely several different specialists will be required to develop the different components of a CNMP.

The rule is adopted under Chapter 201.020 Agriculture Code which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

§523.8. *Comprehensive Nutrient Management Planning in the North Bosque River Watershed.*

(a) Policy Statement. In accordance with §519.1 of this title (relating to Technical Assistance Program) and the policy of the State Soil and Water Conservation Board to develop and implement a program to provide technical assistance for the development and implementation of soil and water conservation plans and soil and water conservation measures, §523.8 of this title (related to comprehensive nutrient management planning in the North Bosque River watershed) is adopted.

(b) Definitions. The following words and terms, when used in §523.8, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Animal feeding operation--A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season.

(2) Comprehensive nutrient management plan, herein referred to as CNMP--a resource management plan containing a grouping of conservation practices and management activities which, when combined into a conservation system, will help ensure that both agricultural production goals and natural resource concerns dealing with

nutrient and organic by-products and their adverse impacts on water quality are achieved. A CNMP incorporates practices to utilize animal manure and organic by-products as a beneficial resource. To be certified, a CNMP must cover all lands that constitute the conservation management unit.

(3) Conservation management unit--for the purposes of this section and regarding comprehensive nutrient management planning, a conservation management unit includes the production area and land application activities which are onsite or are contiguous to the site.

(4) Environmental stewardship programs for owners and/or operators of animal feeding operations--any program, administered by a governmental or non-governmental entity, which provides the owner or operator of an animal feeding operation with a mechanism for improving the overall efficiency of the operation, operating in accordance with all applicable state or federal laws pertaining to water quality, and furthers the effective conservation of the state's soil and water resources.

(5) North Bosque River watershed--the geographic area consisting of all the drainage area for the two designated water quality segments as defined in the two adopted Total Maximum Daily Loads for Phosphorus in the North Bosque River. The two designated water quality segments are segment 1226, the North Bosque River, extending from a point 100 meters upstream of FM Road 185 in McLennan County to a point immediately upstream of the confluence of Indian Creek in Erath County, and segment 1255, the Upper North Bosque River, extending from a point immediately upstream of the confluence of Indian Creek in Erath County to the confluence of the North Fork and South Fork of the North Bosque River in Erath County.

(6) Natural Resources Conservation Service, herein referred to as NRCS--An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service (SCS).

(7) NRCS - Field Office Technical Guide, herein referred to as NRCS - FOTG--The official NRCS guidelines, criteria, and standards for planning and applying conservation treatments.

(8) NRCS Technical Service Provider Process--The process by which a technical service provider obtains certification by NRCS to provide technical services including conservation planning, and/or the design, layout, and installation of approved conservation practices.

(9) Resource management plan--a site specific blueprint for implementation of soil and water conservation land improvement measures. It includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the SWCD.

(10) Resource management system--a combination of conservation practices and resource management activities for the treatment of all identified resource concerns for soil, water, air, plants, animals, and humans that meets or exceeds the quality criteria in the Natural Resource Conservation Service's Field Office Technical Guide for resource sustainability.

(11) Soil and water conservation district, herein referred to as SWCD--A government subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code of Texas.

(12) State Board--The State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

(13) Technical service provider--an individual, entity, or public agency certified by the NRCS State Conservationist and placed on an approved list to provide technical services.

(14) Texas Commission on Environmental Quality--the state agency created under Title 2, Subtitle A, Chapter 5 of the Texas Water Code (formerly the Texas Natural Resource Conservation Commission).

(c) Applicability. Any owner or operator of an animal feeding operation that meets the following criteria may submit a CNMP to the State Board for certification in accordance with §523.8(f) of this title. Owners or operators of an animal feeding operation within the North Bosque River watershed, or owners or operators of an animal feeding operation that has enrolled in any agricultural environmental stewardship program whose administrators have a current memorandum of agreement with the State Board regarding a State Board certification of a CNMP as programmatic requirement.

(d) Process for obtaining a CNMP. It is the intent of the State Board that all CNMPs be developed by technical service providers certified by NRCS to develop CNMPs or component parts of CNMPs. Owners and operators whose CNMP is developed by persons not certified to develop CNMPs through NRCS' Technical Service Provider process must submit their CNMP to the local NRCS Field Office for approval. Owners and operators of animal feeding operations who meet the applicability criteria set forth in §523.8(c) and intend to submit a completely developed CNMP to the State Board for certification shall:

- (1) be a SWCD cooperator.
- (2) declare to the SWCD their intent to submit a CNMP for State Board certification.

(3) request to view a list of certified technical service providers who have been certified by the NRCS to develop CNMPs from their local SWCD and/or NRCS Field Office. Owners and operators whose CNMP is developed by persons not certified to develop CNMPs through NRCS' Technical Service Provider process must submit their CNMP to the local NRCS Field Office for approval.

(4) inform the SWCD that they intend to apply for cost-share assistance, if applicable. All cost-share assistance toward the development of a resource management plan and toward the implementation of land treatment measures contained within the resource management plan, shall be in accordance with §523.6 of this title (relating to Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures).

(e) Cost-share. In accordance with §523.6 of this title, the State Board may allocate funds to a SWCD for cost-share assistance to landowners toward the implementation of land improvement measures consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality. All cost-share assistance toward the development of a resource management plan and toward the implementation of land treatment measures contained within the resource management plan, shall be in accordance with §523.6 of this title.

(f) Certification.

(1) When the following conditions are met the State Board may certify that a CNMP satisfies the State Board's technical criteria and programmatic guidance for comprehensive nutrient management planning with the State's requirements for water quality:

(A) The owner or operator of the animal feeding operation concurs and understands that the conservation practices and implementation schedules contained within the CNMP, when applied and maintained to form a resource management system will meet the State's

requirements for water quality; the owner or operator of the animal feeding operation agrees to notify the local SWCD in the event of deviation from the implementation schedule; and the owner or operator of the animal feeding operation agrees that any substitution or changes to the conservation practices or schedules must be in accordance with the NRCS - FOTG, the State Board's Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning, and the rules and regulations of the State.

(B) The CNMP is in accordance with the Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning adopted by the State Board and contains an implementation schedule pursuant to §523.8(i) of this title.

(C) The owner or operator of the animal feeding operation meets the requirements of §523.8(c) of this title (related to applicability).

(D) The SWCD has approved the CNMP as including the entire conservation management unit.

(E) The CNMP was developed by a technical service provider certified by the NRCS to develop CNMPs or the NRCS Field Office has approved the CNMP as meeting the requirements of the NRCS - FOTG for a Resource Management System.

(2) Withdrawal of certification. The State Board may withdraw certification of any CNMP which, in consultation with the SWCD, has been demonstrated to be deficient in one or more of the conditions established under §523.8(f)(1) or if the holder of the CNMP fails to implement the CNMP in accordance with §523.8(i).

(g) Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning. The technical criteria and specific practice standards considered as components of comprehensive nutrient management planning are based on the criteria in the NRCS - FOTG; however, modification of those practice standards to ensure consistency with state water quality standards, state water quality laws regarding animal feeding operations, and the state agricultural and silvicultural nonpoint source management program will be made by the State Board as necessary. The State Board will adopt and maintain Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning to ensure consistency with state water quality standards, state water quality laws regarding animal feeding operations, and the state agricultural and silvicultural nonpoint source management program.

(h) Environmental Stewardship Programs for Owners and/or Operators of Animal Feeding Operations. The State Board may enter into agreements with entities administering programs who request that participants of such programs receive certification in accordance with §523.8(f) of this title as a programmatic requirement if the State Board determines that the program is consistent with the state agricultural and silvicultural nonpoint source management program and all other State Board policies.

(i) Implementation schedule. A CNMP must contain an implementation schedule.

(1) The implementation schedule will, as far as is practicable, balance the state's need for protecting water quality with the need of agricultural producers to have sufficient time to implement practices in an economically feasible manner.

(2) Highest priority will be given to the implementation of the most cost effective and most needed pollution abatement practices.

(3) The State Board in consultation with the local SWCDs will conduct an annual status review of plan implementation.



(4) The State Board in consultation with the local SWCDs may withdraw certification of a CNMP that is not being implemented in accordance with its schedule. Prior to certification being withdrawn, a landowner will be notified and be given a reasonable period of time to implement the CNMP according to the schedule or a modified schedule approved by the SWCD.

(5) The holder of a certified CNMP shall notify the local SWCD in the event he or she deviates from the implementation schedule.

(j) Applicability of state water quality standards. To the extent allowed by available technology, CNMP development, approval and certification will be based on state water quality standards as established by the Texas Commission on Environmental Quality.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

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James M. Moore

Executive Director

Texas State Soil and Water Conservation Board

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For further information, please call: (254) 773-2250

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER V. FRANCHISE TAX

###### 34 TAC §3.557

The Comptroller of Public Accounts adopts an amendment to §3.557, concerning earned surplus: apportionment, with changes to the proposed text as published in the August 2, 2002, issue of the *Texas Register* (27 TexReg 6812).

The adopted rule incorporates legislative changes from the 77th Legislature, 2001 and prior legislative sessions as described in detail in the preamble to the proposed rule. It adds and updates the definitions for the following terms: employee retirement plan, legal domicile, and location of payor and Internal Revenue Code. The adopted rule also contains information on the new apportionment requirement for dividends and/or interest received by a banking corporation and the exclusion from Texas receipts for interest earned on federal funds and certain securities by a banking corporation from correspondent banks. The adopted rule provides for the computation of gross receipts by a corporate partner, the prohibition of consolidated reporting, and apportionment of revenues from trademarks, franchises, and licenses.

The adopted rule provides current policy resulting from court decisions in *Pennzoil v. Sharp*, *Gulf Publishing v. Rylander* and *Rylander v. Bandag Licensing*. It also provides current policy resulting from Hearing Decision No. 36,590 (2000) that delivery

of tangible personal property by the seller through its motor vehicles to another state does not subject the seller to taxation in that other state and the application of the throwback rule. The adopted rule provides current policies relating to the treatment of loan sales held as inventory and distributions from trusts and relating to natural gas production.

Sprint, Texas Statewide Telephone Cooperatives, Inc. and SBC Communications, Inc. submitted comments to the proposed text of subsection (e)(39) relating to services provided by telephone companies. Because the proposed subsection (e)(39) reverses a policy on fixed access fees that was determined in Hearing Decision No. 35,677 (2000), they questioned the appropriateness of the proposed subsection and also stated that the proposed subsection does not adequately explain the differences between revenues from intrastate telephone calls and revenues from interstate telephone calls and the differences between telephone calls and telephone services. They asked that the access fees be treated as Texas receipts or non-Texas receipts based on regulatory classifications by Federal Communication Commission and Texas Public Utility Commission. They also asked that the agency treat access fees in the same manner as it treats revenues from transportation.

The Comptroller agrees that adding clarification as to difference between intrastate calls and interstate calls will be helpful. The language in subsection (e)(39)(A) is changed in the adopted rule to clarify that intrastate telephone calls are calls that originate and terminate in Texas. The language in subsection (e)(39)(B) is changed in the adopted rule to clarify that interstate telephone calls are calls that originate in Texas but terminate outside of Texas or vice versa. The language in subsection (e)(39)(C) is changed in the adopted rule to clarify that it applies to telecommunication services other than those services enumerated in subparagraph (A) or (B). The Comptroller declines to make other suggested changes. Hearing Decision No. 35,677 expressly held that the policy reflected in the decision should be applied until the Comptroller revises the rule, and in accordance with that decision, the adopted subsection reinstates the policy that existed prior to Hearing Decision No. 35,677, but applies it prospectively. Federal or state regulatory classifications generally do not have relevance to the computation of franchise tax. The agency's policy on revenues from transportation companies does not preclude the adoption of subsection (e)(39)(C).

Finally, subsection (b)(4) is corrected to replace "and" with an "or" to state the alternative qualifications for an employee retirement plan.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The adopted amendment implements Tax Code, §§171.001, 171.1032, 171.1051, 171.106, 171.1061, and 171.1121.

###### §3.557. *Earned Surplus: Apportionment.*

(a) Section provisions. The provisions of this section apply to franchise tax reports originally due on or after January 1, 1992.

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

(1) Capital asset--Any asset, other than an investment, that is held for use in the production of income, and that is subject to depreciation, depletion, or amortization.

(2) Commercial domicile--The principal place from which the trade or business of the entity is directed.

(3) Corporation--Any entity upon which tax is imposed under Tax Code, §171.001.

(4) Employee retirement plan--A plan or other arrangement that qualifies under Internal Revenue Code §401(a) or that satisfies the requirement of Internal Revenue Code, §403, or a government plan described in Internal Revenue Code, §414(d).

(5) Gross receipts--All revenues that are recognized under the methods used for federal income tax purposes for the tax reporting period without deduction for the cost of property sold, materials used, labor performed, or other costs incurred, unless otherwise specifically provided for in this section or Tax Code, Chapter 171.

(6) Internal Revenue Code--The Internal Revenue Code (IRC) of 1986 in effect for a specified tax year as provided by Tax Code, §171.001. Federal taxable income reported for federal income tax purposes may differ from reportable federal taxable income for franchise tax reporting purposes. To the extent that such differences exist, the applicable IRC must be used to report the differences.

(A) For reports that are originally due on or after January 1, 1998, the IRC in effect for the tax year beginning on or after January 1, 1996, and before January 1, 1997 applies.

(B) For reports that are originally due on or after January 1, 1996 and before January 1, 1998, the IRC in effect for the tax year beginning on or after January 1, 1994, and before January 1, 1995 applies.

(C) For reports that are originally due on or after January 1, 1992 and before January 1, 1996, the IRC in effect for the tax year beginning on or after January 1, 1990, and before January 1, 1991 applies.

(7) Investment--Any non-cash asset that is not a capital asset and that is neither held as inventory nor proceeds from the sale of inventory.

(8) Legal domicile--The legal domicile of a corporation is its state of incorporation. The legal domicile of a partnership or trust is the principal place of business of the partnership or trust. The principal place of business of a partnership or trust is the location of its day-to-day operations. If the day-to-day operations of the partnership or trust are conducted equally or fairly evenly in more than one state, then the principal place of business is the commercial domicile.

(9) Location of payor--The legal domicile of the payor.

(10) Revenue--Except as otherwise specifically provided for in this section or Tax Code, Chapter 171, revenue means the value of inflows of economic resources from separate legal entities for delivering or producing goods, rendering services, or carrying out other activities in the entity's operations to the extent included in computing federal taxable income under the method used for federal income tax purposes during the tax reporting period.

(11) Tax reporting period--For the purposes of this section, the period upon which the tax is based under the Tax Code, §171.1532 or §171.0011.

(c) Apportionment formula. Unless otherwise required under Tax Code, Chapter 171, or by this section or other sections promulgated under Tax Code, Chapter 171, a corporation's earned surplus is apportioned to this state to determine the amount of franchise tax due by multiplying the corporation's earned surplus by a fraction, the numerator of which is the corporation's gross receipts from business done

in this state and the denominator of which is the corporation's gross receipts from its entire business. Examples of methods of apportionment that are "otherwise required" include, but are not limited to the following:

(1) Certain items of income must be allocated as provided by Tax Code, §171.1061.

(2) For reports that are originally due on or after January 1, 1992, corporations that have taxable earned surplus that is derived, directly or indirectly from the sale of services to or on behalf of a regulated investment company as defined by the Internal Revenue Code, §851(a), should refer to Tax Code, §171.106(c), relating to the apportionment of gross receipts from services for regulated investment companies.

(3) For reports originally due on or after January 1, 1999, corporations that have taxable earned surplus that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan, as defined in subsection (b)(4) of this section should refer to Tax Code, §171.106(d), relating to the apportionment of gross receipts from services for employee retirement plans.

(d) General rules for reporting gross receipts.

(1) A corporation that files an annual report must report gross receipts based on the business done by the corporation beginning with the day after the date upon which the previous report was based, and ending with the last accounting period that ends in the year before the year in which the report is originally due.

(2) A corporation that files an initial report must report gross receipts based on its activities beginning with the date on which the corporation begins to do business in Texas, as described in §3.554 of this title (relating to Earned Surplus: Nexus), or files its Texas charter, and ending on the last accounting period ending date that is at least 60 days before the original due date of the initial report; if no such date exists, then ending on the date that is the last day of a calendar month and that is nearest to the end of the corporation's first year of business in Texas.

(3) A corporation must report gross receipts based solely on its own earned surplus; consolidated reporting is prohibited. For example, a corporation that joins in filing a consolidated federal income tax return based on consolidated federal income tax provisions must report taxable income deferred on sales to other members of the consolidated group as though no consolidated federal income tax return had been filed.

(4) When a corporation computes gross receipts for apportionment, the corporation is deemed to have elected to use the same methods that the corporation used in filing its federal income tax return.

(5) Any item of revenue that is excluded from net taxable earned surplus under Texas law or United States law is excluded from gross receipts everywhere and gross receipts in Texas. For example, any amount that is excluded from earned surplus under the Internal Revenue Code, §78 or §§951-964, is excluded from gross receipts.

(6) Corporations that report federal taxable income under a long-term contract method must report revenues that are recognized for federal income tax purposes without reduction for the cost of property sold, materials used, labor performed, or other costs incurred. For example, a contractor that uses the percentage-of-completion method to report a construction contract for federal income tax purposes would recognize the portion of the total contract price that the contractor used

in computing gross income on the appropriate federal income tax return.

(7) If the installment method is used to report sales of property, then the seller should include the revenues recognized for federal income tax purposes, unless the property sold is a capital asset or investment. If the property sold is a capital asset or investment, then the net gain that is included in federal taxable income must be used in computing receipts.

(8) Revenues that the receiver of a corporation in receivership collects or otherwise obtains are gross receipts of the corporation.

(9) If the comptroller determines that commonly controlled affiliated corporations have not entered into a transaction on an arm's length basis, then the comptroller may distribute or allocate income and deductions from such transaction as necessary to prevent franchise tax avoidance, provided that such adjustments are authorized under application of principles that are found in the Internal Revenue Code, §482, and regulations thereunder.

(10) A corporation that uses a 52-53 week accounting year end and that has an accounting year that ends during the first four days of January of the year in which the report is originally due may use the preceding December 31 as the date through which taxable earned surplus is computed.

(11) Gross receipts that relate to income that is described in Tax Code, §171.1061 are allocated to a state and are not included in gross receipts everywhere or Texas gross receipts for apportionment purposes.

(e) Treatment of specific items in the computation of receipts.

(1) Agency reimbursements. Reimbursements from a principal to a corporation that acts as the principal's agent for charges that the agent incurs on behalf of the principal, are not gross receipts. Amounts identified as reimbursements that exceed actual expenses paid to a third party are gross receipts.

(2) Bad debt recoveries. Bad debt recoveries are not gross receipts.

(3) Capital assets and investments. Net gains and losses from sales of investments and capital assets must be added to determine the total receipts from such transactions.

(A) If the combination of net gains and losses results in a net loss, the corporation must report zero gross receipts from such transactions.

(B) If the combination of net gains and losses results in a net gain, and both Texas and out-of-state sales have occurred, then a separate calculation of net gains and losses on Texas sales must be made. If the Texas net gain exceeds the total net gain, then the Texas net gain to report equals the total net gain. Net gain on sales of intangibles held as capital assets or investments is apportioned to the location of the payor. Examples of intangibles include, but are not limited to, stocks, bonds, commodities, futures contracts, patents, copyrights, licenses, trademarks, franchises, goodwill, and general receivable rights.

(4) Capital loss carrybacks and carryforwards. The excess of capital losses over capital gains that are carried back or carried forward for federal income tax purposes must be used in the computation of receipts in the year of the actual loss, not in the year to which such loss is actually used as a carryback or carryforward.

(5) Club membership fees. Club membership fees are Texas receipts if the place where the club's employees or agents perform the service of providing access to club benefits is in Texas.

(6) Computer services and programs. Receipts from the sale of computer software services are apportioned to the location where the services are performed. Receipts from the sale of a computer program (as the term "computer program" is defined in §3.308 of this title (relating to Computers--Hardware, Software, Services, and Sales)) are receipts from the sale of an intangible asset and are apportioned to the legal domicile of the payor.

(7) Condemnation. Revenues from condemnation that result from the taking of property are gross receipts that are apportioned based on the location of the property condemned.

(8) Debt forgiveness. If a creditor releases any part of a debt, then the amount that the creditor forgives is a gross receipt that is apportioned to the legal domicile of the creditor.

(9) Debt retirement. Revenues from the retirement of a corporation's own indebtedness, such as through the corporation's purchase of its own bonds at a discount, are gross receipts that are apportioned to the corporation's state of incorporation. The indebtedness is treated as an investment in the determination of the amount of gross receipts.

(10) Deemed sales of assets under Internal Revenue Code, §338. Amounts that are deemed to have been received by the target corporation are treated as sales of assets by the target corporation, and are apportioned according to rules that otherwise apply to sales of such assets under Tax Code, Chapter 171, or this section. For the purposes of this paragraph, the purchaser of the target's stock is considered the purchaser of the assets.

(11) Demurrage charges. Demurrage charges for the detention or storage of equipment that is used in the transportation of goods and merchandise in interstate commerce are Texas receipts to the extent that the detention or storage occurs in Texas.

(12) DISC or FSC. A DISC (domestic international sales corporation) or FSC (foreign sales corporation) is treated in the same manner as any other corporation, except that a commission DISC or FSC may elect to use the earned surplus apportionment factor of its parent if the parent is doing business in Texas under the guidelines that are outlined in §3.554 of this title (relating to Earned Surplus: Nexus). Receipts from the sale of tangible personal property by a corporation to a DISC or FSC that is located in Texas are not Texas receipts, if the tangible personal property flows uninterrupted from the selling corporation to a foreign purchaser who is located outside of Texas. If a DISC or FSC assembles, packages, repackages, modifies, stores, or otherwise takes physical delivery of tangible personal property in Texas, then the receipts from the sale of the tangible personal property are Texas receipts to the selling corporation.

(13) Dividends and/or interest.

(A) Dividends that are recognized as a reduction of the taxpayer's basis in stock of a corporation for federal income tax purposes are not gross receipts. Dividends that exceed the taxpayer's basis for federal income tax purposes that are recognized as a capital gain are treated as dividends for apportionment purposes.

(B) The following are excluded from Texas receipts and receipts everywhere:

(i) dividends from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States;

(ii) Schedule C special deductions that are excluded from taxable earned surplus;

(iii) dividends and/or interest on federal obligations that are excluded from earned surplus under §3.555(k) of this title (relating to Earned Surplus: Computation);

(iv) interest that is exempt from federal income tax.

(C) Dividends and/or interest that are received from a corporation are apportioned to the state of incorporation of the payor.

(D) Dividends and/or interest that are received from a national bank are apportioned to Texas if the bank's principal place of business is located in Texas. Dividends and/or interest that are received from a bank that is organized under the Texas Banking Code are apportioned to Texas.

(E) Dividends and interest from other sources are apportioned to the legal domicile of the payor, unless otherwise required under Tax Code, Chapter 171, this section, or other rules that have been promulgated under Tax Code, Chapter 171.

(F) For reports that are originally due before January 1, 2000, dividends and/or interest that a banking corporation or savings and loan association receives are apportioned to the commercial domicile of the banking corporation or savings and loan association. For reports that are originally due on or after January 1, 2000, dividends and/or interest that a banking corporation or savings and loan association receives are apportioned to the legal domicile of the payor.

(G) For reports that are originally due on or after January 1, 2002, a banking corporation may exclude from its Texas gross receipts interest that is earned on federal funds and interest that is earned on securities that are sold under an agreement to repurchase and that are held in a correspondent bank that is domiciled in Texas, but the banking corporation must include the interest in its gross receipts everywhere. See §3.560 of this title (Relating to Banking Corporations).

(14) Exchanges of property. Exchanges of property are included in gross receipts to the extent that the exchange is recognized as a taxable transaction for federal income tax purposes. Such exchange must be included in receipts based on the gross exchange value, unless otherwise required under this section.

(15) Federal enclave. All revenues from a corporation's sales, services, leases, or other business activities that are transacted on a federal enclave that is located in Texas are Texas receipts, unless otherwise excepted.

(16) Freight charges. Customer's reimbursements to the seller for freight charges that the seller paid to a third party for goods and merchandise that have been shipped to a customer are not gross receipts when the charges are entered as a separate item on the sales invoice, if the reimbursement does not exceed the actual expenses paid to the third party.

(17) Health care supplies and food. Revenues from sales of health care supplies and food are included in the computation of receipts everywhere and Texas receipts in the same manner as revenues from any other sale of tangible personal property.

(18) Insurance proceeds.

(A) Business interruption insurance proceeds are gross receipts when the proceeds are intended to replace lost profits. Such receipts are apportioned to the legal domicile of the payor of the proceeds.

(B) Revenues from fire and casualty insurance proceeds are apportioned to the location of the damaged or destroyed property.

(19) Intercorporate expense allocations. Expense allocations by a corporation among one or more related entities (other than

income taxes that are allocable to the applicable corporation)--whether recorded as management fees, administrative overhead, interest, accounting services, legal services, or other designations--are gross receipts to the corporation that allocates the expenses, unless an agency relationship exists.

(20) Leases and subleases.

(A) Revenues from the lease or sublease (or rental or subrental) of real property are apportioned to the location of the property.

(B) Revenues from the lease or sublease (or rental or subrental) of tangible personal property are apportioned to the location of the property. If the property is used both inside and outside Texas, then lease payments are apportioned based on the number of days that the tangible personal property was used in Texas divided by the number of days that the tangible personal property was used everywhere. If the amount of revenue that is due under the lease is based on mileage, then the lease payments are apportioned based on the number of miles in Texas divided by the number of miles everywhere.

(C) If a lump sum is charged for leased or subleased (or rented or subrented) property that is located both inside and outside Texas, then the allocation of such revenue is based on the rental value of each item of property.

(D) Revenues from the lease or sublease (or rental or subrental) of a vessel that engages in commerce are apportioned to Texas based on the number of days that the vessel is engaged in commerce in Texas waters divided by the number of days that the vessel is engaged in commerce everywhere.

(E) If a lease, sublease, rental, or subrental of real property or tangible personal property is treated as a sale for federal income tax purposes, then the receipts from the transaction are apportioned in the same manner as a sale. Any portion of the payments that the contracting parties designate as interest is interest receipts.

(21) Litigation awards. Revenues that are realized from litigation awards are gross receipts that are apportioned to the legal domicile of the payor of the proceeds; however, if the litigation awards are intended to replace receipts for which another apportionment rule is provided in this section, then the apportionment must be made in accordance with that rule. For example, if a corporation sues a Delaware corporation to recover on a sale of goods delivered to a Texas location, then a judgment for the amount of that sale would not convert the receipts from Texas receipts to Delaware receipts. See subsection (f) of this section for the apportionment of receipts from judgments, compromises, or settlements that relate to natural gas production.

(22) Loan principal. The principal of a loan that is received or repaid is not a gross receipt. However, if the loan is treated as inventory of the seller for federal income tax purposes, then the gross proceeds of the sale of that loan are considered gross receipts.

(23) Newspapers or magazines. All advertising revenues of a newspaper or magazine, including those revenues derived from out-of-state advertisements, are apportioned to Texas based on the number of newspapers or magazines distributed in Texas. All other receipts must be apportioned in accordance with the apportionment rules otherwise set out in this section. For example, receipts from sales of newspapers or magazines are to be apportioned based on paragraph (37) of this subsection.

(24) Partnership or joint venture. A corporation that is a partner or joint venturer must apportion its share of a partnership or joint venture's income that is included in the corporation's federal taxable income as follows:

(A) for reports that are originally due on or after January 1, 2002, a corporation's share of the gross receipts of a partnership or joint venture must be apportioned as though the corporation directly earned the receipts. Only a partnership's or joint venture's gross receipts that generated income that is included in the corporation's federal taxable income are used as the corporation's gross receipts.

(B) For reports that are originally due before January 1, 2002, a corporation may either use the method provided by subparagraph (A) of this paragraph or use the corporation's share of the partnership or joint venture's net federal taxable income as the corporation's gross receipts. If the corporation's share of the partnership's or joint venture's net federal taxable income is used as the corporation's gross receipts, then the corporation should apportion it based on the principal place of business of the partnership or joint venture.

(25) Patents, copyrights, and other intangible rights.

(A) Receipts from the use of intangibles.

(i) Revenues from a patent royalty are included in Texas receipts to the extent that the patent is utilized in production, fabrication, manufacturing, or other processing in Texas.

(ii) Revenues from a copyright royalty are included in Texas receipts to the extent that the copyright is utilized in printing or other publication in Texas.

(iii) Revenues that the owner of a trademark, franchise, or license receives are apportioned as follows:

(I) for reports that are originally due before January 1, 1998, revenues are apportioned based on the location of the payor;

(II) for reports that are originally due on or after January 1, 1998, revenues are included as Texas receipts to the extent the trademark, franchise or license is used in Texas.

(iv) Revenues from the sale or licensing of computer programs are apportioned to Texas in accordance with paragraph (6) of this subsection.

(B) Sales. Sales of intangibles are apportioned based on the location of payor.

(26) Purchase discounts and allowances. Returns, discounts, and allowances that are granted to a purchaser are not gross receipts to the purchaser even if refunds are given in cash.

(27) Radio/television. All advertising revenues of a radio or television station that broadcasts or transmits from a location in Texas constitute Texas receipts, even though some of the listening or viewing audiences are located outside Texas. All other receipts must be apportioned in accordance with the apportionment rules otherwise set out in this section.

(28) Real property. Revenues from the sale, lease, rental, sublease, or subrental of real property are apportioned to the location of the property.

(29) Sales and services. If a transaction involves elements of both a sale of tangible personal property and a service, but no documentation exists to show separate charges for the sale and service elements, then the comptroller may determine the amounts that are allocable to each element based on fair values or on any available evidence.

(30) Sales discounts. Cash or trade discounts that a seller allows reduce gross sales of the seller in the computation of gross receipts.

(31) Sales returns and allowances. Sales returns and allowances that a seller allows reduce gross sales of the seller in the computation of gross receipts.

(32) Sales taxes. State or local sales taxes that are imposed on the customer, but are collected by a seller are not gross receipts of the seller. However, discounts that a seller is allowed to take in remittance of the collected sales tax are gross receipts to the seller.

(33) Services. Receipts from a service are apportioned to the location where the service is performed. If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas.

(A) For reports that are originally due on or after January 1, 1992, corporations that have taxable earned surplus that is derived, directly or indirectly, from the sale of services to or on behalf of a regulated investment company should refer to Tax Code, §171.106(c), for information on apportionment of such taxable earned surplus.

(B) For reports that are originally due on or after January 1, 1999, corporations that have taxable earned surplus that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan as defined in subsection (b)(4) of this section should refer to the Tax Code, §171.106(d), for information on apportionment of such taxable earned surplus.

(C) Receipts from services that a defense readjustment project performs in a defense economic readjustment zone are not Texas receipts.

(34) Services procurement. Revenues from the procurement of services are apportioned to the place where the service procurement is performed.

(35) Stocks. Receipts from the sale of securities are apportioned based on the location of the payor. If securities are sold through a stock exchange, and the buyer cannot be identified, then 6.5% of the net gain (or gross sales price, if securities are inventory) is a Texas receipt. If the securities are investments, see paragraph (3) of this subsection regarding the computation of receipts.

(36) Subsidies or grants. Proceeds of subsidies or grants that a corporation receives from a governmental agency are gross receipts, except when the funds are required to be expended dollar-for-dollar (i.e., passed through) to third parties on behalf of the agency. Receipts from a governmental subsidy or grant are apportioned in the same manner as the item to which the subsidy or grant was attributed. For example, if a corporation qualifies for a grant to conduct research for the government, then the receipts from that grant are receipts from a service and are apportioned to the location where the research is performed.

(37) Tangible personal property. Examples of transactions that involve the sale of tangible personal property and result in Texas receipts include, but are not limited to, the following:

(A) the sale of tangible personal property that is delivered in Texas to a purchaser. Delivery is complete upon transfer of possession or control of the property to the purchaser, an employee of the purchaser, or transportation vehicles that the purchaser leases or owns. FOB point, location of title passage, and other conditions of the sale are not relevant to the determination of Texas gross receipts;

(B) the sale of tangible personal property that is delivered in Texas to an employee or transportation agent of an out-of-state purchaser. A carrier is an employee or agent of the purchaser if the carrier is under the supervision and control of the purchaser with respect to the manner in which goods are transported;

(C) the sale and delivery in Texas of tangible personal property that is loaded into a barge, truck, airplane, vessel, tanker, or any other means of conveyance that the purchaser of the property leases and controls or owns. The sale of tangible personal property that is delivered in Texas to an independent contract carrier, common carrier, or freight forwarder that a purchaser of the property hires results only in gross receipts everywhere if the carrier transports or forwards the property to the purchaser outside this state;

(D) the sale of tangible personal property with delivery to a common carrier outside Texas, and shipment by that common carrier to a purchaser in Texas;

(E) the sale of oil or gas to an interstate pipeline company, with delivery in Texas;

(F) the sale of tangible personal property that is delivered in Texas to a warehouse or other storage facility that the purchaser owns or leases;

(G) the sale of tangible personal property that is delivered to and stored in a warehouse or other storage facility in Texas at the purchaser's request, as opposed to a necessary delay in transit, even though the property is subsequently shipped outside Texas;

(H) the drop shipment of tangible personal property in Texas. A drop shipment is a shipment of tangible personal property from a seller directly to a purchaser's customer, at the request of the purchaser, without passing through the hands of the purchaser. This results in Texas gross receipts for the seller and the purchaser;

(I) sales to which the throwback rule applies. Each sale of tangible personal property that is shipped from this state to a purchaser in another state in which the seller is not subject to taxation (known as the "throwback rule"). This subparagraph controls if it conflicts with any other provision of this section. Another state means a state of the United States, the District of Columbia, Puerto Rico, or any territory or possession of the United States. A corporation or limited liability company is subject to taxation in another state if the corporation or limited liability company is chartered or organized in that state or has sufficient contact with that state such that a tax on net income could be imposed on the corporation or limited liability company without violating 15 United States Code §381 (i.e., Public Law 86-272). Sales into another state where the seller merely holds a certificate of authority are treated as sales to which the throwback rule applies. Voluntary payment of tax to another state or the inclusion of a corporation or limited liability company in another entity's state combined or consolidated income tax return does not, by itself, cause the corporation or limited liability company to be subject to taxation in another state. The selling corporation or limited liability company must be subject to taxation in the other state during the accounting year upon which the tax is based. Delivery of tangible personal property to another state by use of motor vehicles that the seller owns, leases or rents does not subject the seller to taxation in the other state, and the throwback rule applies, effective for reports that are due originally on or after January 1, 2003. The corporation or limited liability company has the burden of proof that the company is subject to taxation in the other state (see §3.554 of this title (relating to Earned Surplus: Nexus)).

(38) Tax refunds. Tax refunds are not gross receipts. However, interest that is awarded on tax refunds are gross receipts.

(39) Telephone companies.

(A) Revenues from telephone calls that both originate and terminate in Texas are Texas receipts.

(B) Revenues from telephone calls that originate in Texas but terminate outside of Texas or that originate outside of Texas, but terminate in Texas are excluded from Texas receipts.

(C) Revenues from telecommunication services other than those services in subparagraph (A) or (B) of this paragraph are Texas receipts if the services are performed in Texas. For example, a telephone company that provides a long distance carrier access to the telephone company's local exchange network in Texas is performing a service in Texas. Any fee that the telephone company charges the long distance carrier for access to the local exchange network in Texas is a Texas receipt regardless of whether the access is related to an interstate call. For reports originally due before January 1, 2003, a fee that is charged to obtain access to a local exchange network in Texas and that is based on the duration of an interstate telephone call may be excluded from Texas receipts.

(40) Texas waters. Revenues from transactions that occur in Texas waters are Texas receipts. Texas waters are considered to extend to 10,359 statute miles, or nine nautical miles, from the Texas coastline.

(41) Transportation companies. Transportation companies must report Texas receipts from transportation services in intrastate commerce by:

(A) the inclusion of revenues that are derived from the transportation of goods or passengers in intrastate commerce; or

(B) the multiplication of total transportation receipts by total mileage in the transportation of goods and passengers that move in intrastate commerce within Texas divided by total mileage everywhere.

(42) Trusts. Distributions to a corporation that is the beneficiary of a trust are apportioned to the legal domicile of the trust. See subsection (b)(8) of this section regarding the legal domicile of a trust.

(f) Natural Gas Production.

(1) Revenues that a gas producer realizes from the contract price of gas that the gas producer produces and that the purchaser takes pursuant to the terms of sales are gross receipts and are apportioned to Texas, if the gas is delivered in Texas.

(2) Revenues that a gas producer realizes from a purchaser's payment under a sale or purchase contract for gas to be produced even if no gas is produced and delivered to the purchaser, are gross receipts and are apportioned to the legal domicile of the payor.

(3) Revenues that a gas producer realizes from a purchaser's payments to terminate a gas purchase contract are gross receipts and are apportioned to the legal domicile of the payor.

(4) Revenues that a gas producer realizes from a contract amendment that relates to the price of the gas sold are gross receipts from the sales of gas and are apportioned to Texas if delivery is made to a location in Texas. Revenues that the gas producer realizes from a contract amendment that relates to a provision other than the price of gas sold are gross receipts and are apportioned to the legal domicile of the payor.

(5) Revenues that a gas producer realizes from litigation awards for a breach of contract, reimbursements for litigation-related expenses (e.g., documented attorney's fees or court costs), or interest (upon which the parties have agreed, that the records of the producer reflects, or in an amount that a court has ordered) are gross receipts and are apportioned to the legal domicile of the payor.

(6) Revenues that a gas producer realizes from a judgment, compromise, or settlement relating to the recovery of a contract price of

gas produced are gross receipts and are apportioned to Texas to the extent the contract specified delivery to a location in Texas. Revenues that a gas producer realizes from a judgment, compromise, or settlement that relates to several claims or causes of action shall be prorated based upon the documented amounts due under the contract for each claim or cause of action according to the records of the producer. For example, a settlement sum of \$100,000 for a pricing dispute of \$25,000 and for failure to pay for gas not taken in the amount of \$225,000, would result in receipts of \$10,000 from gas sales (100,000 X 25,000/250,000) and receipts from other business of \$90,000 (100,000 X 225,000/250,000). Records of the producer shall include, but are not limited to the following: contracts, settlement agreements, accounting records and entries, court pleadings and worksheets, including calculations reflecting settlement amounts.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2003.

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Deputy General Counsel for Taxation

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

#### CHAPTER 79. LEGAL SERVICES

##### SUBCHAPTER Q. FORMAL APPEALS

###### 40 TAC §79.1601

The Texas Department of Human Services (DHS) adopts an amendment to §79.1601 without changes to the proposed text published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9993).

Justification for the amendment is to clarify that DHS's approval of a nurse aide training and competency evaluation program (NATCEP) is not the granting of a license and that the loss of approval of a NATCEP in a nursing facility that participates only in the Medicaid program is treated as a Medicaid remedy and not as the loss of a license.

DHS received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3734

## CHAPTER 94. NURSE AIDES

The Texas Department of Human Services (DHS) adopts the repeal of §§94.1-94.13; and new §§94.1-94.11 in its Nurse Aides chapter. DHS adopts §§94.3, 94.4, 94.6, and 94.8 with changes to the proposed text published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9994). DHS adopts the repeal of §§94.1-94.13, and new §§94.1, 94.2, 94.5, 94.7, and 94.9-94.11 without changes to the proposed text.

Justification for the repeals and new sections is to streamline the sections and implement changes in federal guidance related to immediate withdrawal of approval of a nurse aide training and competency evaluation program (NATCEP). DHS also undertook the rule changes to implement changes made to the Code of Federal Regulations (CFR) related to initial determination regulations at 42 CFR, Part 498, and to the Medicaid hearing regulations at 42 CFR, Part 431. The new sections were also necessary to clarify that a Medicaid-only nursing facility's loss of approval of a NATCEP is treated as a remedy and not the loss of a license.

DHS received no comments regarding adoption of the repeals and new sections. DHS, however, has initiated seven minor changes to the text of §§94.3, 94.4, 94.6, and 94.8 to correct references within the chapter and grammar.

###### 40 TAC §§94.1 - 94.13

The repeals are adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2003.

TRD-200300469

Paul Leche  
General Counsel, Legal Services  
Texas Department of Human Services  
Effective date: March 1, 2003  
Proposal publication date: October 25, 2002  
For further information, please call: (512) 438-3734



#### 40 TAC §§94.1 - 94.11

The new sections are adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§94.3. *Nurse Aide and Training Competency Evaluation Program (NATCEP) Requirements.*

(a) A facility may offer a NATCEP or contract with another NATCEP in order to train nurse aides.

(b) A person or entity that desires to offer a NATCEP must file a complete application for approval on official forms prescribed by DHS.

(c) A facility that is prohibited from participating in the training and testing of nurse aides under subsection (g) of this section may arrange with an external entity to provide training in the facility according to provisions under §1819(f)(2) of the Act (42 United States Code (USC) 1395i-3(f)(2)) and §1919(f)(2) of the Act (42 USC 1396r(f)(2)) if:

- (1) the program is offered in order to train employees of a facility that is prohibited from training under subsection (g) of this section;
- (2) the program is offered in, but not by, the prohibited facility;
- (3) there is no other such program offered within a reasonable distance of the facility; and
- (4) an adequate environment exists for operating the program in the facility.

(d) A waiver of prohibition will be approved for a period not to exceed two years; however, approval will be withdrawn earlier if the facility is subsequently found to no longer meet the waiver criteria.

(e) A person or entity desiring to apply for a NATCEP according to subsection (c) of this section must submit a completed application as per §94.6 of this title (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)), and include the name of the prohibited facility within the application.

(f) Applicants must submit one application for each classroom location.

(g) DHS will not approve a NATCEP offered by or in a facility if, within the previous two years, the facility:

(1) has operated under a waiver concerning the services of a registered nurse under 42 United States Code (USC), §1395i-3(b)(4)(C)(ii)(II) (Social Security Act (SSA)),

§1819(b)(4)(C)(ii)(II) or under 42 USC, §1396r(b)(4)(C)(ii) (SSA, §1919(b)(4)(C)(i)-(ii));

(2) has been subject to an extended or partially extended survey under 42 USC, §1395i-3(g) (SSA, §1819(g)(2)(B)(i)) or under 42 USC, §1396r(g) (SSA, §1919(g)(2)(B)(i));

(3) has been assessed a civil money penalty of not less than \$5,000 as described in 42 USC, §1395i-3(h) (SSA, §1819(h)(2)(B)(ii)) or in 42 USC, §1396r(h) (SSA, §1919(h)(2)(A)(ii));

(4) has been subject to denial of payment under Title XVIII or Title XIX;

(5) operated under state-appointed temporary management to oversee the operation of the facility under 42 USC §1395i-3(h) (SSA, §1819(h)) or under 42 USC, §1396r(h) (SSA, §1919(h));

(6) had its participation agreement terminated under 42 USC §1395i-3(h)(4) (SSA, §1819(h)(4)) or under 42 USC, §1396r(h)(1)(B)(i) (SSA, §1919(h)(1)(B)(i)); or

(7) pursuant to state action, closed or had its residents transferred under 42 USC §1396r(h)(2) (SSA, §1919(h)(2)).

(h) Each NATCEP must teach a minimum of 75 clock hours of training, including at least:

(1) 51 clock hours of classroom training defined as classroom and skills training that does not involve direct care of residents by trainees; and

(2) 24 clock hours of clinical training defined as hands-on care of residents in a nursing facility.

(i) Each NATCEP must teach the curriculum established by DHS, and as described in the Code of Federal Regulations, Title 42, §483.152, to include at least 16 introductory hours of training in the following areas before any direct contact with a resident:

- (1) communication and interpersonal skills;
- (2) infection control;
- (3) safety and emergency procedures, including the Heimlich maneuver;
- (4) promoting the resident's independence;
- (5) respecting the resident's rights;
- (6) basic nursing skills:
  - (A) taking and recording vital signs;
  - (B) measuring and recording height and weight;
  - (C) caring for the resident's environment;
  - (D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and
  - (E) caring for the resident when death is imminent;
- (7) personal care skills, including but not limited to:
  - (A) bathing;
  - (B) grooming, including mouth care;
  - (C) dressing;
  - (D) toileting;
  - (E) assisting with eating and hydration;
  - (F) proper feeding techniques;
  - (G) skin care; and



- (H) transfers, positioning, and turning;
- (8) mental health and social service needs:
  - (A) modifying aide's behavior in response to the resident's behavior;
  - (B) awareness of developmental tasks associated with the aging process;
  - (C) how to respond to the resident's behavior;
  - (D) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
  - (E) using the resident's family as a source of emotional support;
- (9) care of cognitively impaired residents:
  - (A) techniques for addressing the unique needs and behaviors of an individual with dementia (Alzheimer's disease and others);
  - (B) communicating with a cognitively impaired resident;
  - (C) understanding the behavior of cognitively impaired residents;
  - (D) appropriate responses to the behavior of a cognitively impaired resident; and
  - (E) methods of reducing the effects of cognitive impairments;
- (10) basic restorative services:
  - (A) training the resident in self care according to the resident's abilities;
  - (B) use of assistive devices in transferring, ambulation, eating, and dressing;
  - (C) maintenance of range of motion;
  - (D) proper turning and positioning in bed and chair;
  - (E) bowel and bladder training; and
  - (F) care and use of prosthetic and orthotic devices; and
- (11) resident's rights:
  - (A) providing privacy and maintenance of confidentiality;
  - (B) promoting the resident's right to make personal choices to accommodate their needs;
  - (C) giving assistance in resolving grievances and disputes;
  - (D) providing needed assistance in getting to and participating in resident, family, group, and other activities;
  - (E) maintaining care and security of the resident's personal possessions;
  - (F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and
  - (G) avoiding the need for restraints in accordance with current professional standards.

(j) A NATCEP must have a DHS-approved program director and program instructor at the time of initial approval and during the time training occurs who meet the requirements of §94.5(a) and (b) of this title (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(k) A NATCEP must ensure that trainees:

- (1) are not listed on the Nurse Aide Registry in revoked status;
- (2) complete at least the first 16 hours of training (Section I of the curriculum) before any direct contact with a resident;
- (3) do not perform any services for which they have not been trained and have been found to be proficient by an instructor;
- (4) are under the direct supervision of a licensed nurse when performing skills on individuals as part of a NATCEP;
- (5) are under the general supervision of a licensed nurse when providing services to a resident; and
- (6) are clearly identified as trainees during the clinical training.

(l) A NATCEP must notify DHS of any change in the information presented in an approved application, including a change in program director or program instructor. DHS must approve such changes before the effective date of the change. DHS will conduct a review of the program if it determines the changes are substantive.

(m) Each NATCEP must use a DHS performance record to account for major duties or skills taught, trainee performance of duty or skill, satisfactory or unsatisfactory performance, and name of instructor supervising the performance. At the completion of the NATCEP, the trainee and his or her employer, if applicable, will receive a copy of the performance record.

(n) The NATCEP must maintain records that must be available to DHS or its designees at any reasonable time, which include for each new session of the NATCEP:

- (1) dates and times of all classroom and clinical hours;
- (2) full name and social security number of each trainee;
- (3) attendance record of each trainee; and
- (4) final course grade for the training portion of the NATCEP that indicates pass or fail for each trainee.

(o) Each NATCEP must meet the requirements of this title and the CEP as specified in §94.4(b)-(n) of this title (relating to Competency Evaluation Program (CEP) Requirements).

(p) A nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the nurse aide begins a NATCEP may not be charged for any portion of the NATCEP, including any fees for textbooks or other required course materials.

(q) If an individual does not meet the requirements of subsection (p) of this section, but becomes employed as a nurse aide by, or receives an offer of employment as a nurse aide from, a facility not later than 12 months after completing a NATCEP, the state provides for the reimbursement of costs incurred in completing the NATCEP on a pro rata basis during the period in which the individual is employed as a nurse aide.

(r) DHS must approve a NATCEP before operation or solicitation or enrollment of trainees.

(s) DHS approval of a NATCEP covers only approval of the required DHS curriculum and hours and should not be considered approval of additional content or hours.

(t) An orientation given by a facility to a nurse aide employed in the facility does not constitute a part of a NATCEP.

*§94.4. Competency Evaluation Program (CEP) Requirements.*

(a) All examinations will be administered by a DHS-designated examiner to individuals who have successfully completed the training portion of a NATCEP or are eligible to take a CEP under §94.9 of this title (relating to Waiver, Reciprocity, and Exemption Requirements).

(b) Requirements for the competency evaluation portion of a NATCEP are:

(1) A trainee is eligible to take the competency evaluation portion of a NATCEP if he or she has successfully completed the training portion of a NATCEP as determined by the program director.

(2) An eligible trainee will take the examination as part of the same NATCEP. If it is not possible to test with the same NATCEP, a nurse aide may take the examination at another approved facility or at a NATCEP that has volunteered to serve as an examination site.

(3) An eligible trainee who does not test with the same NATCEP must obtain from the program director of the NATCEP a signed CEP application or a certificate or letter to present to the skills examiner before taking the examination, as described in §94.5(a)(4)(E)-(F) of this title (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(c) An approved facility or NATCEP serving as an examination site is responsible for:

(1) providing the facility where the skills examination will be given and the location where the written or oral examination will be given;

(2) offering the examination to its own trainees promptly after successful completion of the training portion of a NATCEP;

(3) offering the examination to an eligible examinee employed by or who has received an offer of employment from the facility, if the individual desires to be examined at the facility;

(4) offering the examination to other eligible examinees the facility or NATCEP has voluntarily accepted for the examination;

(5) scheduling examinations and retests with DHS's designated examiner; and

(6) ensuring applications for examination are completed accurately.

(d) The examinee is responsible for:

(1) taking the examination within 24 months of completion of the training portion of the NATCEP:

(A) with the NATCEP where the examinee was trained;

(B) at an approved facility from which the individual has received an offer of employment or is employed; or

(C) at an approved facility or NATCEP that has volunteered to accept the examinee for examination;

(2) verifying the arrangements for examination with the examination site;

(3) presenting the completed application for examination and documentation to the skills examiner before the examination, as required under subsection (b)(3) of this section or §94.9(c) of this title;

(4) requesting a retest if the examinee fails the examination; and

(5) meeting any other procedural requirements specified by DHS or its designated examiner.

(e) DHS or designated examiner is responsible for:

(1) providing instructions and eligibility forms to applicants for a CEP and provide a letter of approval as specified in §94.9(c) of this title;

(2) assisting an eligible examinee find an approved facility or NATCEP to serve as an examination site;

(3) scheduling examinations and retests for the requesting approved facility or NATCEP; and

(4) administering examinations and report results of examinations as required by DHS.

(f) The examination must consist of:

(1) the skills examination, which includes the trainee demonstrating five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) the written or oral examination, which includes 60 scored multiple choice questions selected from a pool of test items that address each course requirement in the curriculum. The written examination questions are printed in a test booklet with a separate answer sheet. The oral examination is a tape-recorded presentation read from a prepared text in a neutral manner that includes additional questions to test reading comprehension.

(g) A nurse aide with a disability may take the examination to establish competency under this section by requesting a reasonable accommodation pursuant to the Americans with Disabilities Act.

(h) Successful completion of the examination consists of a passing grade on the:

(1) skills examination as determined by DHS; and

(2) written or oral examination as determined by DHS.

(i) A person who fails the skills examination or the written or oral examination may retest twice on the failed examination.

(1) The person will be advised of the areas he or she did not pass.

(2) The person must request re-examination through the approved facility, NATCEP, or DHS's designated examiner.

(3) DHS is not required to set special re-examination schedules.

(4) After failing the examination three times, the individual must complete the training portion of a NATCEP before retesting.

(j) The state must advise in advance any individual who takes the examination that a record of the successful completion of the examination will be included on the Nurse Aide Registry.

(k) A record of successful completion of the examination must be included on the Nurse Aide Registry within 30 days of the date the examination was passed.

(l) An examination will not be offered by or in a facility if the facility falls within any of the provisions of §94.3(g) of this title (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(m) A nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the nurse aide begins a CEP may not be charged for any portion of the CEP.

(n) If an individual does not fall under this subsection, but becomes employed as a nurse aide by, or receives an offer of employment as a nurse aide from, a facility not later than 12 months after completing a CEP, the state must provide for the reimbursement of costs incurred in completing the CEP on a pro rata basis during the period in which the individual is employed as a nurse aide.

§94.6. *Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP).*

(a) A person or entity that desires to offer a NATCEP must file a complete application for approval on forms prescribed by DHS.

(b) DHS will consider whether the applicant complies with the Act and this chapter.

(c) Notice of approval, proposed disapproval of the application, or request for additional information will be given to the applicant within 90 days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Act or this chapter, the reason for disapproval must be given in the notice.

(d) The applicant will be notified in writing of any deficiencies or errors found in the application and given an opportunity to make corrections with provisions of the Act and this chapter by providing a written response within 10 days of receipt of the notice.

(e) If DHS proposes to deny approval of NATCEP based on the criteria listed at §94.3(a)-(f) and (h)-(t) of this title (relating to Nurse Aide and Training Competency Evaluation Program Requirements (NATCEP)), or the requirements found at §94.7 of this title (relating to Approval, Reapproval, and Inspection of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the applicant (individual, facility, or entity) may request a hearing. Such requests must be made, in writing, within 20 days of the date the notice is received by the applicant. Such hearing will be held pursuant to the applicable provisions of DHS's formal hearing procedures provided in Chapter 79, Subchapter Q, of this title (relating to Formal Appeals). The final hearing decision will be made as provided in this subsection. The administrative law judge, on completion of the hearing, must prepare a written decision based solely on the evidence presented at the hearing and the statutory and regulatory provisions of the Act and this chapter. The decision must state the reasons for the decision.

(1) If an applicant does not make a timely request for a hearing, the applicant is deemed to have waived the opportunity for a hearing and the proposed action may be taken.

(2) If an applicant who has requested a hearing fails to appear or be represented at the scheduled hearing, the applicant is deemed to have waived the opportunity for a hearing and the proposed action may be taken.

§94.8. *Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).*

(a) DHS will immediately withdraw approval of a NATCEP in a facility that has:

(1) been granted a waiver concerning the services of an RN under 42 United States Code (USC), §1395i-3(b)(4)(C)(ii)(II)

(Social Security Act (SSA), §1819(b)(4)(C)(ii)(II)) or under 42 USC, §1396r(b)(4)(C)(ii) (SSA, §1919(b)(4)(C)(i)-(ii)).

(2) been subject to an extended (or partially extended) survey under 42 USC, §1395i-3(g) (SSA, §1819(g)(2)(B)(i)) or under 42 USC, §1396r(g) (SSA, §1919(g)(2)(B)(i));

(3) been assessed a civil money penalty of not less than \$5,000 as described in 42 USC, §1395i-3(h) (SSA, §1819(h)(2)(B)(ii)) or in 42 USC, §1396r(h) (SSA, §1919(h)(2)(A)(ii));

(4) been subject to denial of payment under Title XVIII or Title XIX;

(5) operated under state-appointed temporary management to oversee the operation of the facility under 42 USC §1395i-3(h) (SSA, §1819(h)) or under 42 USC, §1396r(h) (SSA, §1919(h));

(6) had its participation agreement terminated under 42 USC §1395i-3(h)(4) (SSA, §1819(h)(4)) or under 42 USC, §1396r(h)(1)(B)(i) (SSA, §1919(h)(1)(B)(i));

(7) pursuant to state action, closed or had its residents transferred under 42 USC §1396r(h)(2) (SSA, §1919(h)(2)); or

(8) refused to permit unannounced visits by DHS.

(b) DHS may withdraw approval of a NATCEP because of program noncompliance with §94.3 of this title (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(c) If DHS proposes to withdraw approval of a NATCEP based on the criteria listed in subsection (a)(1)-(8) of this section, DHS will notify the facility by certified mail of the facts or conduct alleged to warrant the action at the last known address as shown in DHS's records.

(d) Dually certified and skilled nursing facilities offering a NATCEP may appeal the findings of noncompliance that led to the loss of their NATCEP, but not the loss of the NATCEP itself, by requesting a hearing pursuant to Code of Federal Regulations (CFR), Title 43, §498.3(b)(14)(ii) and §498.3(b)(16).

(e) Facilities offering a NATCEP that participate only in Medicaid may appeal the findings of noncompliance that led to the loss of their NATCEP, but not the loss of the NATCEP itself, by requesting a hearing in accordance with provisions in Chapter 79, Subchapter Q, of this title (relating to Formal Appeals). A facility has 60 days from receipt of the certified mail notice to request a hearing.

(f) A facility may appeal under subsection (d) or (e) of this section, but not both. A facility is not entitled to two appeals of the findings of noncompliance that led to the loss of its NATCEP.

(g) If the facility requests an informal dispute resolution or formal appeal for the non-compliance that resulted in the loss of the NATCEP, and the allegation of non-compliance is overturned, the withdrawal of approval for the NATCEP will be rescinded.

(h) If DHS proposes to withdraw a NATCEP based on the criteria listed at §94.3(a)-(f) and (h)-(t) of this title, or the requirements found at §94.7 of this title (relating to Approval, Reapproval, and Inspection of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the NATCEP may request a hearing. Such request must be made, in writing, within 20 days of the date the notice is received by the NATCEP. Such hearing will be held pursuant to the applicable provisions of DHS's formal hearing procedures as provided in Chapter 79, Subchapter Q, of this title. The final hearing decision will be made as provided in this subsection. The administrative law judge, on completion of the hearing, must prepare a written decision based solely on the evidence presented at the hearing and the statutory and

regulatory provisions of the Act and this chapter. The decision must state the reasons for the decision.

(1) If the NATCEP does not make a timely request for a hearing, the NATCEP is deemed to have waived the opportunity for a hearing and the proposed action may be taken.

(2) If the NATCEP that has requested a hearing fails to appear or be represented at the scheduled hearing, the NATCEP is deemed to have waived the opportunity for a hearing and the proposed action may be taken.

(i) Students who have started a NATCEP from which approval is to be or has been withdrawn will be allowed to complete the NATCEP.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2003.

TRD-200300470

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: March 1, 2003

Proposal publication date: October 25, 2002

For further information, please call: (512) 438-3734



## PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

### CHAPTER 702. GENERAL ADMINISTRATION SUBCHAPTER E. MEMORANDUM OF UNDERSTANDING WITH OTHER STATE AGENCIES

#### 40 TAC §702.417

The Texas Department of Protective and Regulatory Services (PRS) adopts new §702.417, with changes to the proposed text published in the December 6, 2002, issue of the *Texas Register* (27 TexReg 11501).

The justification for the new section is to adopt by reference Texas Education Agency's (TEA's) rule at 19 TAC §89.1115, which contains the memorandum of understanding (MOU) between TEA, PRS, and seven other agencies. The section is required by the Texas Education Code, §29.012.

The new section will function by ensuring better coordination of the free and appropriate public education of individuals under 22 years of age living in residential facilities.

No comments were received regarding adoption of the section. PRS is adopting the section with a change to correct a typographical error.

The new section is adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of department programs.

The new section implements the Texas Education Code, §29.012.

§702.417. *Memorandum of Understanding (MOU) Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.*

The Texas Department of Protective and Regulatory Services adopts by reference 19 TAC §89.1115, which contains the Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities, as authorized by the Texas Education Code, 29.012. The MOU addresses respective roles and responsibilities of participating agencies in the sharing of information about, and coordination of services to, students with disabilities receiving special education services that live in residential facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300493

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: February 13, 2003

Proposal publication date: December 6, 2002

For further information, please call: (512) 438-3437



## CHAPTER 732. CONTRACTED SERVICES

The Texas Department of Protective and Regulatory Services (PRS) adopts an amendment to §732.103, and adopts new §§732.401, 732.403, 732.405, 732.407, 732.409, 732.411, 732.413, 732.415, 732.417, 732.419, 732.421, 732.423, 732.425, 732.427, 732.429, and 732.431, without changes to the proposed text published in the December 6, 2002, issue of the *Texas Register* (27 TexReg 11505).

The justification for the sections is to update PRS contracting rules to comply with Chapter 2260 of the Texas Government Code.

The sections will function by ensuring that the dispute resolution process for alleged breaches of contract by PRS will be clearer.

No comments were received regarding adoption of the sections.

### SUBCHAPTER A. GENERAL PROCEDURES

#### 40 TAC §732.103

The amendment is adopted under the Human Resources Code, §40.029, which authorizes the Department to adopt rules to facilitate the implementation of Department programs.

The amendment implements the Human Resources Code, §40.029, and Government Code, §2260.052(c).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300494  
C. Ed Davis  
Deputy Director, Legal Services  
Texas Department of Protective and Regulatory Services  
Effective date: February 13, 2003  
Proposal publication date: December 6, 2002  
For further information, please call: (512) 438-3437



**SUBCHAPTER N. DISPUTE RESOLUTION**

**40 TAC §§732.401, 732.403, 732.405, 732.407, 732.409,  
732.411, 732.413, 732.415, 732.417, 732.419, 732.421,  
732.423, 732.425, 732.427, 732.429, 732.431**

The new sections are adopted under the Human Resources Code, §40.029, which authorizes the Department to adopt rules to facilitate the implementation of Department programs.

The new sections implement the Human Resources Code, §40.029, and Government Code, §2260.052(c).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2003.

TRD-200300495  
C. Ed Davis  
Deputy Director, Legal Services  
Texas Department of Protective and Regulatory Services  
Effective date: February 13, 2003  
Proposal publication date: December 6, 2002  
For further information, please call: (512) 438-3437



# TEXAS DEPARTMENT OF INSURANCE

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Notification Pursuant to the Insurance Code, Chapter 5,  
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30<sup>th</sup> day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10<sup>th</sup> day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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## Texas Department of Insurance

### Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF NEW AND/OR ADJUSTED 2003 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 2003 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-1202-46-I) was published in the December 27, 2002 issue of the *Texas Register* (27 TexReg 12379).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 2003 model year of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-1202-46-I, which are incorporated by reference into Commissioner's Order No. 03-0067.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Insurance Code Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with Insurance Code Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on the 60th day after publication of the notification of the Commissioner's action in the Texas Register.

TRD-200300710  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 29, 2003

◆ ◆ ◆  
EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF NEW AND/OR ADJUSTED 2003 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 2003 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-1202-45-I) was published in the December 27, 2002 issue of the *Texas Register* (27 TexReg 12379).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 2003 model year of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-1202-45-I, which are incorporated by reference into Commissioner's Order No. 03-0066.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Insurance Code Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with Insurance Code Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on the 60th day after publication of the notification of the Commissioner's action in the Texas Register.

TRD-200300711  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 29, 2003

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# 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.

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## Agency Rule Review Plan

Texas State Board of Public Accountancy

### Title 22, Part 22

TRD-200300487

Filed: January 24, 2003



## Proposed Rule Reviews

Employees Retirement System of Texas

### Title 34, Part 4

The Employees Retirement System of Texas files this notice of intent to review the rules contained in Chapter 85 (Flexible Benefits). This review is pursuant to Section 2001.039, Texas Government Code, as added by Chapter 1499, Acts of the 76th Legislature, Regular Session (1999).

Chapter 85. Flexible Benefits

§85.1. Introduction and Definitions

§85.3. Eligibility and Participation

§85.5. Benefits

§85.7. Enrollment

§85.9. Payment of Claims from Reimbursement Accounts

§85.11. Administration

§85.13. Funding

§85.15. Termination and Amendment of Plan

§85.17. Grievance Procedure

§85.19. Termination of Coverage

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received by 5:00 p.m. on March 10, 2003, and submitted to Paula Jones, General Counsel, Employees Retirement System of Texas, 18th & Brazos, P.O. Box 13207, Austin, Texas 78711-3207.

TRD-200300690

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: January 28, 2003



General Land Office

### Title 31, Part 1

In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 1 relating to Executive Administration.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 9 relating to Exploration.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 10 relating to Exploration and Development of State Minerals Other Than Oil and Gas.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 14 relating to Relationship Between Agency and Private Organizations.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 19 relating to Oil Spill Prevention and Response.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. During the review process, the GLO may also determine that a specific rule may need to be amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or

comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200300452

Larry L. Laine  
Chief Clerk/Deputy Land Commissioner  
General Land Office  
Filed: January 22, 2003



#### Boards for Lease of State-Owned Lands

##### Title 31, Part 5

In accordance with Section 2001.039 Government Code, the School Land Board submits the following Notice of Intent to Review the rules found in 31 TAC, Part 5, Chapter 201 relating to Operations of the Texas Parks and Wildlife Department and Texas Department of Criminal Justice.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. During the review process, the GLO may also determine that a specific rule may need to be amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200300454

Larry L. Laine  
Chief Clerk/Deputy Land Commissioner  
Boards for Lease of State-Owned Lands  
Filed: January 22, 2003



#### Texas State Board of Public Accountancy

##### Title 22, Part 22

The Texas State Board of Public Accountancy will review and consider for readoption, revision or repeal Title 22 Texas Administrative Code, Part 22, Chapters 501, 505, 507, 509, 511, 512, 513, 515, 517, 519, 521, 523, 525, 526 and 527.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review the Board will determine whether the reasons for the rule continue to exist. The rule review will also determine whether the rule is obsolete, whether the rule reflects current legal and policy considerations and whether the rule reflects current procedures of the Board.

Any comments pertaining to this notice of intention to review may be submitted within the next 120 days to General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701. Any proposed changes to the rules as a result of



this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

Chapter 501. Rules of Professional Conduct  
Chapter 505. The Board  
Chapter 507. Employees of the Board  
Chapter 509. Rulemaking  
Chapter 511. Certification as a CPA  
Chapter 512. Certification by Reciprocity  
Chapter 513. Registration  
Chapter 515. Licenses  
Chapter 517. Temporary Practice in Texas  
Chapter 519. Practice and Procedure  
Chapter 521. Fee Schedule  
Chapter 523. Continuing Professional Education  
Chapter 525. Criminal Background Investigations  
Chapter 526. Board Opinions  
Chapter 527. Peer Review  
TRD-200300488  
Amanda G. Birrell  
General Counsel  
Texas State Board of Public Accountancy  
Filed: January 24, 2003

School Land Board

#### **Title 31, Part 4**

In accordance with Section 2001.039 Government Code, the School Land Board submits the following Notice of Intent to Review the rules found in 31 TAC, Part 4, Chapter 151 relating to Operations of the School Land Board.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. During the review process, the GLO may also determine that a specific rule may need to be amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200300453  
Larry L. Laine  
Chief Clerk/Deputy Land Commissioner  
School Land Board  
Filed: January 22, 2003

◆ ◆ ◆  
Texas Workers' Compensation Commission

#### **Title 28, Part 2**

Notice of Intention to Review

The Texas Workers' Compensation Commission files this notice of intention to review the rule contained in chapter 156 concerning Representation Of Parties Before The Agency-Carrier's Austin Representative. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting this rule continues to exist and it proposes to readopt chapter 156. Comments regarding whether the reason for adopting this rule continues to exist must be received by 5:00 p.m. on March 8, 2003. You may comment by mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, MS 4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Chapter 156. Representation Of Parties Before The Agency-Carrier's Austin Representative

§156.1. Carrier's Austin Representative. Susan Cory General Counsel Texas Workers' Compensation Commission Filed:

TRD-200300464  
Susan Cory  
General Counsel  
Texas Workers' Compensation Commission  
Filed: January 23, 2003

◆ ◆ ◆  
**Adopted Rule Reviews**

Texas Education Agency

#### **Title 19, Part 2**

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 150 in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11183).

The TEA finds that the reason for adopting continues to exist. The TEA received no comments related to the rule review requirement as to whether the reason for adopting the rules continues to exist. No changes are being proposed as a result of the review. This concludes the review of 19 TAC Chapter 150.

TRD-200300473  
Cristina De La Fuente-Valadez  
Manager, Policy Planning  
Texas Education Agency  
Filed: January 23, 2003

◆ ◆ ◆  
The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 153, School District Personnel, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 153 in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11183).

The TEA received the following comments related to the rule review requirement as to whether the reason for adopting the rules continues to exist.

Comment. Relating to 19 TAC §153.1021, the director general of the International Baccalaureate Organization (IBO) stated that adding the IBO as a recognized accrediting entity for salary increment purposes would greatly enhance the possibility that IB teachers and staff, in over 1,200 schools in 102 countries who may be relocating, would apply for positions in Texas.

Comment. Relating to 19 TAC §153.1021, the director of accreditation services of the European Council of International Schools (ECIS) stated that ECIS wishes to formally request that it be added to the TEA list of recognized accrediting entities for the purpose of recognition of teacher service in ECIS-accredited schools.

Comment. Relating to 19 TAC §153.1021, the director of the National Council for Private School Accreditation (NCPSA) expressed their hope that the TEA will list NCPSA along with the names of its members in its formal recognition and acceptance of creditable private school accrediting association.

Comment. Relating to 19 TAC §153.1021, the human resources executive director of Hidalgo Independent School District commented that the inclusion of additional accrediting agencies in Europe and other

areas worldwide would help to ensure a higher degree of equity and fairness for many outstanding teachers who currently stand to lose a substantial amount of money.

Agency Response. The agency agrees with these comments that the addition of these international entities could greatly enhance the possibility that qualified private school teachers would be encouraged to relocate to Texas public schools. The TEA is proposing an amendment to 19 TAC §153.1021 that adds the previously-mentioned international organizations as recognized accrediting entities for salary increment purposes. The proposal can be found in the Proposed Rules section of this issue of the *Texas Register*.

The TEA finds that the reason for adopting continues to exist. The TEA is proposing amendment to 19 TAC §153.1021, which may be found in the Proposed Rules section of this issue. This concludes the review of 19 TAC Chapter 153.

TRD-200300474  
Cristina De La Fuente-Valadez  
Manager, Policy Planning  
Texas Education Agency  
Filed: January 23, 2003



# TABLES & GRAPHICS

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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.

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## CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the State of (insert name of State), herein referred to as guarantor. This guarantee is made to the Texas Commission on Environmental Quality (TCEQ) on behalf of (owner or operator) of (business address), which is (one of the following: "our subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in 30 TAC §37.11 (relating to Definitions)."

## RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 30 Texas Administrative Code (TAC) §37.251 (relating to Financial Test) and §37.261 (relating to Corporate Guarantee).
2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: permit number, name, and physical and mailing addresses. Indicate for each whether guarantee is for closure, post closure, or corrective action).
3. "Closure or post closure plans" as used below refer to the plans maintained as required for the closure or post closure of the facilities as identified above.
4. For value received from (owner or operator), (describe consideration and dollar amount), guarantor guarantees to TCEQ that in the event that (owner or operator) fails to perform (closure, post closure, or corrective action) of the above facility(ies) in accordance with the closure plans, post closure plans, or corrective action, permits, and other applicable requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 30 TAC §37.201 (relating to Trust Fund), in the name of (owner or operator) in the amount of the current cost estimate.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the TCEQ executive director and to (owner or operator) that the guarantor intends to provide alternate financial assurance as specified in 30 TAC Chapter 37 (relating to Financial Assurance), as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.
6. The guarantor agrees to notify the TCEQ executive director by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the TCEQ executive director of a determination that guarantor no longer meets the financial test criteria or is disallowed from continuing as a guarantor of (closure, post closure, or corrective action), guarantor shall establish alternate financial assurance as specified in Subchapter C of 30 TAC Chapter 37 (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), in the name of (owner or operator) unless (owner or operator) has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post closure plans, or corrective action requirements, amendment or modification of the permit, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator.
9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) must comply with the applicable financial assurance requirements of 30 TAC Chapter 37 for the above-listed facilities, except as provided in paragraph 10 of this agreement.
10. Guarantor may terminate this guarantee by sending notice by certified mail to the TCEQ executive director and to (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the TCEQ executive director approves, alternate financial assurance.
11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in 30 TAC Chapter 37, as applicable, and obtain written approval of such assurance from the TCEQ executive director within 90 days after a notice of termination by the guarantor is received by the TCEQ executive director from guarantor, guarantor shall provide such alternate financial assurance in the name of the (owner or operator).
12. Guarantor expressly waives notice of acceptance of this guarantee by the TCEQ or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure plans, post closure plans, or corrective action requirements, and of amendments or modifications of the permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §37.361 as such regulations were constituted on the date first above written.

Effective date: \_\_\_\_\_

(Name of guarantor) \_\_\_\_\_

(Authorized signature for guarantor) \_\_\_\_\_

(Type name of person signing) \_\_\_\_\_

(Title of person signing) \_\_\_\_\_

Signature of witness or notary: \_\_\_\_\_

Figure: 30 TAC §37.825(d)

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of (insert: name and address of the owner, operator, or guarantor). This letter is in support of the use of (insert: "the financial test of self-insurance," and/or "guarantee") to demonstrate financial assurance for (insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage") caused by (insert: "sudden accidental releases" and/or "nonsudden accidental releases") in the amount of at least (insert: dollar amount) annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this (insert: "owner or operator," and/or "guarantor"): (List for each facility: the name and address of the facility where tanks assured by this financial test are located. Alternatively, if the number of tanks which a firm owns or operates in the United States exceeds 20, and all of these tanks are being covered by the same guarantee, state the exact location where the information relating to the number of tanks at each facility and the names and addresses of the facilities where the tanks are located can be found. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the registration information submitted under Title 30, Texas Administrative Code (TAC), §334.7 (relating to Registration for USTs).)

This firm is the owner, operator, or guarantor of the following facilities for which financial assurance is being demonstrated under other TCEQ, EPA regulations, or state program authorized by EPA through a financial test or guarantee. (For each program area identify: the facility name, physical and mailing addresses, federal or state equivalent regulations, permit number, current cost estimate, and liability coverage. Identify for each current cost estimate the amount designated for closure, post closure, corrective action, or liability coverage.)

- (a) Municipal solid waste management facilities under 30 TAC Chapter 330, 40 CFR part 258 or equivalent \$ \_\_\_\_\_
  - (b) Underground injection control facilities under 30 TAC Chapter 331, 40 CFR part 144 or equivalent \$ \_\_\_\_\_
  - (c) PCB storage facilities under 40 CFR part 761 or equivalent \$ \_\_\_\_\_
  - (d) Hazardous waste treatment, storage, and disposal facilities under 30 TAC Chapter 335, 40 CFR parts 264 and 265 or equivalent \$ \_\_\_\_\_
  - (e) Additional environmental obligations not shown above \$ \_\_\_\_\_
- Total (a)-(e) \$ \_\_\_\_\_

This (insert "owner or operator," or "guarantor") has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on its financial statements for the latest completed fiscal year.

(Fill in the information for Alternative I if the criteria of §37.825(b) of this title (relating to Financial Test of Self-Insurance) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of §37.825(c) of this title are being used to demonstrate compliance with the financial test requirements.)

ALTERNATIVE I

- |     |   |          |       |
|-----|---|----------|-------|
| 1.  | Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee   | \$ _____ |       |
| 2.  | Sum of current cost estimates for closure, post closure, corrective action, and liability coverage (total of (a)-(e) directly above)                                  | \$ _____ |       |
| 3.  | Sum of lines 1 and 2  | \$ _____ |       |
| 4.  | Total tangible assets   | \$ _____ |       |
| 5.  | Total liabilities (if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6) | \$ _____ |       |
| 6.  | Tangible net worth (subtract line 5 from line 4)  | \$ _____ |       |
|     |   | Yes      | No    |
| 7.  | Is line 6 at least \$10 million?  | _____    | _____ |
| 8.  | Is line 6 at least 10 times line 3?   | _____    | _____ |
| 9.  | Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?  | _____    | _____ |
| 10. | Have financial statements for the latest fiscal year been filed with the Energy Information Administration?   | _____    | _____ |
| 11. | Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?  | _____    | _____ |
| 12. | Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A?                           | _____    | _____ |
|     | (Answer "Yes" only if both criteria have been met.)   | _____    | _____ |

ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee \$ \_\_\_\_\_
  2. Sum of current cost estimates for closure, post closure, corrective action and liability coverage (total of (a)-(e) directly above) \$ \_\_\_\_\_
  3. Sum of lines 1 and 2 \$ \_\_\_\_\_
  4. Total tangible assets \$ \_\_\_\_\_
  5. Total liabilities (if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6) \$ \_\_\_\_\_
  6. Tangible net worth (subtract line 5 from line 4) \$ \_\_\_\_\_
  7. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.) \$ \_\_\_\_\_
- |   | Yes   | No    |
|---|-------|-------|
| 8. Is line 6 at least \$10 million?   | _____ | _____ |
| 9. Is line 6 at least 6 times line 3?   | _____ | _____ |
| 10. Are at least 90 percent of assets located in the U.S.? (If "No," complete line 11.) | _____ | _____ |
| 11. Is line 7 at least 6 times line 3? (Fill in either lines 12-15 or lines 16-18)      | _____ | _____ |
12. Current assets \$ \_\_\_\_\_
  13. Current liabilities \$ \_\_\_\_\_
  14. Net working capital (subtract line 13 from 12) \$ \_\_\_\_\_
- |   | Yes   | No    |
|---|-------|-------|
| 15. Is line 14 at least 6 times line 3? | _____ | _____ |
16. Current bond rating of most recent bond issue \_\_\_\_\_
  17. Name of rating service \_\_\_\_\_
  18. Date of maturity of bond \_\_\_\_\_



Yes No

19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? \_\_\_\_\_

(If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.)

(For both Alternative I and Alternative II complete the certification with this statement.)  
I hereby certify that the wording of this letter is identical to the wording specified in Title 30, TAC, §37.825, as this regulation was constituted on the date shown immediately below.

(Insert signature) \_\_\_\_\_

(Insert name) \_\_\_\_\_

(Insert title) \_\_\_\_\_

(Insert date) \_\_\_\_\_

Figure 1: 37 TAC §41.60

**File Requirements:**

ASCII text file.  
 All records are a fixed length with one record per line.  
 No specific order is required with the exception of the Header Record which must occur first and the Trailer Record which must occur last.  
 All alphabetic fields must be UPPER CASE.  
 Filename is SRSTJPCX.??? Where ??? is the department's 3-digit headquarter county number.  
 The extracted file should be compressed and encrypted using PKZip from PKWare in the following format:

PKZIP -AS"password goes here" SRSX??? SRSTJPCX.??? Where ??? is the department's 3-digit headquarter county number.

For security purposes the password has not been specified. Contact T.JPC's MIS Division for the correct password.

The zipped file should be transmitted to T.JPC's FTP server (IP address 161.137.55.7). Sample commands are:

```
ftp 161.137.55.7
User: anonymous
Password: Anything is acceptable (suggest county name for tracking purposes)
ftp> send srsx??? zip larsxfilesrsx??? zip Where ??? is the department's 3-digit headquarter county number.
ftp> quit
```

**Reporting Requirements:**

Reports are due to T.JPC on the tenth day of each month following the reporting period (example: extract of February data is due to T.JPC on March 10). Multiple report periods may be included as a single submission with the following stipulations:

- Report period must be for complete months.
- Report period cannot specify a report period prior to a previously reported period. For example, if the last reported period was May, a subsequent submission for Feb-Apr would be rejected. The subsequent submission should be for Feb-May. This provision prevents more recent information from being overwritten.

Records are submitted based on activity (last changed) date (i.e. all records added or changed during the reporting period should be included).

To ensure complete information the following rules apply when submitting records:

Record Type	Description/Purpose	Submission Interval	Dependent Records Required
Header	Identifies submitting county, reporting period, processing date and CASEWORKER specific information.	Every submission. One per file. Must be first record.	Not Applicable
Trailer	Identifies the end of file and verifies that all records were received.	Every submission. One per file. Must be last record.	Not Applicable
Delete	Deletes a previously reported record.	As needed.	Not Applicable
Decode	Reports department-defined codes and their descriptions.	When added or changed. May be submitted in every submission. One record for each Decode Key (code) within each required Decode Type.	Not Applicable
Child	Reports the child's demographic information.	When added or changed. Dependent record submission may also require Child to be submitted.	Not Applicable
Referral	Reports intake and disposition information on each referral.	Record should be submitted upon completion of Intake and again upon completion of Disposition. Dependent record submission may also require Referral to be submitted.	Child
Detention	Reports information on secure detention events.	Record should be submitted upon entrance and again upon exit.	Child, Referral
JJAEP	Reports children placed in a Juvenile Justice Alternative Education Program. An alternative reporting method using #/craoat Access is available from T.JPC.	Record should be submitted upon entrance and again upon exit.	Child
Offense	Reports information about each offense for which a child is charged, within a designated referral.	When added or changed.	Child, Referral
Placement	Reports information about each out of home placement excluding TYC commitment and placement with relatives.	Record should be submitted upon entrance and again upon exit.	Child, Referral
Program	Reports program name, type, period and outcome each time a child is placed in a program.	Record should be submitted upon entrance and again upon exit.	Child, Referral
Supervision	Reports supervision type, period and outcome each time a child is placed on supervision.	Record should be submitted upon entrance and again upon exit.	Child, Referral

NOTE: Editing will be done to ensure dependent records already exist or are contained within the current submission.

Figure 2. 37 TAC §341.60

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Header	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Header	FILLER		alphanumeric	14		4	17	Blank fill	
Header	Record Type	Record identifier for Header Record.	alphanumeric	2		18	19	Blank fill	
Header	Report Period Begin Date	Should specify the first day of the reporting period.	numeric	8	YYYYMMDD	20	27	Must be a valid date and specify the first day of a month.	
Header	Report Period End Date	Should specify the last day of the reporting period. A multi-month period may be specified.	numeric	8	YYYYMMDD	28	35	Must be a valid date and specify the last day of the reporting period. Must be greater than or equal to the Report Period Begin Date.	
Header	Users Initials	User generating this extraction process.	alphanumeric	3	left-justify, blank fill	36	38	Blank fill	CASEWORKER departments only
Header	CASEWORKER Program Revision Date	Used to determine revision of CASEWORKER that created the extracted information.	numeric	8	YYYYMMDD	39	46	Zero fill	CASEWORKER departments only
Header	Unique Run ID	Date and time of extraction process.	alphanumeric	14	YYYYMMDDHHMMSS	47	60		
Header	Use T.JPC Standard Assessment Tool	Department uses the T.JPC Standard Assessment Tool (Compass)	alphanumeric	1		61	61	Y or N	
Header	Date of Last Comprehensive Folder Edit (CFE)	Information extracted from CASEWORKER systems regarding the status of their last Comprehensive Folder Edit. Used by T.JPC to determine future training issues.	numeric	8	YYYYMMDD	62	69	Zero fill	CASEWORKER departments only
Header	Options Used on Last CFE		alphanumeric	15		70	84	Blank fill	CASEWORKER departments only
Header	Number of Errors on Last CFE		numeric	5	99999	85	89	Zero fill	CASEWORKER departments only
Header	Number of Warnings on Last CFE		numeric	5	99999	90	94	Zero fill	CASEWORKER departments only
Header	End of Record Marker		alphanumeric	1		95	95	Must contain 'I'	
Decode	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Decode	FILLER		alphanumeric	14		4	17	Blank fill	
Decode	Record Type	Record identifier for Decode Record.	alphanumeric	2		18	19	"00"	
Decode	Decode Type	Specifies the category of the following key (code).	alphanumeric	4	left-justify, blank fill	20	23	LIVE-Child Lives With CITZ-Citizenship DFAC-Detention Facilities DISP-Dispositions DVR-Child/Referral Diverted To PFAC-Placement Facilities PGMT-Programs	
Decode	Decode Key (code)	Key (code) used by department for specified Decode Type (category).	alphanumeric	10	left-justify, blank fill	24	33	Not blank	
Decode	Decode Description	Informative description of the Decode Key (code).	alphanumeric	40	left-justify, blank fill	34	73	Not blank	
Decode	End of Record Marker		alphanumeric	1		74	74	Must contain 'I'	
Child	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Child	Personal ID Number	Unique child identifier.	numeric	7	9999999	4	10	0000001..9999999	
Child	FILLER		numeric	7		11	17	Zero fill	
Child	Record Type	Record identifier for Child Record.	alphanumeric	2	9999999	18	19	"01"	
Child	Child's Name	Last Name, First Name MI Title left-justify, blank fill	alphanumeric	35		20	54	Not blank	A-Asian American B-African American H-Hispanic I-American Indian O-Other U-Unknown W-White
Child	Race		alphanumeric	1		55	55		Cannot be Unknown (U) if the child has one or more formal or paper-formalized referrals.
Child	Sex		alphanumeric	1		56	56		Cannot be Unknown (U) if the child has one or more formal or paper-formalized referrals.
Child	Date of Birth		numeric	8	YYYYMMDD	57	64	Valid date between 1/1/1900 and 12/31/2099	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Child	Citizenship	Country of legal citizenship.	alphanumeric	2		65	66	US-United States OT-Other UN-Unknown	
Child	Social Security Number	Zip code of the child's residence.	numeric	9	999999999	67	75	00000000, 999999999	
Child	Zip Code	Specifies the person(s) with whom the child lives with.	numeric	9	999999999	76	84	00000000, 999999999 5-digit zip code is acceptable with trailing zeros.	
Child	Child Lives With	Has the child been diagnosed as a special education student?	alphanumeric	4	left-justify, blank fill	85	88	Department specified code. For example: BOTH-Both Parents, MOTH-Mother Only, FATH-Father Only, SELF-Self, UNK-Unknown, etc. Y or N	Must include a Decode Record for each code specified.
Child	Special Education?	If the child has been diagnosed as a special education student specify the handicapping condition.	alphanumeric	1		89	89	ED-Emotionally Disturbed LD-Learning Disabled MR-Mentally Retarded PD-Physical Disability	Requires if the Special Education field is 'Y', otherwise blank fill.
Child	Special Education Handicapping Condition	Name of the gang or 'Y' for generic gang membership.	alphanumeric	2	left-justify, blank fill	90	91	Any value specifies membership. Blank specifies no gang affiliation/membership.	
Child	Gang Affiliation/Membership	Child is suspected to be the victim of sexual abuse.	alphanumeric	4	left-justify, blank fill	92	95	Y, N, or U (unknown)	
Child	Suspected Sexual Abuse?	Child is suspected to be the victim of physical abuse.	alphanumeric	1		96	96	Y, N, or U (unknown)	
Child	Suspected Physical Abuse?	Child is suspected to be the victim of emotional abuse.	alphanumeric	1		97	97	Y, N, or U (unknown)	
Child	Suspected Emotional Abuse?	Child is receiving Aid for Dependent Children services.	alphanumeric	1		98	98	Y, N, or U (unknown)	
Child	FILLER	Child is receiving Medicaid services.	alphanumeric	1		99	99	Blank fill	
Child	AFDC Receiving?	The child's State Identification Number (SID) as issued by the Department of Public Safety	alphanumeric	1		100	100	00000000, 999999999 or blank fill	
Child	Medicaid Receiving?	County where department headquarters is located.	alphanumeric	1		101	101	Blank fill	
Child	DPS SID Number	Unique child identifier.	alphanumeric	1		102	102	Y, N, or U (unknown)	
Child	FILLER	Record identifier for Referral Record.	alphanumeric	1		103	110		
Child	End of Record Marker	Formal -- A child is brought to the department's attention for alleged delinquent conduct or conduct indicating a need for supervision and some face-to-face contact by visit or interview occurs between the department and the child and/or parents.	alphanumeric	77		111	187	Blank fill	
Referral	Headquarter County Number	Paper Complaint -- A complaint that originates when the department receives paperwork for an alleged offense, but the child is not seen or taken into custody at that time.	alphanumeric	1		188	188	Must contain '1'	
Referral	Personal ID Number	Paper Formalized -- A referral that began as a paper complaint, but face-to-face contact was made, formalizing the complaint.	numeric	3	999	1	3	001, 254	
Referral	Referral Number	Courtesy Supervision -- Local juvenile probation departments provide service to juveniles referred from other Texas counties or through Interstate Compact.	numeric	7	9999999	4	10	00000001, 99999999	
Referral	Record Type	Transferred -- Referrals that have been officially transferred, by the court, from one jurisdiction to another jurisdiction.	numeric	2	9999999	11	17	00000000, 99999999	
Referral	Referral Type	Crisis Intervention -- Voluntary face-to-face contact occurs with a juvenile/child or the parents, but there is no alleged criminal or status offense. These may include children under the age of 10, but no older than 16.	alphanumeric	2		18	19		FM-Formal PF-Paper Formalized PA-Paper Complaint CS-Courtesy Supervision TR-Transferred CI-Crisis Intervention

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Referral Date	The referral date is when you actually have face-to-face contact with the child and/or parents (formal, paper-formalized and crisis intervention). For paper complaints use the date the complaint was received. For transfer or courtesy supervision referrals, it is the date you actually receive the case, not the original referral date from the referring jurisdiction. County where child is referred. Same as Headquarters County Number unless referred to a multi-county jurisdiction. Child's age as of the referral date.	numeric	8	YYYYMMDD	22	29	Valid date between 1/1/1900 and 12/31/2099	County specified must be within the department's jurisdiction.
Referral	County Number		numeric	3	999	30	32	001..254	
Referral	Age		numeric	2	99	33	34	10..17	
Referral	School Status	School status as of the referral date.	alphanumeric	2		35	36	IS-In Regular School DO-Dropped Out SE-Suspended/Expelled GD-GED GR-Graduated HS-Home School AE-Alternative Education JJ-Juvenile Justice Alternative Education Program UN-Unknown Blank fill	
Referral	FILLER		alphanumeric	2		37	38	Blank fill	
Referral	Last Grade Completed		numeric	2	99	39	40	0..12	
Referral	Referral Source		alphanumeric	1		41	41	P-Police Agency S-School D-Probation Department O-Other	
Referral	Primary Alleged Offense	At intake, the most serious offense the child is alleged to have committed.	alphanumeric	8	99999999	42	49	A valid T.JPC-DPS offense code. A current list of codes may be obtained from T.JPC's website or by contacting T.JPC directly.	An Offense Record must exist for this referral with the same offense code and the Alleged Offense Indicator field must contain "P".
Referral	Primary Alleged Offense Preparatory Code	Designates the Primary Alleged Offense was a preparatory (attempted, conspired or solicited) offense. Reduces offense by one degree.	alphanumeric	1		50	50	A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Referral	FILLER		alphanumeric	18		51	66	Blank fill	
Referral	Primary Disposition Offense Code	The most serious offense at disposition of the referral.	alphanumeric	8	99999999	69	76	A valid T.JPC-DPS offense code. A current list of codes may be obtained from T.JPC's website or by contacting T.JPC directly.	An Offense Record must exist for this referral with the same offense code and the Disposition Indicator field must contain "P".
Referral	Primary Disposition Offense Preparatory Code	Designates the Primary Disposition Offense was a preparatory (attempted, conspired or solicited) offense. Reduces offense by one degree. Date COMPASS or other approved risk assessment was completed.	alphanumeric	1		77	77	A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Referral	Standard Risk Assessment Date	Required for all formalized referrals unless performed on a previous referral within the last six months.	numeric	8	YYYYMMDD	78	85	Valid date between 1/1/1900 and 12/31/2099. Zero fill if not applicable.	
Referral	Standard Risk Assessment Level	Based on the score of the risk assessment the child is categorized into this level.	alphanumeric	1		86	86	L-Low M-Medium H-High Blank fill if not applicable	Required if Standard Risk Assessment Date field completed.
Referral	FILLER		alphanumeric	8		87	84	Blank fill	Required if Disposition Date field completed. Must include a Decode Record for each code specified.
Referral	Primary Disposition	Department defined code for disposition.	alphanumeric	4	left-justify, blank fill	85	89	Department specified code.	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Primary Disposition (TJPC category)	Summarized category of Primary Disposition filed as defined by TJPC.	numeric	2	99	99	100	Department Actions: 01-Dismissed or Withdrawn 02-Supervisory Caution 03-Deferred Prosecution Prosecutor Actions: 04-No Probable Cause/Dismissed 05-Refused or Non-Suited 06-Supervisory Caution 07-Deferred Prosecution Court Actions: 08-Dismissed/Not Guilty/Adjudicated with No Disposition Transferred 09-Supervisory Caution 10-Deferred Prosecution 11-Adjudicated and Placed on Probation 12-Modified and/or Extended Probation 13-Indeterminate Commitment to TYC 14-Determinate Commitment to TYC 15-Certified as an Adult 16-Consolidated Case & Disposed in Another Case	Required if Disposition Date field completed.
Referral	Disposition Date	Date a disposition was assigned to this referral.	numeric	8	YYYYMMDD	101	108	Valid date between 1/1/1900 and 12/31/2099. Zero fill if not applicable.	Required if Disposition Date field completed.
Referral	Controlling Disposition?	Designates the primary disposition when multiple referrals are disposed at the same time. If this is the only referral being disposed for this child on the specified date, enter 'Y'. If there are multiple referrals being disposed, enter 'Y' on the primary disposition referral and enter 'N' on all the other referrals. This indicator designates which referral in a group will contain the Progressive Sanctions Information.	alphanumeric	1		109	109	Y or N	If the indicator is 'N', then the progressive sanctions fields (guideline level, assigned level, deferred prosecution level, deferred prosecution months, probation months, intensive supervision months, placement months, deviation indicator and deviation reasons) should be blank or zero depending on the its format.
Referral	TYC Determine Sentence Months	The total number of months if the child is committed to the Texas Youth Commission for a determinate sentence.	numeric	3	999	110	112	001,999 or zero fill if not applicable.	
Referral	If Diverted to Where	Designates the name of the agency (outside of the juvenile justice system) where the child was diverted.	alphanumeric	4	left-justify, blank fill	113	116	Department specified code or blank fill if not applicable.	Must include a Decode Record for each code specified.
Referral	Progressive Sanctions Guideline Level	Progressive Sanctions level that should be assigned to a juvenile offender in a disposition event based on the offender's offense and criminal history.	alphanumeric	1		117	117	0-Not Applicable - No Probable Cause - Not Guilty 1-Supervisory Caution 2-Deferred Prosecution / Probation 3-Court Ordered Probation 4-Intensive Supervision Probation 5-Residential Placement and Court Ordered Probation 6-Indeterminate Commitment to TYC 7-Determinate Commitment to TYC/Certified as an Adult	Required for all Formal, Paper Formalized and Paper Complaints disposed on or after January 1, 1999 and Controlling Disposition field is 'Y'.
Referral	Progressive Sanctions Assigned Level	The highest progressive sanctions level that is actually given to the juvenile in a disposition event.	alphanumeric	1		118	118	Blank fill if not required. Same 0-7 options as above. Blank fill if not applicable.	Required for all Formal, Paper Formalized and Paper Complaints disposed on or after January 1, 1999 and Controlling Disposition field is 'Y'. If the guideline level is zero then the assigned level must be zero.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Progressive Sanctions Previously Assigned Level		alphanumeric	1		119	119	Same 1..7 options as above with addition of '1' to be used to designate the Initial Referral. Blank fill if not applicable.	Required for all Format, Paper, Formatted and Paper. Complaints disposed on or after January 1, 1999 and Controlling Disposition field is 'Y'. If the guideline level is zero then blank fill. Required if Disposition Date field completed and Progressive Sanctions Assigned Level is '2'. If the guideline level is zero then zero fill.
Referral	Deferred Prosecution Months	The ordered length of supervision for deferred prosecution.	numeric	2	98	120	121	01...99 or zero fill if not applicable.	Required if Disposition Date field completed and Progressive Sanctions Assigned Level is '2'. If the guideline level is zero then zero fill.
Referral	Probation Months	The ordered length of supervision for probation.	numeric	2	98	122	123	01...99 or zero fill if not applicable.	Required if Disposition Date field completed and Progressive Sanctions Assigned Level is '3'. If the guideline level is zero then zero fill.
Referral	Intensive Supervision (ISP) Months	The ordered length of supervision for ISP.	numeric	2	99	124	125	01...99 or zero fill if not applicable.	Required if Disposition Date field completed and Progressive Sanctions Assigned Level is '4'. If the guideline level is zero then zero fill.
Referral	Placement Months	The ordered length of stay for a progressive sanctions level 5 placement (post adjudication, secure placement).	numeric	2	99	126	127	01...99 or zero fill if not applicable.	Required if Disposition Date field completed and Progressive Sanctions Assigned Level is '5'. If the guideline level is zero then zero fill.
Referral	Progressive Sanctions Deviation Indicator	Specifies a progressive sanctions deviation exists between the guideline and the assigned level.	alphanumeric	1		128	128	Y or N	Required if Disposition Date field completed and Controlling Disposition field is 'Y'. Must be 'Y' if the guideline and assigned levels are different. May be 'Y' if the guideline and assigned levels are the same but a sentence length deviation exists. Must be 'N' if the guideline level is zero. Otherwise 'N' if no deviation exists.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Progressive Sanctions Deviation Primary Reason	Identifies the primary reason for deviating from the guideline level.	alphanumeric	2		129	130	1A-Pros Refused: No Complaint/Insufficient Evidence 1B-Pros Refused: Non-Suit 1C-Pros Refused: Returned To Department 1D-Diverted At Intake To Another Agency 1E-Other Drops/Divisions (explain) 2A-Family Support 2B-Treatment Needs 2C-Prior History 2D-Other Circumstances (explain) 3A-Weapon Involved 3B-Multiple Offenses 3C-Local Policy 3D-Gang Motivated Offense 3E-Mitigating/Aggravating Circumstances 3F-Other Offense Related Issues (explain) 4A-Insufficient Staffing Resources 4B-Insufficient Placement/Program Resources 4C-No Program/Facility Available 4D-Exceed TYC Commitment Target 4E-Other Resource Related Issues (explain) Choose from list above or blank fill if not applicable. Choose from list above or blank fill if not applicable. Choose from list above or blank fill if not applicable. Choose from list above or blank fill if not applicable. Non-blank if required, otherwise blank fill. Blank fill	Required if Disposition Date field completed and Progressive Sanctions Deviation Indicator is 'Y'.
Referral	Progressive Sanctions Deviation Secondary Reason 1	Identifies an additional reason for deviating from the guideline level.	alphanumeric	2	left-justify, blank fill	131	132	Choose from list above or blank fill if not applicable.	
Referral	Progressive Sanctions Deviation Secondary Reason 2	Identifies an additional reason for deviating from the guideline level.	alphanumeric	2	left-justify, blank fill	133	134	Choose from list above or blank fill if not applicable.	
Referral	Progressive Sanctions Deviation Secondary Reason 3	Identifies an additional reason for deviating from the guideline level.	alphanumeric	2	left-justify, blank fill	135	136	Choose from list above or blank fill if not applicable.	
Referral	Progressive Sanctions Deviation Secondary Reason 4	Identifies an additional reason for deviating from the guideline level.	alphanumeric	2	left-justify, blank fill	137	138	Choose from list above or blank fill if not applicable.	
Referral	Progressive Sanctions Deviation Comment	Descriptive comment for deviation reasons that require explanation.	alphanumeric	35	left-justify, blank fill	139	173	Non-blank if required, otherwise blank fill.	Required for deviation reasons 1E, 2D, 3F, and 4E.
Referral	FILLER		alphanumeric	26		174	199	Blank fill	
<p>The following section provides for a subsequent disposition. This section is used only for children who violate the terms of their deferred prosecution and are subsequently adjudicated on the same referral, or dispositions that are appealed and are subsequently assigned a different disposition. It is not used for modifications. See descriptions and edit criteria above.</p>									
Referral	Subsequent Primary Disposition		alphanumeric	4	left-justify, blank fill	200	203		
Referral	Subsequent Primary Disposition (TYC category)		numeric	2	99	204	205		
Referral	Subsequent Disposition Date		numeric	8	YYMMDD	206	213		
Referral	Subsequent Controlling Disposition?		alphanumeric	1		214	214		
Referral	Subsequent TYC Determinate Sentence Months		numeric	3	999	215	217		
Referral	Subsequent (if Diverted to Where Guideline Level)		alphanumeric	4	left-justify, blank fill	218	221		
Referral	Subsequent Progressive Sanctions Assigned Level		alphanumeric	1		222	222		
Referral	Subsequent Progressive Sanctions Previously Assigned Level		alphanumeric	1		223	223		
Referral	Subsequent Deferred Prosecution Months		alphanumeric	1		224	224		
Referral	Subsequent Probation Months		numeric	2	99	225	228		
Referral	Subsequent Intensive Supervision (ISP) Months		numeric	2	99	227	228		
Referral	Subsequent Placement Months		numeric	2	99	229	230		
Referral	Subsequent Progressive Sanctions Deviation Indicator		numeric	2	99	231	232		
Referral	Subsequent Progressive Sanctions Deviation Primary Reason		alphanumeric	1		233	233		
Referral	Subsequent Progressive Sanctions Deviation Secondary Reason 1		alphanumeric	2		234	235		
Referral	Subsequent Progressive Sanctions Deviation Secondary Reason 2		alphanumeric	2		236	237		
Referral	Subsequent Progressive Sanctions Deviation Secondary Reason 3		alphanumeric	2		238	239		
Referral	Subsequent Progressive Sanctions Deviation Secondary Reason 4		alphanumeric	2		240	241		
Referral	Subsequent Progressive Sanctions Deviation Comment		alphanumeric	2		242	243		
Referral	FILLER		alphanumeric	35	left-justify, blank fill	244	278		
<p>See edit criteria above.</p>									
<p>See dependencies above.</p>									
<p>End of subsequent disposition section.</p>									
Referral	End of Record Marker		alphanumeric	1		289	289	Must contain '1'	



Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Exit Criteria	Dependencies
Detention	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Detention	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Detention	Referral Number	Specifies the referral for which this secure detention applies.	numeric	7	9999999	11	17	0000001..9999999	
Detention	Record Type	Record identifier for Detention Record.	alphanumeric	2		18	19	"DJN"	
Detention	Detention Sequence Number	Uniquely identifies this detention record from all other detention records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Used in conjunction with the PID Number and Referral Number to determine unique detention event. Once assigned it should not be changed.
Detention	FILLER		alphanumeric	3		26	28	Blank fill	
Detention	Detention Facility	TJPC registered facility identification number for secure detention facilities in Texas or department defined code for facilities outside of Texas.	alphanumeric	7	left-justify, blank fill	29	35	If facility is within Texas then code must be a TJPC registered facility identification code, otherwise a department specified code.	If facility is within Texas then includes a Facility Record for each code specified.
Detention	Date Detained		numeric	8	YYMMDD	36	43	Valid date between 1/1/1900 and 12/31/2099	
Detention	Time Detained		numeric	4	HHMM	44	47	HH between 00..24 and MM between 00..59. 0000 or 2400 considered midnight.	
Detention	Date Released		numeric	8	YYMMDD	48	55	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Date Detained. Zero fill if not applicable.	
Detention	Time Released		numeric	4	HHMM	56	59	HH between 00..24 and MM between 00..59. 0000 or 2400 considered midnight.	Required if Date Released field completed.
Detention	End of Record Marker		alphanumeric	1		60	60	Must contain "1"	
JJAEP	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
JJAEP	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
JJAEP	FILLER		numeric	7	9999999	11	17	Zero fill	
JJAEP	Record Type	Record identifier for JJAEP Record.	alphanumeric	2		18	19	"JJ"	
JJAEP	JJAEP Sequence Number	Uniquely identifies this JJAEP record from all other JJAEP records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Used in conjunction with the PID Number to determine unique JJAEP event. Once assigned it should not be changed.
JJAEP	Entrance Date	Child's first attendance day in the JJAEP.	numeric	8	YYMMDD	26	33	Valid date between 1/1/1900 and 12/31/2099.	Expelled children are those with Expulsion Dates other than voluntary school placement, probation department placement or court ordered placement.
JJAEP	Expulsion Date	The date the child was officially expelled by the school district.	numeric	8	YYMMDD	34	41	Valid date between 1/1/1900 and 12/31/2099 for expelled children. Zero fill if not applicable.	
JJAEP	School Campus Number	Specifies the Texas Education Agency (TEA) assigned campus number from which the child was expelled. If not expelled the campus number of the most recently attended school. May be obtained from the local campus, school district or Texas Education Agency (TEA).	numeric	9	999999999	42	50	00000000..999999999 or zero fill if not applicable	



Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Exit Criteria	Dependencies
JJAEP	Exit Reason	Reason the child left the JJAEP program.	alphanumeric	4	left-justify, blank fill	123	126	EXV-Completed, Expired GSD-Graduated PRXY-Completed, Probation Expired RTTS-Completed-Returned To Home School District UNSC-Unsuccessful Completion OTHR-Other (Moved, Death, Medical, Non-Delinq)	Required if Exit Date field completed.
JJAEP	Number of Days Attended	Actual number of days the student attended while enrolled in the JJAEP.	numeric	4	9999	127	130	0001..9999	Required if Exit Date field completed.
JJAEP	Number of Days Absent	Actual number of days the student was counted as absent while enrolled in the JJAEP.	numeric	4	9999	131	134	0000.9999 or zero fill if not applicable	Required if Exit Date field completed.
JJAEP	End of Record Marker		alphanumeric	1		135	135	Must contain T	
Offense	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Offense	Personal ID Number (PID)	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Offense	Referral Number	Specifies the referral for which this offense applies.	numeric	7	9999999	11	17	0000001..9999999	
Offense	Record Type	Record Identifier for Offense Record.	alphanumeric	2		18	19	OF	Used in conjunction with the PID Number and Referral Number to determine unique offense event. Once assigned it should not be changed.
Offense	Unique Offense Number	Uniquely identifies this offense record from all other offense records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	
Offense	FILLER		alphanumeric	8		26	33	Blank fill	
Offense	Alleged Offense Date	Used to specify multiple occurrences (counts) of the same offense and incident.	numeric	8	YYYYMMDD	34	41	Valid date between 1/1/1900 and 12/31/2099.	
Offense	Alleged Offense Counts		numeric	2	99	42	43	01..99	
Offense	Alleged Offense Code	Used to designate the DPS offense code for the alleged offense.	alphanumeric	8	99999999	44	51	A valid TJPC-DPS offense code. A current list of codes may be obtained from TJPC's website or by contacting TJPC directly. A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Offense	Alleged Offense Preparatory Code	Used to designate the Alleged Offense was a preparatory offense.	alphanumeric	1		52	52		
Offense	Alleged Offense Indicator	Designates the status of the offense at time of intake. An offense may be designated as a primary or secondary offense. -However, if during disposition the child is being disposed on an offense not originally listed, enter a new offense and designate it as 'added at disposition' or 'revised at disposition'.	alphanumeric	1		53	53	P-Primary alleged offense S-Secondary alleged offense R-Revised offense at time of disposition A-Added offense at time of disposition	Only one offense within a referral may be designated as the primary alleged offense.
Offense	Disposition Indicator	Designates the status of the offense at time of disposition.	alphanumeric	1		54	54	P-Primary disposition offense C-Consulted with primary offense D-Dismissed (not included in the disposition)	Only one offense within a referral may be designated as the primary disposition offense.
Offense	FILLER		alphanumeric	13		55	67	Blank fill	
Offense	Weapon Used	Specifies the type of weapon used during the commission of the offense.	alphanumeric	2		68	69	AA-Ammunition BK-Brass Knuckles CL-Club or other similar device EX-Explosives/Explosive Weapon FA-Firearm HB-Hoax Bomb KN-Knife MA-Mace or other chemical dispensing device OT-Other NA-Not Applicable-no weapon was used	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Offense	Firearm Code	Specifies the type of firearm used during the commission of the offense.	alphanumeric	1		70	70	F-Ammunition H-Bomb A-Cannon D-Disguised Gun E-Electric Shock Gun G-Grenade M-Machine Gun I-Mine J-Missile O-Mortar P-Pistol R-Rifle C-Rifle Shotgun Combination K-Rocket S-Shotgun Q-Shotgun Pistol V-Silencer B-Submachine Gun or Machine Pistol Z-All Other Weapons	Required if Weapon Used field is 'A'.
Offense	Gang Related Offense?	Did involvement with a gang cause and/or contribute to the commission of this offense?	alphanumeric	1		71	71	Y or N	
Offense	Substance Abuse Related Offenses?	Did involvement in substance abuse cause and/or contribute to the commission of this offense?	alphanumeric	1		72	72	Y or N	
Offense	Type of Substance Abuse Detected	Specify the type(s) of substance abuse detected.	alphanumeric	4	left-justify, blank fill	73	76	A-Alcohol AD-Alcohol and Drugs ADI-Alcohol D-Drugs DI-Drugs and Inhalants I-Inhalants Blank fill if not applicable	Required if Substance Abuse Related Offense field is 'Y'.
Offense	School Related Location	Specifies the offense occurred on a school campus or during a school related activity.	alphanumeric	4	left-justify, blank fill	77	80	OCAM-On Campus During School Hours SPRT-School Related Sports Activity-On/Off Campus GTHR-School Related Activity-On/Off Campus N-Not School Related	
Offense	School Campus Number	Specifies the Texas Education Agency (TEA) assigned campus number where the offense took place. If the offense occurred in transit then use the home campus number. May be obtained from the local campus, school district or Texas Education Agency (TEA).	numeric	9	99999999	81	88	00000000..99999999 or zero fill if not applicable.	Required if School Related Location field is not 'N'.
Offense	End of Record Marker		alphanumeric	1		90	90	Must contain T	
Placement	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Placement	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Placement	Referral Number	Specifies the referral for which this placement applies.	numeric	7	9999999	11	17	0000001..9999999	
Placement	Record Type	Record Identifier for Placement Record.	alphanumeric	2		18	18	PL*	Used in conjunction with the PID Number and Referral Number to determine unique placement event. Once assigned it should not be changed.
Placement	Placement Sequence Number	Uniquely identifies this placement record from all other placement records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	If Placement Type is Secure Correctional (S) then code must be a TJPC registered facility identification code, otherwise a department specified code.
Placement	Placement Facility	TJPC registered facility identification number or department defined code for placement facility.	alphanumeric	7	left-justify, blank fill	26	32		
Placement	Placement Type	Type of residential placement used.	alphanumeric	1		33	33	E-Emergency Shelter F-Foster Care S-Secure Correctional R-Residential Treatment B-Bootcamp	Required if Placement Type field is Secure Correctional (S) or Residential Treatment (R).
Placement	Service Type	Description of the primary service delivered at the facility.	alphanumeric	1		34	34	C-Correctional S-Substance Abuse T-Therapeutic Community X-Sex Offender	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Placement	Cost Per Day	Specifies per day charge for this placement. Zero specifies a no-cost (free) placement. If the cost per day changes during the placement, specify the largest cost per day.	numeric	5	999.99 (implied decimal)	35	39	\$000.00-\$500.00	Unknown (U) is not valid for TDPRS licensed facilities.
Placement	Level of Care	Level of care as defined by the Texas Department of Protective and Regulatory Services (TDPRS).	alphanumeric	1		40	40	1..8 or U for Unknown	
Placement	Funding Source	Specifies the type of funds used to pay for this placement. If multiple sources were utilized, specify the largest source.	alphanumeric	1		41	41	G-TJPC Challenge Grant P-TJPC Community Corrections (CCAP, Small County Diversionary Placement Funds, Level 5 Placement Reimbursements) T-Other TJPC N-Non-TJPC (Title IV-E, local, other state/federal) X-No Cost to Department (insurance, parents, fees)	
Placement	Placement Date In		numeric	8	YYYYMMDD	42	49	Valid date between 1/1/1900 and 12/31/2099	
Placement	Placement Date Out		numeric	8	YYYYMMDD	50	57	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the placement date in. Zero fill if not applicable.	
Placement	Discharge Reason		alphanumeric	1		58	58	S-Successful A-Handled by the Adult System C-Changing Placement Facilities E-Expiration of Funds T-TJC Commitment O-Other Unsuccessful Outcome M-Neither Successful or Unsuccessful	Required if Placement Date Out field completed. If 'C' is used a new Placement Record must exist.
Placement	FILLER		alphanumeric	1		59	59	Blank fill	
Placement	End of Record Marker		alphanumeric	1		60	60	Must contain '1'	

Program	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Program	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Program	Referral Number	Specifies the referral for which this program applies.	numeric	7	9999999	11	17	0000001..9999999	
Program	Record Type	Record Identifier for Program Record.	alphanumeric	2		18	19	PG*	Used in conjunction with the PID Number and Referral Number to determine unique program event. Once assigned it should not be changed.
Program	Program Sequence Number	Uniquely identifies this program record from all other program records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Must include a Decade Record for each code specified.
Program	Program Name	Department defined code for program.	alphanumeric	4	left-justify, blank fill	26	29	Department specified code	
Program	Program Type	Summarizes the program into specific categories based on its primary purpose. Definitions of these categories are available from TJPC.	alphanumeric	1		30	30	N-Anger Management/Conflict Resolution B-Border Justice Project Q-Challenge Grant C-CSR K-Early Intervention/First Referral U-Educational/Mentor E-Electronic Monitoring T-Experiential Education D-Extended Day Program/Day Boot Camp F-Family Preservation H-Female Offender G-Gang Prevention/Intervention I-Intensive Supervision L-Life Skills M-MH/MR R-Runaway/Tuancy S-Sex Offender P-Substance Abuse Prevention/Intervention J-Substance Abuse Treatment V-Victim Mediation Z-Vocational C-Other	Valid date between 1/1/1900 and 12/31/2099.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Program	Program End Date		numeric	8	YYYYMMDD	39	46	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Program Begin Date. Zero fill if not applicable.	
Program	Program Outcome	Specifies the program outcome.	alphanumeric	1		47	47	S-Successful A-Transferred to the Adult System T-Adjudicated to Probation O-Other Unsuccessful Outcome Must contain '1'	Required if Program End Date field completed.
Program	End of Record Marker		alphanumeric	1		48	48		

Supervision	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001,254	
Supervision	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001,9999999	
Supervision	Referral Number	Specifies the referral for which this supervision applies.	numeric	7	9999999	11	17	0000001,9999999	
Supervision	Record Type	Record Identifier for Supervision Record.	alphanumeric	2		18	19	'SV'	
Supervision	Supervision Sequence Number	Uniquely identifies this Supervision record from all other supervision records for the specified Personal ID Number.	numeric	6	9999999	20	25	000001,9999999	Used in conjunction with the PID Number and Referral Number to determine unique supervision event. Once assigned it should not be changed.
Supervision	Supervision Type	Specifies the type of supervision.	alphanumeric	4	left-justify, blank fill	26	29	PROB-Court Ordered Probation DEPR-Deferred Prosecution CREL-Conditional Release from Detention TEMP-Temporary Pre-Court Monitoring	
Supervision	Supervision Begin Date		numeric	8	YYYYMMDD	30	37	Valid date between 1/1/1900 and 12/31/2099	
Supervision	Supervision End Date		numeric	8	YYYYMMDD	38	45	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Supervision Begin Date. Zero fill if not applicable.	
Supervision	Supervision Outcome	Specifies the supervision outcome.	alphanumeric	1		46	46	S-Successful A-Transferred to the Adult System P-Adjudicated to Probation T-Committed to TYC O-Other Unsuccessful Outcome	Required if Supervision End Date field completed. An outcome of 'P' can only be used for Deferred Prosecution supervisors.
Supervision	End of Record Marker		alphanumeric	1		47	47	Must contain '1'	

Delete	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001,254	
Delete	FILLER		alphanumeric	14		4	17	Blank fill	
Delete	Record Type	Record Identifier for Delete Record. A request to delete a Child Record will cause all records for the specified PID Number to be removed.	alphanumeric	2		18	19	'XX'	
Delete	Delete Record Type	A request to delete a Referral Record will cause all records attached to the referral (i.e. detentions, offenses, placements, etc) to be removed. All other delete requests will remove only the requested record.	alphanumeric	2		20	21	01-Child 03-Referral DN-Deletion JJ-JAEP OF-Offense PL-Placement PG-Program SV-Supervision	
Delete	Delete Personal ID Number	Specifies the personal identification number of the record to be deleted.	numeric	7	9999999	22	28	0000001,9999999	Required for all delete transactions.
Delete	Delete Referral Number	Specifies the referral number of the record to be deleted.	numeric	7	9999999	29	35	0000001,9999999, zero fill if not applicable	Required for all delete transactions except '01'-Child.
Delete	Delete Sequence Number	Specifies the sequence number of the record to be deleted.	numeric	6	9999999	36	41	000001,9999999, zero fill if not applicable	Required for all delete transactions except '01'-Child and '03'-Referral.
Delete	End of Record Marker		alphanumeric	1		42	42	Must contain '1'	

Trailer	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001,254	
Trailer	FILLER		alphanumeric	14		4	17	'ZZZZZZZZZZZZZZ'	
Trailer	Record Type	Record Identifier for Trailer Record.	alphanumeric	2		18	19	'ZZ'	Must be last record in the file.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Trailer	Total Record Count		numeric	8	99999999	20	27		Computed to calculate number of records to ensure complete file was transmitted.
Trailer	End of Record Marker		alphanumeric	1		28	28	Must contain '1'	

# 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.

### Texas Commission for the Blind

#### Notice of Public Hearing - Annual Review of Rate Schedule

The Texas Commission for the Blind is conducting a public hearing from 2:00 p.m. until 4:00 p.m. on February 27, 2003, at the Commission's Administration Building, 3rd Floor Conference Room, 4800 North Lamar, Austin, Texas. The purpose of the hearing is to initiate the agency's annual review of its rate schedule for purchasing professional medical services from doctors, professional services of other medically related providers, and for purchase of medical and related items for consumers served by the Commission. The Commission's rate schedule below is an excerpt from the agency's adopted rules that can be found in full in Title 40, Part 4, Chapter 159, Section 159.6, of the Texas Administrative Code (<http://lamb.sos.state.tx.us/tac/index.html>).

(b) Rate schedule. Based on the standards set forth in subsection (a) of this section, the Commission shall pay for medical services according to the following:

(1) The Commission shall pay for eye-medical and related services according to the Health Care Financing Administration's (HCFA) Relative Value Units (RVU) base rate adjusted by the Medicare conversion factor if a rate for the service has been established.

(2) When there are no HCFA RVU rates established for eye-prosthetics and related items, the Commission shall pay the rates established by Medicare for durable medical equipment, prosthetics, orthotics, and supplies, if a rate for the service has been established.

(3) When there is no HCFA RVU and no established Medicare rate for eye-prosthetics and related items, the Commission shall pay the rates established by Medicaid for durable medical equipment, prosthetics, orthotics, and supplies, if a rate for the service has been established.

(4) When there is no rate established by Medicare and Medicaid for optical low-vision devices, the Commission shall purchase these from national suppliers either at the supplier's published price or a lesser negotiated price.

(5) The Commission shall pay for noneye-medical and related services that are not unique to persons with visual disabilities according to the Texas Rehabilitation Commission's medical payment rates.

(6) For services and items for which there is neither a rate nor an industry standard that takes into consideration the unique needs of persons with vision loss, the Commission shall pay according to the following:

(A) Low vision evaluation: \$243;

(B) Hand-held and other nonspectacle-mounted optical low vision devices: national supplier catalog price with an add-on of a 25% processing fee when purchased through a low vision specialist;

(C) Spectacle-mounted optical low vision devices--single element systems: national supplier catalog price, with an add-on of a 30% prescriptive/processing fee when purchased through a low vision specialist;

(D) Spectacle mounted optical low vision devices--Telescopic and other compound optical low vision device systems, including distance vision telescopes, and near vision telescopes: national supplier catalog

price, with an add-on of a 40% prescriptive processing fee when purchased through a low vision specialist;

(E) Poly carbonate safety lens: base prescription, with a \$15 add for single vision lens, and a \$25 add for bifocal lens;

(F) Beecher telescopic systems: national supplier catalog price, with an add-on of a 40% prescriptive processing fee when purchased through a low vision specialist: Total allowable payment \$595, which includes Beecher device up to \$350 plus 40% (\$490), and special fitting fee of \$105;

(G) Helm System for clip-on filters, which includes Noir filters, clip-on frame, and UV tint cut and mount: Up to \$114;

(H) Fitting, spectacle prosthesis, when used in conjunction with other low vision components: \$105;

(I) Fitting of spectacle-mounted low vision aid, when used in conjunction with other low vision components: \$240;

(J) Deluxe frames (heavy duty; to support lens(es) with +4D bifocal add or greater, optical low vision lens(es) at or above plus or minus 8D, or spectacle-mounted optical devices greater than plus or minus 8D): \$100.00;

(K) Psychological service, Comprehensive Vocational Evaluation System (CVES) used as Vocational Evaluation: \$500.00.

The public is invited to offer comments at the hearing or send written comments on the existing rates included in this notice on or before March 1, 2003. Oral comments will be heard in the order of registration upon arrival at the meeting. For information about the hearing and rate review prior to the meeting, you may contact Ronald Lucey, Medical Services Specialist, by mail: Texas Commission for the Blind, 4800 North Lamar, Austin, Texas 78756; by fax: (512) 377-0592; or by phone (512) 377-0577.

TRD-200300693

Terrell I. Murphy

Executive Director

Texas Commission for the Blind

Filed: January 28, 2003

### Coastal Coordination Council

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. 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 for these activities extends 30 days



from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following projects(s) during the period of January 17, 2003, through January 23, 2003. The public comment period for these projects will close at 5:00 p.m. on February 28, 2003.

#### FEDERAL AGENCY ACTIONS:

Applicant: Port of Corpus Christi Authority; Location: The project is located on the north shoreline of the Corpus Christi Ship Channel, approximately 0.4 miles west of the Port Aransas ferry landing, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Port Aransas, Nueces County, Texas. Approximate UTM Coordinates: Zone: 14; Easting: 6883811; Northing: 3080755. Project Description: The applicant proposes to place 13,200 linear feet of rock or geotube for shoreline protection. Approximately 35,000 cubic yards of sand from two proposed open water borrow areas would be dredged and placed in the geotube should the geotube option be utilized. Approximately 42,000 cubic yards of rock would be used should the rock option be utilized. CCC Project No.: 03-0006-F1; Type of Application: U.S.A.C.E. permit application #22119(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The CMP consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

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 is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or [diane.garcia@glo.state.tx.us](mailto:diane.garcia@glo.state.tx.us). Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200300713

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council

Filed: January 29, 2003

#### Notice of Intent to Issue List of "Urban Waterfronts and Ports" for Coastal Coordination Council Grant Program and Request for Public Comment

The Texas Coastal Coordination Council (Council) will consider adopting a list of "Urban Waterfronts and Ports" in its Cycle 9 Grant Guidance Document at its meeting on March 31, 2003. The purpose of the list is to designate individual urban waterfronts and ports as "areas of particular concern" for purposes of awarding funding for piers, shoreline stabilization, and the repair of pilings for the redevelopment of deteriorating and underutilized urban waterfronts and ports.

The National Oceanic and Atmospheric Administration (NOAA) requested that Texas provide a list of individual urban waterfronts and ports to be designated for the purposes of awarding Coastal Zone Management Act §306A funding. The Coastal Zone Management Act defines the term "urban waterfront and port" as "any developed area that is densely populated and is being used for, or has been used for, urban residential recreational, commercial, shipping, or industrial purpose." (Coastal Zone Management Act (CZMA) §306A(a)(2);

16 USC §1455a(a)(2)). CZMA Section 306A(b)(2) and (c)(2)(C) authorize funding for piers, shoreline stabilization, and the repair of pilings for the redevelopment of deteriorating and underutilized urban waterfronts and ports.

The Council solicits public comment regarding the proposed list of urban waterfronts and ports. Specifically, the Council is soliciting comments and information concerning whether a community: (1) is densely populated; and (2) has a waterfront or port that is being used for, or has been used for, urban residential recreational, commercial, shipping, or industrial purposes. Comments may be submitted to Ms. Melinda Tracy, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas, 78711-2873, [melinda.tracy@glo.state.tx.us](mailto:melinda.tracy@glo.state.tx.us), facsimile (512) 463-6311. In order to be considered, comments must be received by 5:00 p.m. on February 28, 2003.

The proposed list of "Urban Waterfronts and Ports," as well as information concerning the Council and its duties, may be found on the Texas General Land Office website at <http://www.glo.state.tx.us/coastal/cc.html>. To receive a copy of the proposed list of urban waterfronts and ports, please send a written request to Ms. Melinda Tracy, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas, 78711-2873, [melinda.tracy@glo.state.tx.us](mailto:melinda.tracy@glo.state.tx.us), facsimile (512) 463-6311.

TRD-200300714

Larry L. Laine

Chief Clerk/Deputy Commissioner

Coastal Coordination Council

Filed: January 29, 2003

## Comptroller of Public Accounts

### Amended Notice of Request for Proposals

Notice of Request for Proposals: This notice is to amend the RFP number. Pursuant to Section 1201.027, Texas Government Code; Chapter 2254, Subchapter B, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #153a) from qualified, independent firms to serve as Financial Advisor to the Comptroller. The Comptroller desires to obtain the services of a Financial Advisor in connection with two tasks. Task A is related to the document preparation, issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes). Task B involves research and related matters pertinent to bond and securities issues. The successful respondent will be expected to begin performance of the contract on or about March 17, 2003.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., RM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on January 31, 2003, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, January 31, 2003, 2:00 p.m. (CZT).

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, February 10, 2003. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512)

475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or about Thursday, February 13, 2003, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

**Closing Date:** Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Tuesday, February 25, 2003. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to verify and are solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

**Evaluation Criteria:** Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 31, 2003, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - February 10, 2003, 2:00 p.m. CZT; Official Responses to Questions posted - February 13, 2003, or as soon thereafter as practical; Proposals Due - February 25, 2003, 2:00 p.m. CZT, Contract Execution - March 14, 2003, or as soon thereafter as practical; Commencement of Project Activities - March 17, 2003.

TRD-200300698

Pamela Ponder

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: January 28, 2003



#### Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Section 1201.027, Texas Government Code; Chapter 2254, Subchapter A, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP 152c) from qualified, independent law firms to serve as Bond Counsel to the Comptroller. The Comptroller desires to obtain the services of Bond Counsel in connection with two tasks. Task A involves a variety of issues related to the issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes). Task B involves advice and legal research on matters related to bond and securities issues. The successful respondent will be expected to begin performance of the contract on or about March 17, 2003.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., RM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on February 7, 2003, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter.

The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, February 7, 2003, 2:00 p.m. (CZT).

**Questions and Non-Mandatory Letters of Intent:** All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, February 14, 2003. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or about Thursday, February 20, 2003, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

**Closing Date:** Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Friday, February 28, 2003. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

**Evaluation Criteria:** Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 7, 2003, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - February 14, 2003, 2:00 p.m. CZT; Official Responses to Questions posted - February 20, 2003, or as soon thereafter as practical; Proposals Due - February 28, 2003, 2:00 p.m. CZT, Contract Execution - March 14, 2003, or as soon thereafter as practical; Commencement of Project Activities - March 17, 2003.

TRD-200300715

Pamela Ponder

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: January 29, 2003



### 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, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 01/27/03- 02/02/03 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 01/27/03- 02/02/03 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 02/01/03- 02/28/03 is 10% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 02/01/03- 02/28/03 is 10% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200300465

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 23, 2003



### 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 Sections 303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 02/03/03 -- 02/09/03 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 02/03/03 -- 02/09/03 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by Sec. 303.005 <sup>3</sup> for the period of 02/01/03 -- 02/28/03 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 02/01/03 -- 02/28/03 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

TRD-200300697

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 28, 2003



## Texas Department of Criminal Justice

### Notice to Bidders

The Texas Department of Criminal Justice invites bids for the construction of Roofing at the Huntsville Unit, Huntsville, Texas. The project consists of Roofing Replacement to Buildings 2, 3, and 13 at the existing Huntsville Unit, 815, 12th Street, Huntsville, Texas. The project consists of the removal of the existing built-up system including the insulation and membrane and the installation of new insulation and a totally adhered thermo plastic roof system with energy star rating. This project also includes the removal of the existing tile roof system and existing base sheet or underlayment, and the installation of new underlayment, and the re-installation of existing tile or new tile where existing tile are broken.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five years documented experience as a Company specialized in utilizing and installing, manufactured

products and specified roof systems described herein, installed in the State of Texas. Include and provide references for at least three projects that have been completed of a dollar value and complexity equal to, or greater than the proposed project. Specialize in the application of Thermoplastic Membrane Roofing, and show license and, or, certification in the State of Texas as an applicator. Be certified by the roofing materials manufacturer as an approved NDL applicator for a minimum of two years prior to the Solicitation Date, and qualified to provide specified warranty on selected systems and flashings.

B. Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Deposit in the amount of 5% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of \$66.00(Sixty-Six Dollars, non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to:

Half Associates, Northwest Plaza Drive, Dallas, Texas 75225, C/O Paul H. Woodard AIA. Phone: (214) 346-6200 Fax: (214) 739-0095

A Pre-Bid conference will be held at 11:00AM on February 13, 2003 at the Huntsville Unit, Huntsville Texas, followed by a site-visit. **ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY; THEREFORE, BIDDERS ARE STRONGLY ENCOURAGED TO ATTEND.**

Bids will be publicly opened and read at 2:00PM on February 25, 2003 in the Contracts and Procurement Conference Room located in the West Hill Mall, Suite 525, Two Financial Plaza, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200300380

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: January 22, 2003



## Texas Education Agency

### Request for Proposals Solicitation Notice

Description. In accordance with the Texas Government Code, §2155.083, **State Business Daily; Notice Regarding Procurements Exceeding \$25,000**, all Texas Education Agency procurement opportunities of \$25,000 or more will be publicly posted on the Texas Building and Procurement Commission's website, the Electronic State Business Daily, State Procurement Section of the Texas Marketplace, at <http://esbd.tbpc.state.tx.us>. Notice of procurement opportunities will be published in the *Texas Register* if required by statute.

Further Information. For clarifying information about this notice, contact Barbara Frische, Department of Internal Operations, Texas Education Agency, (512) 463-9383.

TRD-200300716

Cristina De La Fuente-Valadez  
Manager, Policy Planning  
Texas Education Agency  
Filed: January 29, 2003

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**Texas Commission on Environmental Quality**

**Notice of Public Hearing (Chapter 114 and State Implementation Plan)**

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, and to the state implementation plan (SIP) narrative, under the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs. The amendments to Chapter 114 are proposed as a revision to the SIP.

These proposed amendments to Chapter 114 would: consolidate requirements for motor vehicle dealers and establish a retention period for certain records in §114.21; incorporate by reference amendments to federal regulations on transportation conformity in §114.260; and delay the deadline for lawn and garden equipment operators in the Houston/Galveston ozone nonattainment area to file the emission reduction plans in §114.452.

Public hearings on this proposal will be held in Houston on February 27, 2003, at 2:00 p.m. at the City Hall Annex, Council Agenda Briefing Room, 900 Bagby (between McKinney and Walker), and in Austin on February 28, 2003, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Room 2210, 12100 Park 35 Circle. The hearings are 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 occur during the hearings; however, agency staff will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by 5:00 p.m. on February 28, 2003, and should reference Rule Log Number 2003-008-114-AI. For further information on the proposed revisions, please contact Joseph Thomas at (512) 239-4580. Copies of the proposed rules and SIP revisions can be obtained from the commission's website at: <http://www.tmrcc.state.tx.us/oprd/rules/propadop.html>.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200300516  
Stephanie Bergeron  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: January 24, 2003

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**Notice of Water Quality Applications**

The following notices were issued during the period of January 17, 2003 through January 27, 2003.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF BARTLETT has applied for a renewal of TPDES Permit No. 10880-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 325,000 gallons per day. The facility is located approximately 0.5 mile northeast of the intersection of State Highway 95 and Farm-to-Market Road 487 in the City of Bartlett in Bell County, Texas.

CHAMP'S WATER COMPANY has applied for a renewal of TPDES Permit No. 10436-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 1714 Sandy Dale in Western Homes Subdivision in Harris County, Texas.

FLINT HILLS RESOURCES, LP which operates the West Refinery, a petroleum refinery with storage terminals, has applied for a major amendment to TPDES Permit No. 00531 to authorize the additional discharge of treated domestic wastewater and marine generated wastewater via Outfall 001; relocate Outfall 001 via a pipeline to the Viola Turning Basin; add cooling tower blowdown, boiler blowdown and reverse osmosis concentrate waters via Outfalls 002-010; add firewater discharges at the docks in the Viola Turning Basin via a new Outfall 011; redesignate current Outfall 001 as Outfall 012; reuse storm water, hydrostatic test water, and reverse osmosis concentrate as make-up waters; and clarify/modify various calculation, sampling, and dilution protocol. The current permit authorizes the discharge of treated process, ballast, storm water, groundwater and other utility wastewaters from the West Refinery, and contaminated water generated at offsite storage terminals at a daily average flow not to exceed 5,300,000 gallons per day via Outfall 001; and storm water, hydrostatic test, firewater test wastewaters, steam and air conditioner condensate, and uncontaminated groundwater on an intermittent and flow variable basis via Outfalls 002 - 010. The facility is located east and west of Suntide Road and north of Up River Road in the northwest area of the City of Corpus Christi, Nueces County, Texas.

HARRIS COUNTY UTILITY DISTRICT NO. 16 has applied for a major amendment to TPDES Permit No. 12614-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 100,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 2,000 feet west of Hardy Road and approximately one mile north of the intersection of Hardy Road and Farrell Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 86 has applied for a renewal of TCEQ Permit No. 12065-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 425,000 gallons per day. The facility is located approximately 0.40 mile south of the intersection of Farm-to-Market Road 1960 and Ella Boulevard (formerly Medberry Road) in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 127 has applied for a major amendment to TPDES Permit No. 12209-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,150,000 gallons per day. The facility is located at 19201 Gummert Road, approximately 1.2 miles west of the intersection of Barker-Cypress Road and Gummert Road in Harris County, Texas.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10875-004, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 670,000 gallons per day. The facility is located approximately 300 feet northwest of the intersection of Oak Lane and Ferndale Street in the City of Vidor in Orange County, Texas.

RENN ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 12078-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. This application was submitted to the TNRC on April 23, 2002. The facility is located at 9535 Sugarland-Howell Road, immediately northeast of the crossing of Sugarland-Howell Road over Keegan Bayou in Fort Bend County, Texas.

CITY OF SOUR LAKE has applied for a renewal of TPDES Permit No. 10703-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 1/2 mile southwest of the City of Sour Lake, approximately 3/4 mile west of State Highway 326 in Hardin County, Texas.

TRD-200300694

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 28, 2003



#### Notice of Water Rights Application

Notices mailed January 23, 2003 through January 27, 2003.

APPLICATION NO. 5787; Caddo Lake Institute, Inc., 5447 East Cypress Drive, Uncertain, Texas 75661, applicant, seeks a Water Use Permit pursuant to 11.121, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Caddo Lake Institute, Inc., applicant, seeks to appropriate up to 2,154,025 acre-feet of water per annum, based on the sum of requested flows measured at six locations on tributaries of Caddo Lake in the Cypress Basin as follows: (1) Up to 505,175 acre-feet per year in Black Cypress Bayou, tributary of Big Cypress Creek, distributed monthly based on historically recorded mean flows, maximum flows, and flows needed to achieve periodic wetland inundation, measured at USGS Gaging Station No. 07346045, 1.1 miles north of Jefferson in Marion County adjacent to U.S. Highway 59 at 32.778 N Latitude, 94.357 W Longitude. (2) Up to 544,081 acre-feet per year in Little Cypress Creek, tributary of Big Cypress Creek, distributed monthly based on historically recorded mean and maximum flows, measured at USGS Gaging Station No. 07346070, 3.5 miles south of Jefferson in Harrison County adjacent to U.S. Highway 59 at 32.713 N Latitude, 94.346 W Longitude. (3) Up to 482,830 acre-feet per year in Big Cypress Bayou (Big Cypress Creek), distributed monthly based on historically recorded mean flows, measured at USGS Gaging Station No. 07346000, 8.5 miles west of Jefferson in Marion County immediately downstream of Lake O' the Pines at 32.749 N Latitude, 94.499 W Longitude. (4) Up to 503,349 acre-feet per year in James Bayou (a.k.a. Jims Bayou), distributed monthly based on estimated mean and estimated maximum flows, measured at a control point 4.5 miles west of the Texas-Louisiana line in Marion County upstream of Caddo Lake, TCEQ Clean Rivers Site No. 10319, at 32.537 N Latitude, 94.112 W Longitude. (5) Up to 63,080 acre-feet per year in Kitchen Creek, tributary to Caddo Lake, distributed monthly based on estimated maximum flows needed for periodic wetland inundation, measured at a control point approximately 11 miles east-northeast of Jefferson and 1.7 miles downstream of State

Highway 43 at Marion County Road 3616, TCEQ Clean Rivers Site No. 14998 in Marion County at 32.779 N Latitude, 94.159 W Longitude. (6) Up to 55,510 acre-feet per year in Harrison Bayou, tributary to Caddo Lake, distributed monthly based on estimated maximum flows needed for periodic wetland inundation, measured at a control point approximately 14 miles northeast of Marshall at Farm to Market 134 bridge, TCEQ Clean Rivers Site No. 15508 in Harrison County at 32.617 N Latitude, 94.156 W Longitude.

Applicant's requested appropriation for non-consumptive in-stream uses in Marion and Harrison Counties includes preservation of riparian habitat and wetlands, in-stream flows in the Cypress Basin, inflow to Caddo Lake and associated wetlands, in-place beneficial use in Caddo Lake and associated wetlands, water quality, fish and wildlife, beneficial flushing and scouring of channels and associated flood plains, recreation and pleasure, and navigation. The requested appropriation will maintain Caddo Lake at normal operating elevation of 168.5 feet above mean sea level (AMSL) and allow for periodic higher lake levels, up to an elevation of 176 feet AMSL as often as possible to preserve, protect, and maintain wetlands, swamps and backwaters associated with Caddo Lake. No works, diversion, or distribution facilities will be constructed or located on any land in this project. The application was received on July 1, 2002, and additional information was received on August 28, 2002 and September 25, 2002. The application was declared administratively complete and accepted for filing on September 27, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Application No. 10-3959A; The Woodlands Land Development Company, L.P., applicant, P.O. Box 5050, The Woodlands, Texas, 77381, seeks to amend Certificate of Adjudication No. 10-3959, pursuant to Texas Water Code 11.042 and 11.122, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Certificate of Adjudication No. 10-3959, as amended, authorizes applicant to maintain an existing dam and reservoir on Panther Branch ("Lake Woodlands"), tributary of Spring Creek, tributary of the West Fork San Jacinto River, tributary of the San Jacinto River, San Jacinto River Basin, impounding therein not to exceed 1,460 acre-feet of water and to divert and use not to exceed 750 acre-feet of water per annum from the aforesaid reservoir, for agricultural purposes to irrigate 500 acres of land within the boundaries of "The Woodlands" development area in Montgomery County, Texas. Owner is also authorized to use the impounded water for recreation purposes. Special Conditions "5B" and "5C" state that owner shall provide a well with a pump capacity of not less than 700 gpm, and that all water loss and diversion from the aforesaid reservoir shall be replenished from the well. Special Condition "5G" states that owner may not exercise the right to divert and use water for irrigation purposes until such time as owner applies for and is granted a diversion point or points on the perimeter of said reservoir and a rate of diversion from the reservoir. Permittee seeks to amend Certificate of Adjudication No. 10-3959 to eliminate or modify Special Conditions "5B" and "5C," adding treated groundwater-based effluent in addition to groundwater as a means of replenishing diverted lake water. Permittee also seeks to amend Certificate of Adjudication No. 10-3959 to allocate 220 acre-feet of water per year out of the currently authorized 750 acre-feet of water per year for agricultural use to recreation use in an off-channel reservoir ("The Woodlands Waterway") with a surface area of approximately 27 acres. The remaining 530 acre-feet of water will remain as currently authorized, for agricultural purposes to irrigate up to 500 acres of land located within the boundaries of "The Woodlands" Development area in Montgomery County, Texas. Permittee seeks to amend Certificate of Adjudication No. 10-3959 modify Special Condition "5G" by adding diversion points. The Applicant

proposes to divert the water authorized by Certificate of Adjudication 10-3959 from three diversion points as follows: (1) Diversion Point No. 1, on the perimeter of The Woodlands Waterway at Latitude 30.160°N and Longitude 95.466°W, also described as bearing S3.411°E, 4,239 feet from the Northwest Corner of the Walker County School Land Survey, Abstract 599, at a maximum diversion rate of 2.23 cfs (1,000 gpm). (2) Diversion Point No. 1A, on the perimeter of The Woodlands Waterway at Latitude 30.164°N and Longitude 95.470°W, also described as bearing S21.929°W, 2,972 feet from the Northwest Corner of the Walker County School Land Survey, Abstract 599, at a maximum diversion rate of 2.23 cfs (1,000 gpm). (3) Diversion Point No. 2, on the perimeter of Lake Woodlands at Latitude 30.155°N and Longitude 95.483°W, also described as bearing S38.148°W, 8,979 feet from the Northwest Corner of the Walker County School Land Survey, Abstract 599, at a maximum diversion rate of 1.67 cfs (750 gpm). Permittee also seeks to amend Certificate of Adjudication No. 10-3959 to authorize the conveyance of treated effluent purchased from the San Jacinto River Authority's Wastewater Treatment Plant #2 (SJRA WWTP #2) to Lake Woodlands via the bed and banks of Panther Branch. The SJRA WWTP #2 Discharge Point is at Latitude 30.196 N and Longitude 95.489 W, also described as bearing N39.899 W, 11,444 feet from the Northwest Corner of the Walker County School Land Survey, Abstract 599. The amendment application was received on April 24, 2002. The application was determined to be administratively complete and accepted for filing on October 23, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 4124B; The City of Fort Worth, 4200 South Freeway, Ste. 2200, Fort Worth, Texas 76115-1499, applicant, seeks to amend Water Use Permit 3831 (Application No. 4124), as amended, pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality (TCEQ) Rules 30 TAC 295.1, et seq. Water Use Permit No. 3831 (A-4124), as amended, authorizes the permittee to maintain an existing on-channel 15 acre-foot capacity reservoir (Reservoir No. 1) on the Clear Fork Trinity River, tributary of Trinity River, and two existing dams and reservoirs (Reservoirs Nos. 2 and 3) with impoundments of 1.4 acre-feet and 0.6 acre-feet, respectively, on unnamed tributaries of the Clear Fork Trinity River, tributary of the Trinity River, Trinity River Basin in Tarrant County, Texas for recreational purposes. Permittee is also authorized to divert and use, with a time priority of May 11, 1981, not to exceed 300 acre-feet of water per annum from Reservoir No. 1 from a diversion point on the right, or east, bank of the aforesaid reservoir at a point bearing S 72 W, 725 feet from the NW Corner of the J. Rickals Survey, Abstract No 1277, at a maximum diversion rate of 3.9 cfs (1,750 gpm) for agricultural purposes to irrigate 150 acres of the Pecan Valley Golf Course in the J. Bartlett Survey, Abstract No. 187; the J. F. Heath Survey, Abstract No. 641, the aforementioned Rickals Survey; the J. A. Dunham Survey, Abstract No. 409, and the J. A. Bower Survey, Abstract No. 86 in Tarrant County, about 10 miles SW of the Tarrant County Courthouse, the use and occupancy of which land is leased to permittee by the Department of the Army for a term expiring on July 31, 2012. Special condition 4.(b) of the amendment states that this authorization to divert and use water shall expire and become null and void on December 31, 2001. Also to be noted is the condition that the TCEQ would notify applicant of the pending expiration of the permit. As notification by TCEQ was not given until May 13, 2002, applicant was given an additional 180 days to apply to extend the term. Other special conditions apply. Applicant seeks to amend Water Use Permit 3831, as amended, by extending or deleting the expiration date of December 31, 2001. The amendment application was received on August 19, 2002. Additional information was received on October 17 and November 20, 2002. The application was determined to be administratively complete on January

15, 2003. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 4125B; The City of Fort Worth, 4200 South Freeway, Ste. 2200, Fort Worth, Texas 76115-1499, applicant, seeks to amend Water Use Permit No. 3832 (Application No. 4125), as amended, pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality (TCEQ) Rules 30 TAC 295.1, et seq. Water Use Permit No. 3832 (A-4125), as amended, authorizes the permittee to maintain eight existing on-channel reservoirs all on unnamed tributaries of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, and to impound therein not to exceed the following amounts: Reservoir No. 1 - 0.1 acre-feet; Reservoir No. 2 - 1.0 acre-feet; Reservoir No. 3 - 7.0 acre-feet; Reservoir No. 4 - 1.0 acre-feet; Reservoir No. 5 - 3.0 acre-feet; Reservoir No. 6 - 12.0 acre-feet; Reservoir No. 7 - 2.0 acre-feet; Reservoir No. 8 - 12.0 acre-feet. Permittee is authorized to use the reservoirs for recreational purposes. Permittee is also authorized to divert and use, with a time priority of May 11, 1981, not to exceed 50 acre-feet of water per annum from the perimeter of Reservoir No. 6 at a point bearing S 56 W, 1,700 feet from the NE corner of the A. Jordan Survey, Abstract No. 888, at a maximum rate of 2.2 cfs (1,000 gpm) for agricultural purposes to irrigate 72.5 acres of the Meadowbrook Golf Course out of two tracts totaling 138.911 acres in the aforementioned Jordan Survey; the W. J. Baker Survey, Abstract No. 101; and the J. B. Haney Survey, Abstract No. 1822 in Tarrant County, 5.5 miles east of the Tarrant County Courthouse. Special condition 4.(a) of the amendment states that this authorization to divert and use water shall expire and become null and void on December 31, 2001. Also to be noted is the condition that the TCEQ would notify applicant of the pending expiration of the permit. As notification by TCEQ was not given until May 13, 2002, applicant was given an additional 180 days to apply to extend the term. Other special conditions apply. Applicant seeks to amend Water Use Permit No. 3832, as amended, by extending or deleting the expiration date of December 31, 2001. The amendment application was received on August 19, 2002. Additional information was received on October 17, November 20, and December 5, 2002. The application was determined to be administratively complete on January 15, 2003. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 4126B; The City of Fort Worth, 4200 South Freeway, Ste. 2200, Fort Worth, Texas 76115-1499, applicant, seeks to amend Water Use Permit 3833 (Application No. 4126), as amended, pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality (TCEQ) Rules 30 TAC 295.1, et seq. Water Use Permit No. 3833 (A-4125), as amended, authorizes the permittee to maintain five existing on-channel reservoirs all on an unnamed tributary of Kings Branch, tributary of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, and impound therein not to exceed the following amounts: Reservoir No. 4 - 1.3 acre-feet; Reservoir No. 4a - 1.2 acre-feet; Reservoir No. 11 - 1.0 acre-feet; Reservoir No. 12 - 1.7 acre-feet; Reservoir No. 15 - 1.7 acre-feet. Dams Nos. 4 and 4a are in the H. Covington Survey, Abstract No. 256 and Dams Nos. 11, 12, and 15 are in the E. Wilburn Survey, Abstract No. 1679, both Surveys being in Tarrant County. The centerlines of the dams at the stream are referenced from the NE Corner of the aforementioned Wilburn Survey as follows: Reservoir No. 4 - N 16 W, 2,280 feet; Reservoir No. 4a - N 45 W, 620 feet; Reservoir No. 11 - S 48 W, 520 feet; Reservoir No. 12 - S 30 W, 690 feet; Reservoir No. 15 - S 17 W, 1,350 feet. Permittee

is authorized to use the reservoirs for recreational purposes. Permittee is also authorized to divert and use, with a time priority of May 11, 1981, not to exceed 15 acre-feet of water per annum from the perimeter of Reservoir No. 4a from a point bearing N 45 W, 620 feet from the NE corner of the E. Wilburn Survey, Abstract No. 1679, at a maximum rate of 1.7 cfs (750 gpm) for agricultural use to irrigate 50 acres of the Z. Boaz Golf Course out of a tract of about 140 acres in the H. Covington Survey, Abstract No. 256 and the aforementioned Wilburn Survey, approximately 7 miles southwest of the Tarrant County Courthouse, Fort Worth, Texas. The water use permit contains a special condition 4(a) whereby the permit shall expire on December 31, 2001. Other special conditions apply. Special condition 4.(a) of the amendment states that this authorization to divert and use water shall expire and become null and void on December 31, 2001. Also to be noted is the condition that the TCEQ would notify applicant of the pending expiration of the permit. As notification by TCEQ was not given until May 13, 2002, applicant was given an additional 180 days to apply to extend the term. Other special conditions apply. Applicant seeks to amend Water Use Permit 3832, as amended, by extending or deleting the expiration date of December 31, 2001. The amendment application was received on August 19, 2002. Additional information was received on October 17, November 20, and December 5, 2002. The application was determined to be administratively complete on January 15, 2003. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 4127B; The City of Fort Worth, 4200 South Freeway, Ste. 2200, Fort Worth, Texas 76115-1499, applicant, seeks to amend Water Use Permit No. 3831 (Application No. 4124), as amended, pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality (TCEQ) Rules 30 TAC 295.1, et seq. Water Use Permit No. 3835 (A-4127), as amended, authorizes the permittee to maintain an existing off-channel reservoir connected to the West Fork Trinity River by a 36-inch culvert and to impound therein not to exceed 13 acre-feet of water for recreational purposes. Permittee is also authorized to divert water from the West Fork Trinity River through the culvert to the reservoir at a point bearing S 6.5 W, 3,100 feet from the northeast corner of the J.P. Thomas Heirs Survey, at 5.0 cfs (2244 gpm) and to divert and use, with a time priority of May 11, 1981, 140 acre-feet of water per annum from the perimeter of the reservoir from a point bearing S 9.5 W, 2,550 feet from the same survey corner via gravity flow through a 36-inch culvert at 3.3 cfs (1,500 gpm) for agricultural purposes to irrigate 70 acres of the Rockwood Golf Course out of three tracts containing 256.46 acres in the J.P. Thomas Heirs Survey, Abstract No. 1525, the J. Childress Heirs Survey, Abstract No. 252; the J. W. Conner Survey, Abstract No. 355; the P. Schoonover Survey, Abstract No. 1405; the R. O. Reeves Survey, Abstract No. 1293; the J. W. Conner Survey, Abstract No. 1525; and the J. P. Thomas Heirs Surveys, located approximately 2 miles northwest of the Tarrant County Courthouse, Fort Worth, Texas. Special condition 4.(b) of the amendment states that this authorization to divert and use water shall expire and become null and void on December 31, 2001. Also to be noted is the condition that the TCEQ would notify applicant of the pending expiration of the permit. As notification by TCEQ was not given until May 13, 2002, applicant was given an additional 180 days to apply to extend the term. Other special conditions apply. Applicant seeks to amend Water Use Permit No. 3835, as amended, by extending or deleting the expiration date of December 31, 2001. The amendment application was received on August 19, 2002. Additional information was received on October 17 and November 20, 2002. The application was determined to be administratively complete on January 15, 2003. Written public comments and requests for a public meeting should be submitted to

the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

#### Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200300695

LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: January 28, 2003



#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on (JANUARY 27, 2003) Executive Director of the Texas Commission on Environmental Quality, Petitioner v. (ENTITY); Respondent; SOAH Docket No. (582-02-3949); TCEQ Docket No. (2001-0452-PST-E). In the matter to be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239- 3317.

TRD-200300706

LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: January 29, 2003

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## Texas Department of Housing and Community Affairs

### Notice of Public Hearing

#### Multifamily Housing Revenue Bonds (Sphinx At Murdeaux) Series 2003

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at E.B. Comstock Middle School, 7044 Hodde, Dallas, Texas 75217 at 6:00 p.m. on February 25, 2003 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in an aggregate principal amount not to exceed \$13,400,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Murdeaux Villas, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 240-unit multifamily residential rental development to be constructed on approximately 18 acres located at the southwest quadrant of the 7400 block of Murdeaux and Loop 12, Dallas, Texas 75217. The project will be initially owned and operated by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213 and/or rmeyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200300664  
Edwina P. Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: January 27, 2003

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### Notice of Public Hearing

#### Multifamily Housing Revenue Bonds (West Virginia Apartments) Series 2003

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Glenn C. Hardin Intermediate School, 426 East Freeman, Duncanville, Texas 75137 at 6:00 p.m. on February 27, 2003 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in an aggregate principal amount not to exceed \$11,100,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to West Virginia Apartments Limited Partnership, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows:

204-unit multifamily residential rental development to be constructed on approximately 10.517 acres located in the 7900 block of Highway 67 (Marvin D. Love Freeway) immediately south of its intersection with Interstate Highway 20 (Lyndon B. Johnson Freeway). The site extends to and contains frontage on West Virginia Drive, Dallas, Texas 75237. The project will be initially owned and operated by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213 and/or rmeyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200300663  
Edwina P. Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: January 27, 2003

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## Texas Department of Insurance

### Notice of Filing

The following petition has been filed with the Texas Department of Insurance, and is under consideration:

The adoption of amendments to the Plan of Operation for Texas Automobile Insurance Plan Association (TAIPA), pursuant to Article 21.81.

The proposal is to amend the TAIPA Plan of Operation, Section 6.A., Subsections 2 and 3, to provide a second option by which agents can obtain immediate binding of coverage regarding applications submitted to TAIPA for assignment. This second option is to be handled through an Electronic Application Submission Interface Procedure, rather than through the existing Electronic Submission Procedure telephone call.

The new procedure is to be installed in phases as programs are developed, and is expected to automate many of the current processing functions, both for agents and for TAIPA. TAIPA expects that this new procedure for binding coverage will be operational approximately July 1, 2003.

This filing is subject to Department approval without a hearing. Any comments may be filed with the Office of the Chief Clerk, Texas Department of Insurance, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, within 15 days after publication of this notice. An additional copy is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104.

For further information or to request a copy of the proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (reference number A-1202-47).

TRD-200300700



Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 28, 2003

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**Third Party Administrator Applications**

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of AmSoft Information Services, Inc., a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200300378  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 22, 2003

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**Third Party Administrator Applications**

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of TRISTAR Risk Management, a foreign third party administrator. The home office is Long Beach, California.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200300685  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 28, 2003

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**Texas Lottery Commission**

**Instant Game No. 371 "Hot Cards"**

**1.0 Name and Style of Game.**

A. The name of Instant Game No. 371 is "HOT CARDS". The play style is "match two with all win".

**1.1 Price of Instant Ticket.**

A. Tickets for Instant Game No. 371 shall be \$1.00 per ticket.

**1.2 Definitions in Instant Game No. 371.**

A. Display Printing - That area of the instant game 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 ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, WIN, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$3,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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. 371 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
<b>WIN SYMBOL</b>	<b>WINALL</b>
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$3,000	THR THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 371 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$3,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (371), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 371-0000001-000.

L. Pack - A pack of "HOT CARDS" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the first page, tickets 005-009 will be on the next page and so forth with tickets 245-249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT CARDS" Instant Game No. 371 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general 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 instant ticket. A prize winner in the "HOT CARDS" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. If the player gets 2 like cards in any hand, the player will win the

prize for that Hand. If the player gets a WIN symbol in any Hand, the player will win all 5 prizes. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 15 (fifteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, 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;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-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 ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 15 (fifteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 15 (fifteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the 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-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The 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 Instant Game 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 ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No 3 or more like non-winning play symbols on a ticket.

D. The "win" symbol will never occur more than once on a ticket.

E. No duplicate hands (in any order) on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "HOT CARDS" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, or \$500 ticket. 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 2.3.C of these Game Procedures.

B. To claim a "HOT CARDS" Instant Game prize of \$3,000, the claimant must sign the winning 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 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 "HOT CARDS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. 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 a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education 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 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 of less than \$600 from the "HOT CARDS" Instant 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 more than \$600 from the "HOT CARDS" Instant 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

#### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall

be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the 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 ticket in the space designated therefor. If more than one name appears on the back of the 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 Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,234,250 tickets in the Instant Game No. 371. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 371 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	1,419,146	8.62
\$2	734,090	16.67
\$4	146,769	83.36
\$5	97,874	125.00
\$10	73,418	166.64
\$20	48,937	250.00
\$50	16,325	749.42
\$100	6,380	1,917.59
\$500	102	119,943.63
\$3,000	51	239,887.25

\*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.81. 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 tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 371 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 371, 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-200300679  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: January 28, 2003



Instant Game No. 721 "Double Down"

1.0 Name and Style of Game.

A. The name of Instant Game No. 721 is "DOUBLE DOWN". The play style is a "match key number match with doubler and all win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 721 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 721.

A. Display Printing - That area of the instant game 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 ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000, \$40,000, DOUBLE DOLLAR SYMBOL, and MONEY BAG SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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. 721 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY

\$25.00	TWY FIV
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$40,000	40 THOU
DOUBLE DOLLAR SYMBOL	DBLE
MONEY BAG SYMBOL	WINALL

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 721 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, \$200, or \$500.

I. High-Tier Prize - A prize of \$1,000, \$5,000 or \$40,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (721), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 721-0000001-000.

L. Pack - A pack of "DOUBLE DOWN" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DOUBLE DOWN" Instant Game No. 721 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general 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 instant ticket. A prize winner in the "DOUBLE DOWN" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If the player matches any of the YOUR CHIPS to either WINNING CHIP within the same game, the player will win the prize shown for that chip. If the player gets a double dollar symbol, the player will win double the prize shown for that chip. If the player gets a money bag symbol, the player will win all 20 prizes. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, 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;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-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 ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the 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-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The 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 Instant Game 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 ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No three or more like non-winning prize symbols.
- C. No duplicate non-winning Your Chips play symbols on a ticket.

- D. There will be no duplicate Winning Chips play symbols on a ticket.
- E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).
- F. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- G. The doubler symbol will appear according to the prize structure.
- H. The win all symbol will appear according to the prize structure.
- I. The doubler symbol and the win all symbol will never appear more than once on a ticket and they will never appear together on a ticket.
- J. When the win all symbol is used there will be no occurrence on any Your Chips matching a Winning Chip.
- K. No chip in one game will match a Winning chip in another game.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLE DOWN" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, \$200, or \$500 ticket. 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 2.3.C of these Game Procedures.

B. To claim a "DOUBLE DOWN" Instant Game prize of \$1,000, \$5,000 or \$40,000, the claimant must sign the winning 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 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 "DOUBLE DOWN" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. 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 a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or



3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education 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 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 of less than \$600 from the "DOUBLE DOWN" Instant 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 more than \$600 from the "DOUBLE DOWN" Instant 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the 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 ticket in the space designated therefor. If more than one name appears on the back of the 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 Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,048,075 tickets in the Instant Game No. 721. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 721 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	629,930	4.84
\$10	203,198	15.00
\$15	60,968	49.99
\$20	81,282	37.50
\$50	25,497	119.55
\$100	4,502	677.05
\$200	375	8,128.20
\$500	275	11,083.91
\$1,000	75	40,641.00
\$5,000	9	338,675.00
\$40,000	3	1,016,025.00

\*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.03. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 721 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 721, 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-200300680  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: January 28, 2003

## Texas Department of Mental Health and Mental Retardation

### Correction of Error

The Texas Department of Mental Health and Mental Retardation proposed to repeal 25 TAC §411.56 in the November 22, 2002, issue of the *Texas Register* (27 TexReg 10890). Due to an error in the department's submission, the section number appeared as §411.401 instead of §411.56. The section number and title should have read "§411.56. Memorandum of Understanding (MOU) on Coordinated Services to Children and Youths."

TRD-200300712

## North Texas Tollway Authority

### Request for Qualifications Phase 3 DNT

The North Texas Tollway Authority (the NTTA), a regional Tollway authority and a political subdivision of the State of Texas, intends to issue a Request for Qualifications (RFQ) to enter into an agreement with a qualified independent firm(s) to pursuant to Chapter 366 of the Texas Transportation Code and Chapter 2254 of the Texas Government Code to provide design engineer services for the extension of the Dallas North Tollway, Phase 3, from SH 121 to US 380 in the Town of Frisco.

To be considered, potential proposers must submit a Letter of Request, requesting a copy of the RFQ, which letter must also contain the name of the proposer, a contact person, and an address to which the RFQ may be sent. The NTTA will send only one copy of the RFQ to each proposer. RFQ's will be available for distribution starting February 7, 2003.

**Deadlines.** Letters of Request for a copy of the RFQ, will be accepted by fax at (214) 528-4826, or by mail or hand delivery to: North Texas Tollway Authority, 5900 W. Plano Parkway, P.O. Box 260729, Plano, Texas, 75026, Attn: Ms. Kathi Shelton. Letters of Request will be received until 1:00 p.m. February 19, 2003.

Potential proposers should note that the NTTA will hold a Mandatory Pre-qualification conference at their administrative offices at 5900 West Plano Parkway, Suite 100, Plano, Texas, 75093 starting promptly at 1:00 p.m. on February 20, 2003. Proposers must have a representative in attendance at this conference to have their Statement of Qualifications considered by the NTTA.

Statements of Qualifications are due to the NTTA before 1:00 p.m. on March 14, 2003.

**Agency Contact.** Any requests for additional information regarding this notice of invitation should be sent in writing to Mr. David W. Clarke, P.E. at the above address, or by email to [jbecker@ntta.org](mailto:jbecker@ntta.org), General Engineering Consultant.

TRD-200300708  
Katharine D. Nees  
Deputy Executive Director  
North Texas Tollway Authority  
Filed: January 29, 2003

## Public Utility Commission of Texas

### Notice of Amendment to Interconnection Agreement

On January 22, 2003, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Z-Tel Communications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27263. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27263. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 24, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas

78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888- 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27263.

TRD-200300681  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 28, 2003



#### Notice of Amendment to Interconnection Agreement

On January 22, 2003, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Logix Communications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27264. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27264. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 24, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888- 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27264.

TRD-200300682  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 28, 2003



#### Notice of Amendment to Interconnection Agreement

On January 22, 2003, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Bestline Communications, LP also known as Austin Bestline Company, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27265. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27265. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 24, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those

issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27265.

TRD-200300683  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 28, 2003



#### Notice of Application for Amendment to Certificated Service Area Boundary in Brownsville, Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on January 24, 2002, for an amendment to a certificated service area boundary in Brownsville, Cameron County, Texas.

Docket Style and Number: Application of Public Utilities Board of the City of Brownsville to Amend Certificated Service Area Boundaries within Cameron County and City of Brownsville. Docket Number 2727.

The Application: The Brownsville Public Utilities Board (BPUB) filed an application to amend its Certificate of Convenience and Necessity to include areas which are within the city limits of the City of Brownsville, Texas, which are currently certificated to Central Power and Light Company (CP&L).

Area No. 1: BPUB has received a request from Eduardo Larrazolo dba Warro, Inc. for electrical service to the Larrazolo Subdivision. BPUB is seeking the ability to provide electrical service to the site of the Larrazolo Subdivision that is located on the North side of FM 511. The estimated cost of these facilities is estimated to be \$1,067,910.61.

There is an existing CP&L electric line along FM 511 adjacent to this property. BPUB is proposing to extend 80,000 feet of underground distribution lines within the subdivision to serve this project. The area consists of 200 acres of land along the north side FM 511 named the Larrazolo Subdivision that will be developed by Eduardo Larrazolo doing business as Warro, Inc. during 2003. The area is currently undeveloped and is solely owned by Eduardo Larrazolo dba Warro, Inc. No other property owners will be affected by this service.

Area No. 2: BPUB has received a request from Victor Garcia for electrical service to the Diamond Point Subdivision. BPUB is seeking the ability to provide electrical service to the site of the Diamond Point Subdivision that is located north of Alton Gloor Boulevard and south of the Lakeway Subdivision. The estimated cost of these facilities is estimated to be \$48,085.31.

There is an existing CP&L electric line along Alton Gloor Boulevard adjacent to this property. BPUB is proposing to extend overhead electrical lines approximately 2000 feet west along Alton Gloor Boulevard and 1500 feet of underground distribution lines within the subdivision feet to serve this project. This area consists of 6 acres of land along the north side of Alton Gloor Boulevard and South of Lakeway Subdivision that will be developed by Victor Garcia during 2003. The area is

currently undeveloped and is solely owned by Victor Garcia. No other property owners will be affected by this service.

Area No. 3: BPUB has received a request from the Nino Gutierrez, Deputy Port Director, Operations of the Brownsville Navigation District, for electrical service to 2.63 acres of land (Section 17, Part 4) along Old Alice Highway on which the Brownsville Navigation District is constructing a new rail office (UPRR Yard Office). BPUB is seeking to provide electrical service to the site of the new rail office (UPRR Yard Office) that is located on the southwest corner of the new rail yard and along Old Alice Highway. The estimated cost of these facilities is estimated to be \$10,760.27.

There are existing BPUB and CP&L electric lines along Old Alice Highway adjacent to this property. BPUB is proposing to extend an underground distribution line along Old Alice Highway approximately 150 feet to serve this property. The area consists of 2.63 acres of land (Section 17, Part 4) along Old Alice Highway that will be developed by the Brownsville Navigation District (Port of Brownsville) as a UPRR Yard Office in 2003. The area is currently undeveloped and is solely owned by Brownsville Navigation District (Port of Brownsville). No other property owners will be affected by this service.

Persons wishing to comment on the action sought should contact 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 27277.

TRD-200300702  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 29, 2003



#### Notice of Application for Relinquishment of Service Provider Certificate of Operating Authority

On January 17, 2003, TXU Communications filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SP-COA Certificate Number 60047. Applicant intends to relinquish its certificate.

The Application: Application of TXU Communications for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 27255.

Persons wishing to comment on the action sought should contact 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 1-888-782-8477 no later than February 12, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket No. 27255.

TRD-200300371  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 22, 2003



#### Notice of Application for Sale, Transfer or Merger

Notice is given to the public of the filing with the Public Utility Commission of Texas a joint application for sale, transfer, or merger on January 22, 2003, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §37.154 (Vernon 1998 & Supplement 2003).

Docket Style and Number: Joint Application of Pedernales Electric Cooperative, Inc., AEP Texas Central Company, and AEP Texas North Company to Transfer Certain Distribution and Transmission Facilities and Service Areas, Docket Number 27261.

The Application: The instant proceeding involves the transfer of certain distribution and transmission facilities and service areas in and around the cities of Junction, Menard, and Rocksprings, as well as certain unincorporated areas of southern Mason County, northeastern Gillespie County, and the Freiss Ranch area of Sutton County to Pedernales Electric Cooperative, Inc. Approximately 3,800 customers are served by these facilities, including 206 miles of distribution line. Some of the affected areas are currently singly certificated to AEP Central or AEP North, and some of the AEP North service area is dually certificated with Cap Rock Electric Cooperative, Southwest Texas Electric Cooperative, Central Texas Electric Cooperative, or Pedernales Electric Cooperative, Inc.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 27261.

TRD-200300489  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 24, 2003



#### Notice of Application for Sale, Transfer or Merger

Notice is given to the public of the filing with the Public Utility Commission of Texas a joint application for sale, transfer, or merger on January 24, 2003, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§37.154 (Vernon 1998 & Supplement 2003).

Docket Style and Number: Joint Application of AEP Texas Central Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for Approval of Transfer of Facilities in Goliad and Karnes Counties, Docket Number 27282.

The Application: The instant proceeding involves the transfer from AEP Texas Central Company of certificate rights concerning a 345 kV transmission facility that interconnects the Coleto Creek Substation to the Pawnee Switching Station to the LCRA Transmission Services Corporation.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 27282.

TRD-200300688

Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 28, 2003



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 17, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to § 54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Interlink Computer Connection for a Service Provider Certificate of Operating Authority, Docket Number 27248 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 Kbps, Frame Relay, and Fractional T1 services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact 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 1-800-782-8477 no later than February 12, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27248.

TRD-200300370  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 22, 2003



#### Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on January 22, 2003, for waiver of denial by North American Numbering Plan Administrator (NANPA) of applicant's request for NXX codes.

Docket Title and Number: Application of Verizon Southwest, Inc. for Waiver of Denial by NANPA of NXX Code Request in the Boerne Rate Center. Docket Number 27269.

The Application: A customer of Verizon, Boerne Independent School District (Boerne ISD), has requested Verizon to supply a sequential block of 300 numbers to improve and eliminate deficiencies in its current telephone system in Boerne, Texas. Verizon stated that it does not have 300 sequential numbers available within the Boerne central office to meet the customer's request. A 1,000 number block was requested as number pooling is slated to be implemented in this number planning area on January 28, 2003. The NANPA denied Verizon's request based on practices designed to prohibit acquisition of unneeded numbering resources. Verizon seeks an exception to the application of NXX assignment guidelines. Verizon asks that the commission waive the NANPA's denial of Verizon's NXX assignment request and direct Neustar to provide Verizon a 1,000 number block for Boerne, Texas when pooling begins on January 28, 2003.

Persons wishing to comment upon the action sought should contact 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 1-888-782-8477 no later than February 21, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 27269.

TRD-200300689  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 28, 2003



### Notice of Interconnection Agreement

On January 23, 2003, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas d/b/a Sprint, and Now Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27272. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27272. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 25, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if

necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 . Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27272.

TRD-200300684  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 28, 2003



### Notice of Interconnection Agreement

On January 24, 2003, Central Telephone Company of Texas doing business as Sprint and Sprint Communications Company, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27278. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27278. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 26, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing

those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 . Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27278.

TRD-200300686  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 28, 2003



### Notice of Interconnection Agreement

On January 24, 2003, United Telephone Company of Texas, Inc. doing business as Sprint and Sprint Communications Company, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27279. The joint application and the underlying interconnection agreement is available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27279. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 26, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the

joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 . Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27279.

TRD-200300687  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 28, 2003



### Notice of Interconnection Agreement

On January 27, 2003, Southwestern Bell Telephone, LP d Southwestern Bell Telephone Company and Arch Wireless Company, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27287. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27287. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 27, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings

concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888- 782-8477 . Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27287.

TRD-200300707  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 29, 2003

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## Texas Department of Transportation

### Notice of Contract Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation publishes this notice of a consultant contract award for providing vehicle titles and registration outsourcing review services. The request for proposal for vehicle titles and registration outsourcing review services was published in the *Texas Register* on July 26, 2002 (27 TexReg 6777).

The consultant will identify functions which could be outsourced, including functions with an organizational imbalance; assess the performance of each operational function suggested to be outsourced; and identify how outsourcing would effect the effectiveness and efficiency of the division as a whole while maintaining customer service for the counties and the general public.

The selected consultant for these services is American Management Systems, 50 West Broad Street, Suite 2300, Columbus, Ohio 43215. The total value of the contract is \$225,000, and the contract work period started on January 28, 2003, and will continue until May 31, 2003. The final report is to be submitted on or before May 30, 2003.

TRD-200300691  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: January 28, 2003

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### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

<http://www.dot.state.tx.us>

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200300458  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: January 23, 2003

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### Public Notice

Pursuant to 43 TAC §15.75, the Texas Department of Transportation (TxDOT) will conduct a public hearing to receive comments on the Tornillo/Guadalupe New International Bridge application. The public hearing will be held at 10:00 a.m. on February 14, 2003, at the El Paso TxDOT District Office, 13301 Gateway West, El Paso, Texas 79928 and will be conducted in accordance with the procedures specified in 43 TAC §1.5. The bridge application is available for viewing in the El Paso TxDOT District Office, 13301 Gateway West, El Paso, Texas 79928. Those desiring to make comments or presentations may register starting at 9:30 a.m. Any persons, including, but not limited to, official representatives of a county, municipality, metropolitan planning organization, or other governmental entity, and any individual, group, or association may provide comment. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the Tornillo/Guadalupe New International Bridge application should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any detailed suggestions should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Blanca Del Valle, Public Information Office, 13301 Gateway West, El Paso, Texas 79928, 915/790-4341 at least two working days prior to the hearing so that appropriate services can be provided.

### SUMITTAL OF COMMENTS

Written comments on the Tornillo/Guadalupe New International Bridge may be submitted to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on February 28, 2003.

TRD-200300703  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: January 29, 2003

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### Request for Comments - Driver Behavior Problems



In accordance with Title 43, §25.904 of the Texas Administrative Code, the Texas Department of Transportation (TxDOT) is soliciting public comments on the top ten driver behavior problems in Texas. The comments will be used in developing the Traffic Safety Strategic Plan for the period of 2004 through 2010. Comments on the problems must be driver behavior related, and should not include roadway design or construction, signage, traffic control devices, or other equipment oriented items. Examples of driver behavior problem areas are:

- Excessive speed
- Red light running
- Inadequate or low safety belt use
- Alcohol or drug impaired driving
- Lack of or inadequate EMS response capability to motor vehicle crashes
- Motorcycle safety
- Bicycle safety
- Pedestrian safety

These are only samples and do not exclude other problems not listed. Comments should answer the question, "What are the top ten driver behavior problem areas?" Comments should offer potential solutions to the problems listed.

**Planning Process:** Comments will be accepted from the public and existing traffic safety stakeholders through March 10, 2003. Submitters are encouraged to list a maximum of ten traffic safety problems, and

the potential solutions. Submissions will be consolidated and sent to all submitters for valuing under a scale of one through three, with one being the highest value. Valued priorities received by 5 p.m. March 21, 2003, will be ranked and assigned to one of the 13 traffic safety program areas. The resulting problem and program area lists will be sent to all submitters with the existing goals and strategies, requesting revisions to the goals and strategies by April 11, 2003. TxDOT will use the responses to develop the Strategic Plan for 2004 through 2010, to include goals, strategies, performance measures, and targets. The Strategic Plan will be the basis of the Texas Traffic Safety Performance Plans for fiscal year 2004 and 2005.

**Current Goals, Strategies, and Performance Measures:** Texas Traffic Safety goals, strategies, and performance measures are part of the Performance Plan to the Texas Highway Safety Plan, and is available for downloading at:

<http://www.dot.state.tx.us/trafficsafety/grants/hspmain.htm>

Texas Traffic Safety Priorities must be received at Texas Department of Transportation, TRF/TS, 125 E. 11th Street, Austin, Texas, 78701-2483, or via email no later than 5 p.m., CST, March 12, 2003 to be considered. Email address:

[wstrawn@dot.state.tx.us](mailto:wstrawn@dot.state.tx.us)

**Authority and Responsibility:**

The Texas Traffic Safety Program derives from the National Highway Safety Act of 1966 (23 USC § 401, et Seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code Chapter 723).

**Figures Regarding Traffic Trends**

Figure 1: DWI-Involved KAB Crashes

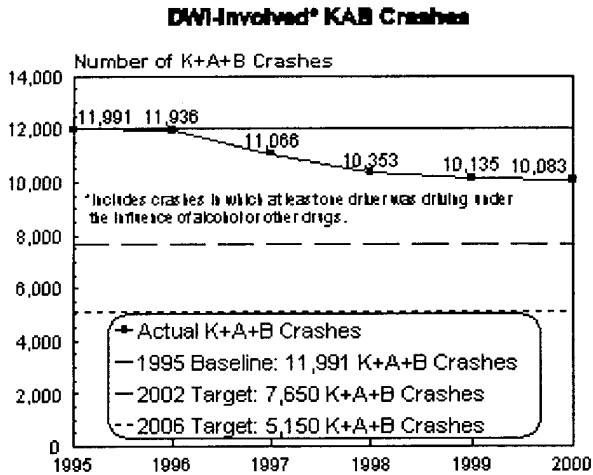


Figure 2: DWI-Involved Fatalities

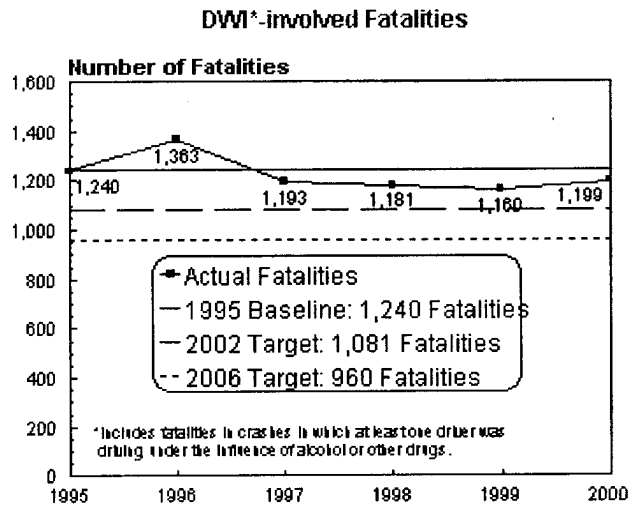


Figure 3: Motorcycle Operator and Passenger Fatalities

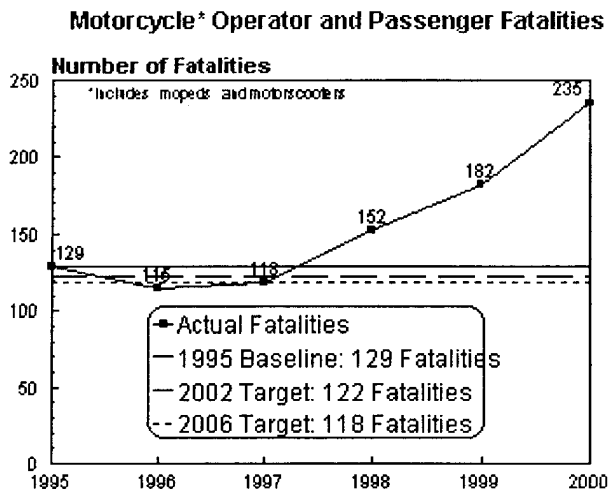


Figure 4: Speed-related KAB Crashes

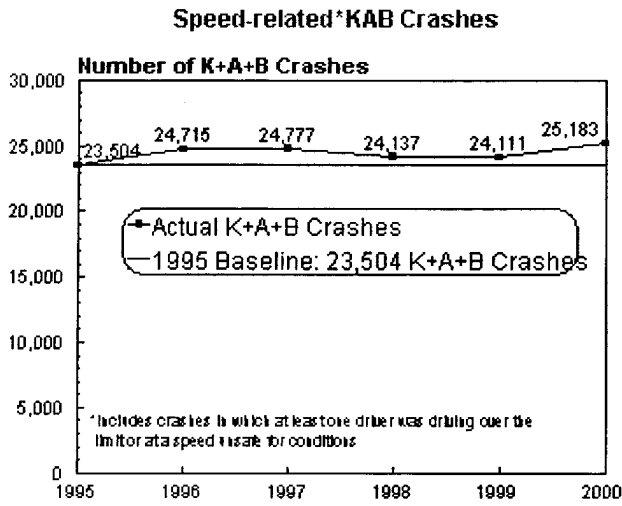


Figure 5: Motor Vehicle-related Pedestrian ABC Injuries

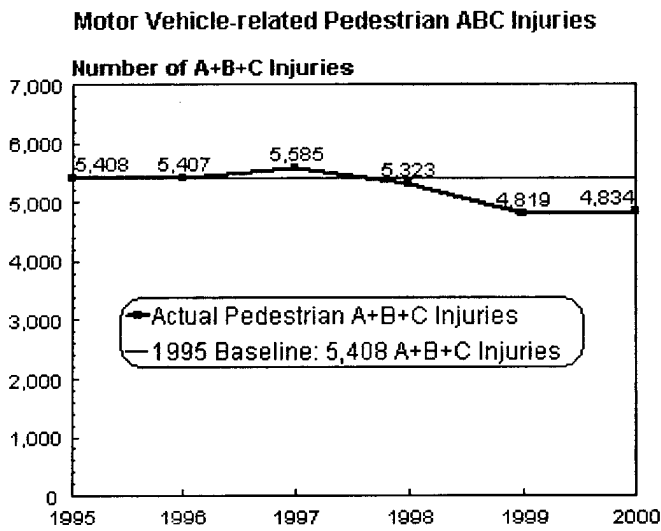


Figure 6: Motor Vehicle-related Pedestrian Fatalities

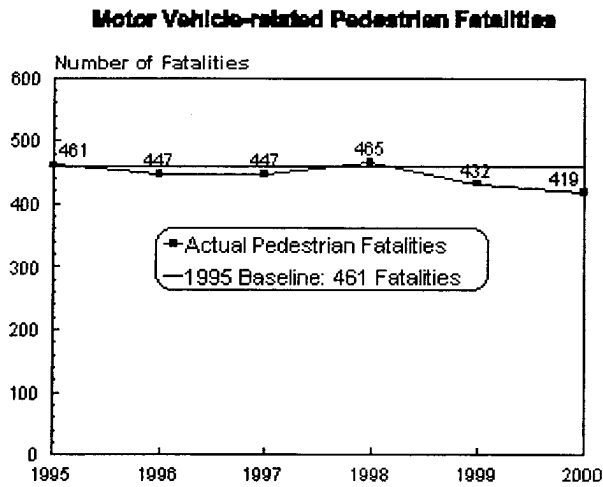


Figure 7: Pedalcyclist Traffic Fatalities

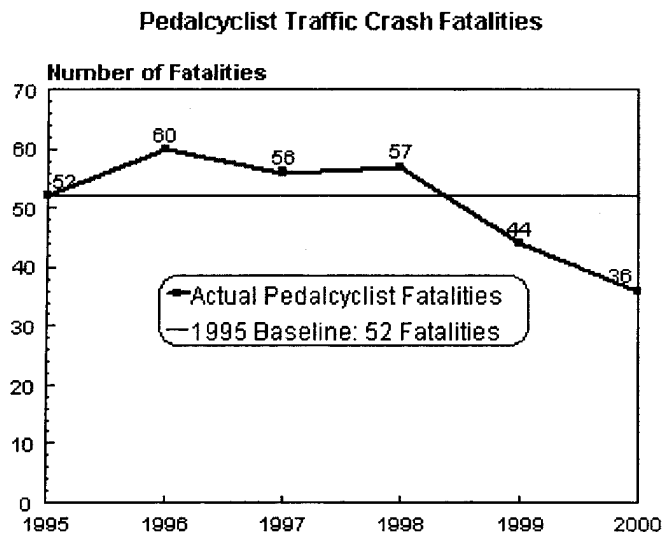


Figure 8: Safety Belt Use in Texas in 2002

Safety Belt Use in Texas in 2002:

	<u>All Passenger Vehicles</u>	<u>Passenger Cars</u>	<u>Light Pickups</u>
Front Seat	81.1%	82.7%	76.1%
Driver	82.0%	83.7%	76.9%
Passenger	76.3%	77.4%	70.5%

TRD-200300692  
 Bob Jackson  
 Deputy General Counsel  
 Texas Department of Transportation  
 Filed: January 28, 2003

◆ ◆ ◆  
**University of North Texas**

Request for Proposal for Government Relations Consulting  
 Services

This request for proposals for consulting services is issued in accordance with the provisions of the State of Texas Government Code, Chapter 2254. Award of this contract is contingent upon the Governor's Office of Budget and Planning approval.

#### INVITATION TO BID

The University of North Texas (UNT) System is soliciting proposals for continuation of federal government relations consulting services.

#### GENERAL REQUIREMENTS/SCOPE OF WORK

The selected federal government relations consulting firm will be responsible for the following tasks:

1. Assisting the UNT System and member institutions to continue the development and execution of the federal government relations plan initiated in January of 2002 to attract support for research facilities, equipment, technology and programs through federal initiatives.
2. Continue assisting the UNT System and member institutions in evaluating research resources, developing concepts and themes for agreed upon research initiatives, formulating plans and timetables for presentation of research initiatives, assisting in preparation of supporting documentation, coordinating meetings with elected representatives and their legislative staffs, serving as a liaison to funding agencies, preparing testimony for presentation, developing legislative strategies, and monitoring and reporting on government programs relevant to research initiatives and other areas of interest to the UNT System and member institutions.

#### UNIVERSITY CONTACT

Please submit 3 copies of your proposal to:

Candy Blagg Associate Director of Purchasing Services

University of North Texas

2310 North Interstate 35-E

P.O. Box 310499 Denton, TX 76203

#### DRAFT

#### CLOSING DATE FOR SUBMISSION OF PROPOSALS

All written proposals must be received by the UNT Purchasing Office at the above address by 10:00 a.m. on March 10, 2003.

#### EVALUATION OF PROPOSALS

The University of North Texas System will evaluate the proposals on the Best Value provisions of state procurement guidelines. The University of North Texas System will be the sole evaluator of the proposals and its decision will be final. The System reserves the right to negotiate fees with the selected firm. In addition to cost, the following are the criteria on which proposals will be evaluated, in general order of importance:

1. The consultant team Background of the senior consultants Experience representing state university systems Demonstrated creativity Experience in working with legislators and legislative staff, and funding agencies
2. Stability and reputation of the firm
3. Availability of key firm members
4. Ability to offer consulting advice independent of any relationship with other clients

5. Range of in-house specialization and capabilities
6. Implementation-approach and methodologies
7. Scheduling of key activities and resources
8. Evidence of a quality assurance program

Following proposal a System review team will select a firm.

#### PROPOSAL SELECTION SCHEDULE

January 29, 2003 Issue RFP for federal government relations consultant

March 10, 2003 Written proposals due, 10:00 a.m. Central time

March 10, 2003 UNT staff will evaluate the written proposals

March 11, 2003 Select consulting firm

March 18, 2003 Get best and final offer DRAFT

March 31, 2003 Complete and sign contract

#### PROPOSAL REQUIREMENTS AND SUBMISSION GUIDELINES

All responses to this Request for Proposals shall include the following:

1. A description of your methodology and approach to government consulting.
2. A list of consultants who would interact with UNT and governmental personnel, with a description of the roles and qualifications of each individual. Include resumes of each person identified.
3. A proposed pricing structure for the services to be provided.
4. Certification that the submitter does not discriminate in employment practices and shall abide by all Federal and State statutes.

#### BACKGROUND

The University of North Texas is the leading public university in the Dallas/Fort Worth Metroplex and the fourth largest in Texas. The Carnegie Foundation for the Advancement of Teaching classifies UNT as a Doctoral/Research-Extensive University, based on the breadth and productivity of its research doctoral programs. UNT offers approximately 50 doctoral programs, more than 120 master's programs, and nearly 100 undergraduate concentrations. The fall 2002 enrollment of approximately 30,000 to include over 6,000 graduate students, places UNT among the top three graduate schools in Texas and neighboring states.

UNT's research and graduate programs in science and technology are an area of strength, particularly in the natural sciences and interdisciplinary fields of environmental science, information science, and materials science. Strength in science and technology is complemented by recognized excellence in arts and letters, business administration, the community service professions and psychology, education, visual arts, and a nationally acclaimed program in music.

TRD-200300701

Candy Blagg

Associate Director of Purchasing Services

University of North Texas

Filed: January 29, 2003



## How to Use the Texas Register

**Information Available:** The 13 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.

**Secretary of State** - opinions based on the election laws.

**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 a 30-day 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.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Open Meetings** - notices of open meetings.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

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 26 (2001) is cited as follows: 26 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 "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 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, Room 245, 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 through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

## 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 (using Arabic numerals) and Parts (using Roman 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 following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

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 *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

# *Texas Register*

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