

# ADOPTED RULES

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

## TITLE 7. BANKING AND SECURITIES

### PART 6. CREDIT UNION DEPARTMENT

#### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

##### SUBCHAPTER C. MEMBERS

###### 7 TAC §91.301

The Credit Union Commission (the Commission) adopts the amendments to 7 TAC §91.301 concerning a credit union's field of membership without changes to the text as published in the March 18, 2016 issue of the *Texas Register* (41 TexReg 2047). The amended rule will not be republished.

In general, the purpose of the amended rule adoption regarding 7 TAC §91.301 is to implement changes resulting from the Commission's review of this section under Texas Government Code §2001.039. Under Texas Finance Code §15.402, the Commission has legal authority to adopt rules concerning the character of field of membership. In adopting rules, the Commission may regulate and classify credit unions according to criteria that the Commission determines are appropriate and necessary to accomplish the purposes of Texas Finance Code Chapter 15 and the Texas Credit Union Act.

This rule adoption amends 7 TAC §91.301(a) to expand the definition of local service area to generally consist of one or more contiguous political subdivisions that are within reasonable proximity of a credit union's offices. Political subdivision has the meaning assigned by Texas Local Government Code §172.003(3). The rule adoption also amends 7 TAC §91.301(e) to allow all credit unions to include in their field of membership areas designated by a credit union development district in accordance with Texas Finance Code Chapter 279 and 7 TAD Chapter 91, Subchapter K (related to Credit Union Development Districts), without regard to location. Once a credit union development district has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in that district.

In accordance with Texas Finance Code §15.402(b), the Commission finds that the amended rule will: (1) promote a stable credit union environment; (2) provide credit union members with convenient, safe, and competitive services; (3) preserve and promote the competitive parity of credit unions with regard to other depository institutions consistent with the safety and soundness of credit unions; and (4) promote or encourage economic development in this state. In order to promote a stable credit union environment and provide credit union members with competitive services, credit unions must be able to attract new

members and expand consumer choice within the confines of the Texas Finance Code. The proposed rule would also increase consumer access to affordable financial services. At the same time, the proposed rule will keep the state charter competitive with recent National Credit Union Administration proposed field of membership rule changes and, thus, promote a stable credit union environment.

The Commission observes that an "underserved area" as defined in 7 TAC §91.101 (related to Definitions and Interpretations) is more limiting than the criteria prescribed for an area to be designated as a credit union development district in accordance with Texas Finance Code Chapter 279 and 7 TAC Chapter 91, Subchapter K (related to Credit Union Development Districts). While an "underserved area" could meet the standards necessary for designation as a "credit union development district," the reverse cannot be guaranteed. A credit union can only open an office that is reasonably necessary to provide services to the credit union's members. If the Department did not differentiate between credit union development districts and underserved areas, then if an area did not meet the definition of underserved area, a credit union would not be able to meet its obligation to open a branch in the development district unless the geographic area was already included in the credit union's existing field of membership. This result would be inconsistent with the legislative intent with regard to credit union development districts. The Commission takes seriously its direction from the Legislature to administer and monitor a credit union development district program to encourage the establishment of branches of credit union in geographic areas where there is a demonstrated need for financial services.

The 30-day period ended April 18, 2016. The Commission received comments regarding the amended rule from four commenters: Texas Credit Union Association, Neighborhood Credit Union, Texas Bankers Association, and the Independent Bankers Association of Texas. Of the commenters, two opposed the rules and two persons favored the rule, with one of the commenters favoring the rule but suggesting ways to improve the rule and the other commenter favoring the rule with no suggested changes. A summary of comments relating to the amended rule and the Commission's responses follows.

One of the commenters suggested that there is no empirical evidence supporting the need for expanding the field of membership local service area to consist of one or more contiguous political subdivisions. As required by Texas Government Code §2001.039, the Commission performed its last comprehensive review of 7 TAC §91.301 in February 2012 (37 TexReg 1518). Over the past four years, the Credit Union Department (Department) has monitored and reviewed the rule in an effort to improve consistency and provide a basis for further clarification and modifications, if necessary. In response to this continued oversight, requests from credit unions, and the factors identified by Texas

Finance Code §15.402(b), the Department identified issues that are the basis for the amendments.

The factual basis for the amendments to 7 TAC §91.301 include using objective and quantifiable criteria to determine the boundaries of a local service area. The presumptive local service area would generally consist of one or more contiguous political subdivisions that are within reasonable proximity of a credit union's offices. Political subdivision has the meaning assigned by Texas Local Government Code §172.003(3).

The Department's experience indicates that there is ample uncertainty among applicants regarding the geographic limits of an applicant's local service area, particularly in view of the continued advancement in electronic delivery systems and alternative methods of providing credit union services. The amendments should make it easier for an applicant to determine and demonstrate whether a proposed group is within its local service area while at the same time maintaining the use of many of the most significant indicia of a community of interest. The Commission finds that a governmental unit below the State level is local and well-defined. A political subdivision also has strong indicia of community, including common interest and interaction among residents. Political subdivisions by their nature generally must provide residents with common services and facilities, such as education, police, fire, emergency, water, and medical services. Further, a political subdivision frequently has other indicia of a community of interest such as major trade area, employee patterns, local organizations and/or a local newspaper. Such examples of commonalities are indicia that political subdivisions are local service areas where residents have a community of interest.

In accordance with Texas Finance Code §15.402(b), the Commission finds that the amended rule will: (1) promote a stable credit union environment; (2) provide credit union members with convenient, safe, and competitive services; (3) preserve and promote the competitive parity of credit unions with regard to other depository institutions consistent with the safety and soundness of credit unions; and (4) promote or encourage economic development in this state. In order to promote a stable credit union environment and provide credit union members with competitive services, credit unions must be able to attract new members and expand consumer choice within the confines of the Texas Finance Code. The proposed rule would also increase consumer access to affordable financial services. At the same time, the proposed rule will keep the state charter competitive with recent National Credit Union Administration proposed field of membership rule changes and, thus, promote a stable credit union environment.

Two commenters suggested that the definition of "political subdivision" as it relates to using one or more contiguous political subdivisions as a presumptive local service area is either too broad or would allow credit unions unfettered entrée to designating the entire state and portions of other states as their local service area. The Commission disagrees and declines to revise the rule as the commenters suggest.

The Department's experience has been that local service areas can come in various population and geographic sizes. While the term 'local service area' does imply some limit, the Legislature has directed the Commission in Texas Finance Code §15.402 to establish the criteria for the character of field of membership that are consistent with the Texas Credit Union Act. While political subdivisions below the state level have historically met the definition of a local service area, nothing precludes a larger area

comprised of multiple political jurisdictions from also meeting the regulatory definition. There is no statutory requirement or economic rationale that compels the Commission to authorize only the smallest local service area in a particular region. The Commission believes that one or more contiguous political subdivisions that are within reasonable proximity of a credit union's office(s) should be a presumptive local service area. The Commission emphasizes that the amended rule would not permit an individual to qualify remotely for membership in a credit union based on electronic access to it from outside its local service area.

With respect to the notion that a credit union could theoretically open sufficient offices to effectively obtain the entire state as its local service area, the Commission notes that in Texas Finance Code §122.012, the Texas Credit Union Act requires that any new office must be reasonably necessary to provide services to the credit union's members. Opening offices in areas that cannot be supported by a credit union's members and those persons currently eligible for membership in the credit union's existing field of membership would be inconsistent with the statutory provision.

It depends on the facts but, conceptually, the Commission acknowledges that under the proposed rule a local service area could cross state jurisdictional boundaries. It should be pointed out, however, that any Texas-chartered credit union wishing to actually expand its field of membership into another state would be required to comply with that state's field of membership requirements. Nothing in the amended rule would override the authority of the other state to control and/or restrict the expansion activities of a Texas-chartered credit union. Accordingly, opening an office simply to facilitate an expansion of a credit union's field of membership would be impermissible under Texas Finance Code §122.012.

One commenter suggested that the term "reasonable proximity" should be defined. The Commission disagrees and declines to revise the rule as the commenter suggests. The Commission's view is that previous versions of 7 TAC 91.301(a) have contained the reasonable proximity term for years and the rule adequately sets forth the requirement that reasonable proximity should be a geographic limitation. That is, any group to be added to a credit union's field of membership must be within reasonable proximity geographically to the credit union or, stated another way, within the local service area of the credit union. By establishing a presumptive local service area, the Commission believes it has established a reasonable objective and quantifiable standard for the reasons enumerated above.

One commenter recommended that a "digital branch" should be added to the definition of office location. Although the Commission agrees there are technological advances that have allowed for increased convenience in communication and transactions between customers and credit unions, it declines to revise the definitions rule as the commenter suggests. The definition of "office" is contained in 7 TAC §91.101 (related to Definitions and Interpretations) and any modifications to that rule are beyond the scope of this rulemaking.

One commenter suggested that the definition of local service area should be expanded. The commenter recommended that, in addition to the political jurisdiction enumerated in the Texas Local Government Code, political subdivision should be enlarged to include the entire State of Texas. The Commission disagrees and declines to revise the rule as the commenter suggests. The Commission believes that, to be consistent with legislative in-

tent, a more circumspect and restricted approach to defining a credit union's service area is necessary. The Texas Credit Union Act is clear that credit unions are not allowed to provide credit union services to the general public. Community of interest requirements are meant as limiting factors, and permitting a credit union to designate the entire State of Texas as its local service area would circumvent the statutes and is beyond the Commission's scope of authority. Given the size and population of the State of Texas, action by the Legislature would be necessary before the Commission could consider allowing such a large political jurisdiction as a presumptive local service area.

One commenter suggested that the proposed rule does not need to amend 7 TAC §91.301(e). It was recommended that the term "underserved communities", as it is defined, is sufficient to cover all situations where there may be a demonstrated need for financial services. Another commenter opposed "this broad expansion of the credit union field of membership because it has no apparent connection to HB 1626, 84th Session, and undermines the common bond requirement." The Commission disagrees with both commenters and declines to revise the rule for the reasons outlined below. The Commission observes that an "underserved area" as defined in 7 TAC §91.101 (related to Definitions and Interpretations) is more limiting than the criteria prescribed for an area to be designated as a credit union development district in accordance with Texas Finance Code Chapter 279 and 7 TAC Chapter 91, Subchapter K (related to Credit Union Development Districts). While an "underserved area" could meet the standards necessary for designation as a "credit union development district" the reverse cannot be guaranteed. A credit union can only open an office that is reasonably necessary to provide services to the credit union's members. If the Department did not differentiate between credit union development districts and underserved areas, then if an area did not meet the definition of underserved area, a credit union would not be able to meet its obligation to open a branch in the development district, unless the geographic area was already included in the credit union's existing field of membership. This result would be inconsistent with the legislative intent with regard to credit union development districts. The Commission takes seriously its direction from the Legislature to administer and monitor a credit union development district program to encourage the establishment of branches of credit union in geographic areas where there is a demonstrated need for financial services.

One commenter favored the proposed rule and had no suggested changes. The Commission agrees with the commenter.

The amendments are adopted pursuant to Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.051, concerning membership.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.051.

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

Filed with the Office of the Secretary of State on July 11, 2016.

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Harold E. Feeney  
Commissioner  
Credit Union Department  
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For further information, please call: (512) 837-9236

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**CHAPTER 97. COMMISSION POLICIES AND  
ADMINISTRATIVE RULES**  
**SUBCHAPTER C. DEPARTMENT  
OPERATIONS**

**7 TAC §97.200**

The Credit Union Commission (the Commission) adopts amendments to §97.200, concerning employee training and education assistance programs without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2049).

The amendments make changes to reflect that Texas Government Code §656.048 was amended effective September 1, 2015, by Section 3 of H.B. 3337 (Act 2015, 84th Leg., R.S. Ch. 366, §3), to establish certain requirements for agency tuition reimbursement programs. The amendments are adopted to reflect the new statutory requirement that the agency head authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher education.

The Commission received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

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

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**TITLE 16. ECONOMIC REGULATION**  
**PART 2. PUBLIC UTILITY  
COMMISSION OF TEXAS**  
**CHAPTER 25. SUBSTANTIVE RULES  
APPLICABLE TO ELECTRIC SERVICE  
PROVIDERS**

## SUBCHAPTER J. COSTS, RATES AND TARIFFS

### DIVISION 1. RETAIL RATES

#### 16 TAC §25.246

The Public Utility Commission of Texas (commission) adopts new §25.246, relating to Rate Filing Standards and Procedures for Non-ERCOT Utilities, with changes to the proposed text as published in the February 26, 2016 issue of the *Texas Register* (41 TexReg 1317). The new rule implements the provisions of Section Nos. 1 through 3 of House Bill No. 1535 of the 84th Legislature, Regular Session in 2015 (HB 1535). The new rule allows for the use of adjustments to test-year data to include actual information for information originally estimated; defines the update period and provides requirements for an update to test-year information; provides requirements for a post-test-year adjustment for a natural-gas-fired plant; provides requirements to initiate a rate proceeding, including timing and notice requirements; allows for an extension of the automatic rate-case-filing deadline and includes the factors the commission will use in its standard of review in making a determination concerning an extension to the deadline; and, provides requirements and procedures for the relation back of final rates to an effective date 155 days after the filing of the rate application. Project Number 45131 is assigned to this proceeding.

On October 28, 2015, the commission held a workshop to solicit feedback on draft rule language. The commission invited parties to file informal comments after this workshop. For the limited purpose of soliciting feedback on the use of an update period subsequent to a test year, the commission held a supplemental workshop on May 5, 2016, and parties filed follow-up comments concerning the limited issue discussed in the workshop.

The commission received written comments and/or reply comments on the proposed rule from El Paso Electric Company, Entergy Texas, Inc., Southwestern Electric Power Company, and Southwestern Public Service Company (collectively, Non-ERCOT Utilities); State of Texas agencies and institutions of higher education (State Agencies); Office of Public Utility Counsel (OPUC); Texas Industrial Energy Consumers (TIEC); and Alliance of Xcel Municipalities and Cities Advocating Reasonable Deregulation (AXM and CARD). No party requested a public hearing.

#### Comments and Reply Comments

##### *Comments on specific sections of the rule:*

##### *Subsection (b)(1)(B) Update period*

At the supplemental workshop for this rulemaking on May 5, 2016, Staff solicited additional input from stakeholders on the issue of the definition and use of the term "update period" in the proposed rule. Specifically the workshop addressed two questions: 1) Can a utility filing under this section select an update period of any duration and with any ending date, or does the update period's ending date need to coincide with the end of a test year?; and, 2) For a utility that elects to provide estimated information, does the utility need to update all the information submitted for the test year or is the utility permitted not to update certain information? After discussion of these questions at the workshop, parties were invited to submit informal comments.

Concerning the first question, Non-ERCOT Utilities commented that they read the statute to allow for an update period of any duration and ending date. Non-ERCOT Utilities asserted that the

statute allows a utility to select an update period whose ending date coincides with the definition of test year, but could also allow a utility to select a date that does not coincide with the end of a test year. Non-ERCOT Utilities stressed that the flexibility of timing for the update period was a key part of the negotiation and balance struck by the legislature in HB 1535.

TIEC, joined by State Agencies and AXM and CARD, commented that, consistent with 16 Texas Administrative Code §25.231 (TAC) and the Public Utility Regulatory Act (PURA), the commission sets rates based on a test year whose first day coincides with the first day of a calendar or fiscal year quarter. TIEC *et alia* remarked that, if the legislature had intended to change these other sections of law and deviate from long-standing practice, one would think that the legislature would have been more explicit. TIEC *et alia* also supported requiring the update period to end on a calendar or fiscal year quarter for the pragmatic benefit of allowing for comparison of information to other quarterly filings that utilities are required to make.

OPUC commented that the rule must maintain the important ratemaking concept of the ability to compare and reconcile data even though the statute does not explicitly require a utility to have the end of an update period correspond with the end of a test year. Accordingly, OPUC proposed requiring the update period to fall on the end of a calendar month and included suggestions for modified language.

##### *Commission response*

The commission agrees with the comments submitted by TIEC, joined by State Agencies and AXM and CARD, that historically the commission has set rates based on the concept of test year as defined elsewhere in PURA. While the statute does not explicitly define the length of the update period, the statute ultimately provides that the commission must set rates based on either a test year or a test year updated for the most current information. Also, as argued by OPUC, the use of a 12-month period ending on a calendar or fiscal year quarter for rate setting purposes allows for comparison of information submitted by the utility with other quarterly information, such as quarterly filings made with the Federal Energy Regulatory Commission, the Rural Utilities Service, and the Securities and Exchange Commission. Accordingly, the commission has modified the rule to include language similar to that proposed by OPUC.

##### *Subsection (b)(2) Test year update; and Subsection (b)(3) Requirements for test year update*

TIEC, joined by State Agencies and AXM and CARD, suggested removing the phrase "adjusted for known and measurable changes" as it appears in subsections (b)(2)(A) and (b)(2)(B) of the proposed rule, and removing the phrase "may be further adjusted for known and measurable changes occurring after the update period, as permitted by PURA and commission rules" from subsection (b)(3). Instead, TIEC *et alia* proposed putting language elsewhere in the rule-as new subsection (b)(5)-to exactly mirror the statute in PURA §36.112(b). TIEC *et alia* wanted to make clear that the commission is not otherwise changing its policy on known and measurable changes. OPUC filed similar comments.

##### *Commission response*

The commission agrees with TIEC *et alia* and OPUC and has modified the rule language accordingly.

##### *Subsection (b)(3)(D) Requirements for test year update*

TIEC commented that the commission should specify in the rule that the utility must update its billing determinants as of the end of the update period. OPUC expressed its agreement in comments filed after the May 5, 2016 workshop.

#### *Commission response*

The commission agrees with TIEC and OPUC and has modified the rule language accordingly.

#### *Subsection (b)(4) Use of estimates; supplementation of information*

##### *Issue of scope of updates*

Non-ERCOT Utilities filed comments before and after the supplemental workshop indicating their position that the rule should provide for the flexibility to retain some test-year information as part of the update. Non-ERCOT Utilities pointed out the possibility of a situation, for example, in which the costs in a particular category do not materially change from the test year to the end of the update period and the expenditure of resources to make that update would only add to the proceeding's overall costs. Non-ERCOT Utilities asserted that such a case where a utility uses some test-year information should be the exception, rather than the rule.

Other parties argued that HB 1535 does not provide for a "pick and choose" option for the utility, whereby at the end of the proceeding some information would be for the test year and other information would be for a 12-month period ending at the end of the update period.

OPUC commented that the commission should clarify that all information must be updated and that, to avoid confusion and promote efficient administration, the update must be filed on the same date. TIEC suggested rule language incorporating the requirement that an update cover all components of a utility's case.

Following the supplemental workshop, Non-ERCOT Utilities filed comments opposing OPUC's and TIEC's suggested addition to subsection (b)(4)(B) requiring that the utility update all components of its rate case. Non-ERCOT Utilities noted that the suggested language goes beyond requiring an update of only estimated information by requiring the utility to update all information. Non-ERCOT Utilities argued that there is no discernible limit to the phrase "for all components of a utility's filed case" and that the inclusion of such language is contrary to the intent and language of HB 1535.

TIEC replied that if the suggested language from TIEC was deemed by the commission to be overbroad, TIEC would not object to other language that accomplished the goal of requiring all originally estimated information to be updated and, at the end of the update, for all information to be actual information.

#### *Commission response*

The commission agrees with TIEC, OPUC, and the other parties who argue that the statute requires a utility to update all information originally estimated and also any attendant impacts of updated information. The commission also agrees with Non-ERCOT Utilities that the suggested language from TIEC and OPUC is overly broad and might require resubmission of every piece of paper originally filed. Accordingly, the commission adopts language in the new rule that requires a utility to update all information originally estimated. The rule requires a utility to update all changes to its cost of service including attendant impacts from changes, but provides that the utility does not need to update every piece of information in the originally filed case.

The commission agrees with OPUC's comment that a requirement of submission of the update on a single business day will provide clarity and relieve cause for confusion. Parties should need to review only one filing (or series of filings on the same day) to find the utility's updated case. The commission has added language to the rule reflecting this clarification.

#### *Subsection (b)(4) Use of estimates; supplementation of information*

##### *Issue of dismissal of docket for failure to update*

OPUC suggested that the commission clarify that the consequence of failing to provide an update is dismissal of the rate case. Similarly, TIEC recommended that the commission should dismiss the proceeding if a utility fails to update all information originally estimated within the 45-day period. OPUC included suggested language consistent with its comments.

Non-ERCOT Utilities opposed OPUC's and TIEC's suggested mechanism for dismissal of a docket if a utility fails to timely update its case. Non-ERCOT Utilities submitted that the remedy proposed by OPUC and TIEC for failure to comply with the deadline is severely out of proportion with the legitimate interests of the parties. Non-ERCOT Utilities expressed concerns that the proposed language from TIEC and OPUC could unnecessarily lead to the dismissal of a docket for lack of an update to merely one or just a couple of numbers in a massive filing, or for a transcriptional error, or for a case whose update was not filed until 46 days after the initial filing. Non-ERCOT Utilities commented that a more appropriate and proportional remedy would be to treat failure to timely update in the same manner as a material deficiency under 16 TAC §22.75(c).

In reply, TIEC noted that the statute includes a strict 45-day deadline.

#### *Commission response*

The commission agrees with Non-ERCOT Utilities and retains the language as published.

#### *Proposed Subsection (b)(5)(B) (Adopted Subsection (b)(6)(B)) Post-test year adjustment for newly constructed or acquired natural-gas-fired plant*

Non-ERCOT Utilities suggested that the phrase "as determined by the commission" should be added to the rule to keep the rule consistent with the statute. Non-ERCOT Utilities commented that, although it could be said that the proposed rule language includes this limitation by implication, this additional phrase was a carefully negotiated aspect of the statute.

AXM and CARD replied that the rule should fully mirror HB 1535 and the statute by placing a comma before the additional language. AXM and CARD believe that the omission of a comma could unfortunately give rise to the erroneous argument that the phrase "as determined by the commission" modifies only the phrase "including any offsetting revenue" in the rule.

#### *Commission response*

The commission agrees with Non-ERCOT Utilities and AXM and CARD and has added in the suggested language so that the rule now mirrors the wording in HB 1535 and the statute.

#### *Subsection (c)(1)(B) Timing*

State Agencies commented that subsection (c)(1)(B) should provide a materiality threshold above a utility's authorized rate of return beyond which a utility would be presumed to be overearning.

TIEC commented that the inclusion of such a materiality threshold could provide a benefit to customers. TIEC opposed setting a bright line return on equity or base point threshold below which the commission could not decide that a utility's overearning is material and require a rate case. TIEC clarified that adoption of a materiality threshold beyond which a utility is presumed to be overearning in no way prevents the commission from making a determination of overearning for a utility whose earnings do not exceed the bright line threshold. TIEC also acknowledged the disadvantages to any bright line percentage or basis point approach and thought that leaving the determination of materiality up to the commission's discretion on a case-by-case basis is a reasonable resolution.

Non-ERCOT Utilities opposed State Agencies' suggestion of a materiality threshold for presumed overearning, arguing that any number of facts and circumstances bear on whether the level of a utility's earnings are excessive at any given point in time, and also whether that level of earnings is reasonably expected to continue. Non-ERCOT Utilities noted that TIEC's comments ultimately agreed that Staff's approach is reasonable.

#### *Commission response*

The commission agrees with Non-ERCOT Utilities and retains the language as published.

#### *Subsection (c)(2)(A) Extension of rate-case-filing deadline*

##### *Issue of Clarification of Phrase "At the time of such filing"*

OPUC supported subsection (c)(2)(A) of the proposed rule subject to confirming that the phrase "at the time of such filing" is referring to the filing made "on or before the third anniversary of the date the final order in the utility's most recent comprehensive base rate proceeding" and not the filing that follows the 120-day notice provided by the commission under subsection (c)(3)(A)(i) of the rule.

Non-ERCOT Utilities replied that they agree with OPUC's reading of the rule and that the proposed rule already reflected such a reading by providing, "If the utility seeks an extension, at the time of such filing it shall provide all relevant information to meet its burden in showing that an extension is justified."

#### *Commission response*

The commission confirms that the phrase "at the time of such filing" in subsection (c)(2)(A) refers to the filing made on or before the third anniversary of the date of the final order in the utility's most recent comprehensive base rate proceeding and not to any other filing.

#### *Subsection (c)(2)(A) Extension of rate-case-filing deadline*

##### *Issue of Frequency of Exceptions*

State Agencies commented that extensions to the deadline for filing a rate case every four years should be granted sparingly and that the commission should add language to the rule stating so. TIEC commented that there should be a very high burden for a utility to show that a rate case is not necessary when the statutory deadline arrives.

Non-ERCOT Utilities replied that HB 1535 creates no presumption against extensions of the rate case filing deadline, nor does it state or hint at any elevated standard of proof governing these requests.

#### *Commission response*

The commission agrees with Non-ERCOT Utilities that the statute does not contain any presumption against an extension to the deadline. Accordingly, the commission retains the language as published.

#### *Subsection (c)(2)(A) Extension of rate-case-filing deadline*

##### *Issue of Whether a Contested Case Hearing Is Allowed or Required*

Non-ERCOT Utilities commented that subsection (c)(2)(A) should add language to the draft rule explicitly providing, "A contested case hearing is not required in determining whether to order an extension of the rate case filing deadline under this subsection." This suggested language was included in the strawman proposal for the workshop held October 28, 2015, but, after receipt of informal comments from parties, was removed from the proposed rule. Non-ERCOT Utilities argued that the addition of such language would still allow for the option of a contested case hearing, while supporting the conclusion that a contested case hearing will be the exception, rather than the rule.

TIEC, AXM and CARD, and State Agencies disagreed with Non-ERCOT Utilities' suggested additional language. TIEC urged the commission to adopt the rule language as proposed and not prematurely limit its discretion to determine what constitutes a "reasonable opportunity to present materials and argument" by stating that an ill-defined, contested case hearing is not required. TIEC further noted that the suggested language from Non-ERCOT Utilities does not give clear guidance for what actually is required, thus adding ambiguity to the rule. AXM and CARD argued that the proposed rule allows for resolution of a request for extension of the filing deadline via a contested case hearing or some other way; AXM and CARD expressed concern that the suggested language could give rise to the perception that a contested case hearing is not required and therefore unavailable to the parties. State Agencies noted that the suggested language was not a part of HB 1535 and submitted that the addition was neither necessary nor helpful. State Agencies asserted that a contested case hearing is one possibility for addressing whether an extension of the rate case filing deadline is warranted, but there is no indication that the legislature intended for it to be the chosen method more or less often than any other.

#### *Commission response*

The commission agrees with TIEC, AXM and CARD, and State Agencies that the suggested additional language adds confusion instead of clarity to the proposed rule. The commission retains the language as published.

#### *Subsection (c)(2)(B)(iv) Standard of review*

Non-ERCOT Utilities commented that subsection (c)(2)(B)(iv) should include language clarifying that the commission may use the continued appropriateness of allocation of costs and rate design, but only "provided that the utility shall not be required to include a class cost of service study, with the level and detail contained in a study produced as part of a rate case, as a component of the information presented to justify an extension of the deadline." Non-ERCOT Utilities argued that a full cost of service study would require significant time and resources, and thus should be avoided. They asserted that information such as sales and demand data, along with updated cost allocation factor data, would be sufficient for the commission to make a determination under subsection (c)(2).

TIEC applauded the inclusion of the "continued appropriateness of the utility's allocation of costs and rate design" and "any other factors the commission deems relevant to its determination" as some of the factors the commission may consider in making a determination.

TIEC and State Agencies disagreed with Non-ERCOT Utilities' suggested additional language. TIEC and State Agencies both replied that they believe the commission should leave open the option of considering a class cost of service study in making its determination, but that the rule should neither require nor preclude such a study. TIEC further noted that the suggested language from Non-ERCOT Utilities is unworkably vague, as the "level of detail" required in a rate case class cost of service study is subjective and variable.

#### *Commission response*

While the commission acknowledges that in many cases the inclusion of updated sales, demand, cost allocation, and billing determinant data may be sufficient for the commission to make a determination, the commission agrees with TIEC and State Agencies that the rule should neither require nor preclude a full class cost of service study. Therefore, the commission retains the language as published.

#### *Subsection (c)(3)(A)(i) Notice to the utility*

OPUC commented that the commission should clarify the timing of when the commission will provide notice to a utility under subsection (c)(3)(A)(i). OPUC stated it should be clear that the utility will initiate a base rate case by the fourth anniversary of its last base rate case final order, and not by a date four months after such anniversary. OPUC recommended additional language consistent with its comments. AXM and CARD expressed general agreement with OPUC, but recommended slightly different language.

Non-ERCOT Utilities replied that HB 1535 gave the commission leeway on the exact timing of the commission's notice but requires the utility to file "not later than the 120th day after the date the commission notifies the utility." Non-ERCOT Utilities pointed out the possibility of a situation in which circumstances arise where the commission may wish to give the notice to file the rate case on a different schedule from that proposed by OPUC and AXM and CARD.

TIEC replied that it believes that a utility is statutorily required to file its base rate filing package by the four-year deadline regardless of whether the utility has received notice from the commission, and that late notice from the commission would not extend the deadline. TIEC otherwise agreed that the suggestion from OPUC and AXM and CARD was reasonable and would improve the rule.

#### *Commission response*

The commission agrees with Non-ERCOT Utilities and retains the language as published. It is the commission's intent that, if a utility seeks an extension to the mandatory rate case filing deadline under subsection (C)(2)(A), the commission will make a determination in that proceeding with time to allow for 120-day notice to the utility before the four-year anniversary of the final order in the utility's most recent comprehensive base rate case.

#### *Subsection (c)(3)(B) Notice to parties*

OPUC filed a comment requesting confirmation that the phrase "at the time the utility submits its filing to the commission requesting an extension" is referring to the filing made "on or before the

third anniversary of the date the final order in the utility's most recent comprehensive base rate proceeding" under subsection (c)(2)(A).

Non-ERCOT Utilities replied that they agree with OPUC's reading of the rule and that such intent is made clear by existing language in the proposed rule.

#### *Commission response*

The commission confirms OPUC's reading of the rule. The phrase "at the time the utility submits its filing to the commission requesting an extension" referenced in subsection (c)(3)(B) refers to the filing made on or before the third anniversary of the date of the final order in the utility's most recent comprehensive base rate proceeding and not to any other filing. No change to the rule is required.

#### *Subsection (d)(1) Relation back of rates*

##### *Issue of Clarifying Temporary Rates in the Relation Back of Rates*

AXM and CARD commented that the commission should clarify in the rule that, while final rates will relate back to the 155th day after the utility's filing, there is no change in rates during the suspension period unless the commission otherwise approves temporary or interim rates. AXM and CARD proposed language consistent with their comments.

#### *Commission response*

The commission agrees with AXM and CARD and has modified the rule accordingly.

#### *Subsection (d)(3) Relation back of rates*

OPUC commented that the two instances of the phrase "historical usage and demand" in subsection (d)(3) of the proposed rule differ in that the first use qualifies the term with "recorded during each month in the period in which the refund or surcharge obligation arose, adjusted for line losses if necessary," but that the second use of the term, in the context of all other customers, is qualified differently. OPUC requested that the commission add the same qualification to the second use of "historical usage and demand" relating to all other customers, or that the commission otherwise clarify this ambiguity in the rule. OPUC noted that the language in question is not included in the statute. OPUC requested confirmation of its interpretation of this section of the proposed rule.

Disagreeing with OPUC's proposed change to subsection (d)(3), Non-ERCOT Utilities replied that the proposed rule correctly considers the calculations for customers who receive service at transmission voltage levels, for seasonal agricultural customers, and for all other customers. Non-ERCOT Utilities referred to 16 TAC §25.236(e)(4), relating to Recovery of Fuel Costs, which calculates surcharges or refunds for customers who receive service at transmission voltage levels and seasonal agricultural customers "based on their individual actual historical usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses if necessary," but calculates surcharges or refunds for all other customers "based on the historical kilowatt-hour usage of their rate class."

#### *Commission response*

The commission agrees with Non-ERCOT Utilities that the language closely corresponds with the provision for calculating fuel surcharges or refunds, but the commission notes that it is very

unlikely that any adjustment for line losses will be necessary for the calculation of surcharges or refunds under the rule. However, the commission agrees with OPUC that it is appropriate to add the same qualification in both instances so as to reduce the potential for ambiguity, and has modified the language accordingly.

*Subsection (d)(3) Relation back of rates; and Section 25.246(b)(1) Adjustments to test year information*

*Issue of Clarifying Relation Back of Rates for a Rate Case Using Updated Information*

AXM and CARD suggested that there is ambiguity between the date on which the final rates will be "effective" for consumption under subsection (d)(3) and a utility's "proposed effective date" under PURA §36.108. AXM and CARD proposed additional language that they argued resolves this potential ambiguity.

*Commission response*

The commission disagrees with AXM and CARD about the potential for ambiguity and retains the language as published.

In this rulemaking the commission fully considered all comments offered at the workshops and submitted on record in the docket, including any not specifically referenced herein. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

The commission adopts this new rule under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. This new rule implements the provisions of PURA §§36.112, 36.211, and 36.212 into the Texas Administrative Code.

Cross Reference to Statutes: PURA §§14.002, 36.112, 36.211, and 36.212.

*§25.246. Rate Filing Standards and Procedures for Non-ERCOT Utilities.*

(a) Application. The provisions of this section apply only to an electric utility that operates solely outside of the Electric Reliability Council of Texas.

(b) Adjustments to test year information.

(1) Definitions.

(A) Test year--The period defined in §25.5(134) of this title (relating to Definitions).

(B) Update period--For a utility that elects to file under paragraph (2)(B) of this subsection, the period beyond the end of the test year, for which period the electric utility initially submits estimated information and later submits actual information to be used in establishing its base rates. The update period chosen by the utility must end on the last day of a calendar or fiscal year quarter, and not later than the 30th day before the date the applicable rate proceeding is filed.

(2) Test year election. In establishing the base rates of an electric utility under the Public Utility Regulatory Act (PURA), Chapter 36, Subchapter C or D, the commission shall determine the utility's revenue requirement based on, at the election of the utility:

(A) information submitted for a test year; or

(B) information submitted for a test year updated to include actual information for the update period regarding increases and

decreases in the utility's cost of service, including expenses, capital investment, cost of capital, and sales.

(3) Requirements for test year update. The updated information authorized to be submitted by paragraph (2)(B) of this subsection shall be subject to the following additional standards:

(A) expenses authorized by §25.231(b) of this title (relating to Cost of Service) for inclusion in revenue requirement shall reflect the 12-month period ending on the final day of the update period;

(B) components of rate base as defined by §25.231(c)(2) of this title shall be included through the end of the update period;

(C) the electric utility's cost of capital shall be updated to reflect any transactions affecting those items that occur between the end of the test year and the end of the update period; and

(D) the utility's sales revenues, customer count, and billing determinants shall reflect the 12-month period ending on the final day of the update period.

(4) Use of estimates; supplementation of information.

(A) An electric utility that includes estimated information for the update period in the initial filing of a rate proceeding shall supplement that filing with actual information not later than the 45th day after the date the initial filing was made. The update must provide actual information for all information originally estimated. The utility shall update every component of its cost of service that changed, including flow-through effects and attendant impacts of changes. The utility need not, however, update or refile every piece of information in the originally filed case. The utility shall file the entire update on a single business day.

(B) The commission shall extend the deadline for concluding the rate proceeding for a period of time equal to the period between the date the initial filing of the proceeding was made and the date of the supplemental filing made under subparagraph (A) of this paragraph, except that the extension period may not exceed 45 days.

(5) Known and measurable changes. In establishing the base rates of an electric utility, an electric utility that makes an election under paragraph (2) of this subsection is not precluded from proposing known and measurable adjustments to the utility's historical rate information as permitted by PURA and the commission's rules.

(6) Post-test year adjustment for newly constructed or acquired natural-gas-fired power plant. In addition to the test year update authorized by paragraph (2)(B) of this subsection, and without limiting the availability of known and measurable adjustments otherwise permitted by PURA and commission rules, the commission shall allow an electric utility to make a known and measurable adjustment for a newly constructed or acquired natural-gas-fired generation facility.

(A) The commission is required to allow a known and measurable adjustment under this paragraph only if the natural-gas-fired generation facility is in service before the effective date of new rates.

(B) A known and measurable adjustment under this paragraph shall include the utility's prudent capital investment in the facility, a reasonable return on such capital investment, depreciation expense, reasonable and necessary operating expenses, and all attendant impacts associated with the newly constructed or acquired natural-gas-fired generation facility, including any offsetting revenue, as determined by the commission.

(C) Notwithstanding the requirements of §25.231(c)(2)(F)(i)(II) of this title, the commission shall allow an adjustment under this paragraph regardless of whether the investment is less than 10% of the utility's rate base before the date of the adjustment.

(c) Requirement to initiate rate proceeding.

(1) Timing. An electric utility is required to make filings with regulatory authorities as required by PURA, Chapter 33, Subchapter B, and shall file a rate-filing package under PURA, Chapter 36, Subchapter D, to initiate a comprehensive base rate proceeding before all of the utility's regulatory authorities in the following circumstances:

(A) on or before the fourth anniversary of the date of the final order in the utility's most recent comprehensive base rate proceeding; or

(B) if the commission determines, before the deadline described in subparagraph (A) of this paragraph, that the utility has earned materially more than the utility's authorized rate of return on investment, on a weather-normalized basis, in the utility's two most recent consecutive commission earnings monitoring reports.

(C) If a rate-filing package is required to be submitted under this subsection, the utility's rate filing shall reflect a test year, which at the election of the utility may be updated pursuant to subsection (b)(2)(B) of this section, and may be otherwise adjusted for known and measurable changes as permitted by PURA and commission rules.

(2) Extension of rate-case-filing deadline. A utility is required to make a rate filing by the deadline set forth in paragraph (1)(A) of this subsection unless the commission grants an extension of the deadline. The commission may extend the deadline set forth in paragraph (1)(A) of this subsection and set a new deadline if the commission determines that a comprehensive base rate case would not result in materially different rates. The utility shall have the burden to prove that a delay in the rate-case-filing deadline is warranted and shall submit all requisite information to meet such burden.

(A) On or before the third anniversary of the date of the final order in the utility's most recent comprehensive base rate proceeding, the utility shall submit a filing to the commission indicating whether the utility seeks an extension to the deadline described in paragraph (1)(A) of this subsection. If the utility seeks an extension, at the time of such filing it shall provide all relevant information to meet its burden in showing that an extension is justified. The commission shall give interested parties a reasonable opportunity to present materials and argument before making a determination under this paragraph; the Administrative Law Judge(s) assigned to the docket concerning the extension shall set procedural guidelines, including discovery limits and deadlines allowing the commission sufficient time to provide notice pursuant to paragraph (3)(A)(i) of this subsection.

(B) Standard of review. In determining whether to extend the time period for the filing of a base rate proceeding, the commission may consider matters such as the following:

(i) the results of recent earnings monitoring reports for the utility, including such adjustments to those reports as may be found appropriate by the commission;

(ii) recent and expected levels of expenses, sales revenues, and capital investment for the utility;

(iii) recent and projected financial results for the utility;

(iv) continued appropriateness of the utility's allocation of costs and rate design;

(v) capital market conditions;

(vi) whether there has been a material change in circumstances since the utility's base rates were last established by the commission; and

(vii) any other factors the commission deems relevant to its determination.

(3) Notice.

(A) Notice to the utility. The utility must make the filings described in paragraph (1) of this subsection not later than the 120th day after the date the commission provides written notice to the utility:

(i) that a filing under paragraph (1)(A) of this subsection will be required; or

(ii) that the condition of material over-earning described by paragraph (1)(B) of this subsection exists. The 120-day period provided by this subsection may be extended by the commission for good cause.

(B) Notice to parties. If the utility seeks an extension to the filing deadline pursuant to paragraph (2) of this subsection, the utility shall provide, at the time the utility submits its filing to the commission requesting an extension, notice to all persons who were parties to the utility's most recent base rate proceeding.

(d) Relation back of rates.

(1) In a rate proceeding under PURA, Chapter 36, Subchapter D, or if requested by an electric utility in the utility's statement of intent initiating a rate proceeding under PURA, Chapter 36, Subchapter C, notwithstanding PURA §36.109(a), the final rate set in the proceeding, whether a rate increase or rate decrease, shall be made effective for consumption on and after the 155th day after the date the rate-filing package is filed. Unless the commission approves temporary rates under PURA §36.109(a), the utility's new rates will not be implemented until the commission issues its final order approving new rates.

(2) The commission shall:

(A) require the electric utility to refund to customers money collected in excess of the rate finally ordered on or after the 155th day after the date the rate-filing package is filed; or

(B) authorize the electric utility to collect a surcharge from customers to recover the amount by which the money collected on or after the 155th day after the utility files its rate-filing package is less than the money that would have been collected under the rate finally ordered.

(3) The commission may require refunds or surcharges of amounts determined under paragraph (2) of this subsection over a period not to exceed 18 months, along with appropriate carrying costs. The commission shall make any adjustments necessary to prevent over-recovery of amounts reflected in riders in effect for the electric utility during the pendency of the rate proceeding. Customers who receive service at transmission voltage levels, as well as any groups of seasonal agricultural customers as identified by the electric utility, shall be subject to refund or surcharge rates calculated based upon their individual historical usage and demand recorded during each month in the period in which the refund or surcharge obligation arose, adjusted for line losses if necessary. All other customers shall be subject to refund or surcharge rates calculated based upon the historical usage and demand of all customers served under the same tariffed rate schedule recorded during each month in the period in which the refund or surcharge obligation arose, adjusted for line losses if necessary.

(4) An electric utility may not assess more than one surcharge authorized by paragraph (2)(B) of this subsection at the same time.

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

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For further information, please call: (512) 936-7293



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 97. COMMUNICABLE DISEASES

##### SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

###### 25 TAC §§97.61 - 97.72

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§97.61 - 97.72, concerning immunization requirements in Texas elementary and secondary schools and institutions of higher education. Amendments to §§97.63, 97.64, and 97.66 are adopted with changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1642). Sections 97.61, 97.62, 97.65, and 97.67 - 97.72 are adopted without changes, and therefore, the sections will not be republished.

###### BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.61 - 97.72 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are required by statute and provide guidance for the ongoing program. However, revisions to the rules are necessary as outlined in this preamble.

The purpose of the amendments is to clarify and optimize procedures, update language and contact information, simplify the immunization requirements by clarifying the requirement schedules, and remove outdated requirement information. The adopted language concerning vaccination requirements is consistent with the recommended vaccine schedule, per the Centers for Disease Control and Prevention's current Advisory Council on Immunization Practices (ACIP) recommendations (see <http://www.cdc.gov/vaccines/schedules/>). The amend-

ments are necessary to comply with Health and Safety Code, Chapters 81 and 161; Education Code, Chapters 38 and 51; and Human Resources Code, Chapter 42, which require the department to set immunization requirements.

###### SECTION-BY-SECTION SUMMARY

The adopted amendment to §97.61 reflects the change in the department name from the Texas Youth Commission to the Texas Juvenile Justice Department.

The adopted amendments to §97.62 clarify, update, and improve readability of the rule. The adopted amendments to §97.62(1) clarify that the medical exemption documents must be dated and signed and be presented to the school or child-care facility. Additionally, language used to describe providers able to write medical exemptions is changed from "the child's physician" to "a physician" who has examined the child or student. The antiquated phrase "duly registered and licensed to practice medicine in the United States" is updated to read "properly licensed and in good standing in any state in the United States." The word "student" is added to the section not only to expand this exclusion method to students 18 years of age or older, but also to clarify that the method is available to child-care participants as well as school-age children.

The adopted amendments to §97.62(2) clarify how to obtain an exclusion for reasons of conscience. The changes specify that an affidavit must be signed and notarized; allow students 18 years of age or older the right to sign the affidavit on their own behalf; and clarify that a completed affidavit is valid for a two-year period from the date of notarization. The amendment also revises the language from the title "commissioner of public health" to "commissioner of the department."

The adopted amendment to §97.62(2)(A) clarifies the method in which a person can request and obtain an exemption affidavit: via online, fax, mail, or hand-delivery to the department. The adopted amendment adds the text "or student," to include students 18 years of age or older to be consistent with this rule. The changes also contain what information is required in a request for an exemption affidavit to include the full name of the child or student; the child's or student's date of birth (month/day/year); complete mailing address, including telephone number; and number of requested forms (not to exceed five forms per child or student).

The adopted amendment to §97.62(2)(B) updates the methods in which requests for affidavit forms can be submitted to the department by including accurate fax number information as well as the corrected Immunization Branch website URL: [www.ImmunizeTexas.com](http://www.ImmunizeTexas.com).

The adopted amendment to §97.62(2)(C) rearranges the language for improved readability; adds the text "or student" to include students 18 years of age or older to be consistent with this subchapter; and specifies that the requests will be mailed to the address provided. The adopted amendment to §97.62(2)(D) clarifies the sentence for improved readability.

The adopted amendment to §97.63(2)(B)(i)(I), revises the Poliomyelitis (Polio) vaccine requirements from kindergarten entry to kindergarten through 12th grade to clarify that students must show proof of polio vaccination upon entry to grades kindergarten through 12.

The adopted amendment to §97.63(2)(B)(ii)(I) expands the Diphtheria/Tetanus/Pertussis vaccine requirement from kindergarten entry to kindergarten through 6th grade in order to clarify that stu-

dents must show proof of the vaccination upon entry to grades kindergarten through 6.

The adopted amendment to §97.63(2)(B)(ii)(III) for Tdap removes the existing verbiage "Beginning SY 2009 - 2010" in items (-a-) and (-b-) to streamline the rules for improved readability.

The adopted amendment to §97.63(2)(B)(iii) removes the Measles/Mumps/Rubella (MMR) vaccination schedule organized by individual school years and grades and creates a blanket MMR requirement for students in grades kindergarten through 12, with considerations to grandfather in students meeting previous requirements. Students enrolling in grades kindergarten through 12 will be required to have two doses of MMR vaccine or two doses of measles and one dose each of mumps and rubella if vaccinated prior to 2009. Removing the schedules for the specific school years and grades prevents the requirements from expiring in the years to come.

The adopted amendment to §97.63(2)(B)(iv)(I) specifies that the Hepatitis B vaccine requirement applies to all students enrolling in grades kindergarten through 12 and removes the redundant phrase "no later than entry into kindergarten."

The adopted amendment to §97.63(2)(B)(v) deletes the schedules for outdated school years and specific grades for the varicella requirements and establishes a two-dose varicella requirement for students enrolling in grades kindergarten through 12 beginning with the 2016 - 2017 school year.

The adopted amendment to §97.63(2)(B)(vi), which establishes the Hepatitis A vaccine requirements, simplifies the rule language by removing the schedules for the previous school years and grades and expands the requirement once the graded implementation is completed.

The adopted amendment to the meningococcal vaccine requirements in §97.63(2)(B)(vii) clarifies that one dose of quadrivalent meningococcal conjugate vaccine (MCV4) is required on or after the student's 11th birthday to be effective for the 2016 - 2017 school year. The amendment also deletes the schedules for the previous school years and grades.

The adopted amendment to §97.64(b) simplifies the language and identifies additional doses for tetanus-diphtheria-pertussis, mumps, and varicella vaccines required for students pursuing health-related coursework as outlined and recommended by the ACIP. The requirement for the mumps vaccine in §97.64(b)(2)(B) was changed from "one dose" to "two doses," as recommended by the ACIP.

The adopted amendment to the hepatitis B vaccine requirements in §97.64(b)(3) deletes language referring to serologic confirmation of immunity to hepatitis B virus to clarify the section and allow §97.64(c)(3) to be a stand-alone authority on serologic confirmation of immunity.

The adopted amendment to §97.64(b)(4) changes the varicella vaccine age requirement schedule from "one dose on or after the first birthday, or if the first dose was administered on or after the student's thirteenth birthday" to "two doses are required," as recommended by the ACIP.

The adopted amendment to §97.64(c)(1) deletes extraneous regulatory agencies, leaving the ACIP, in order to clarify vaccination requirements and prevent differing vaccination schedule recommendations. In addition the amendment updates language to require students to complete their missing doses as

rapid as medically feasible instead of "on schedule." These changes reduce confusion and ensure that students become completely immunized as quickly as possible.

The adopted amendment to §97.64(c)(3) adds language allowing students to show proof of immunity through laboratory confirmation of immunity or disease and removes the limitation of serologic confirmation to better reflect current immunology technologies and tests.

The adopted amendment to §97.64(d) addresses changes in rabies immunity technology by adding §97.64(d)(3), which requires veterinary students to have had one dose of a tetanus-diphtheria toxoid (Td) within the last ten years during enrollment in veterinary school. This added requirement will better protect veterinary students from tetanus infection in the field.

The adopted amendment to §97.65(b) adds the word "student's" to the phrase "...attesting to a child's/student's positive history of varicella disease (chickenpox)" to provide consistency throughout the subchapter.

The adopted amendments to §97.66 expand the rule to clearly apply to child-care facilities as well as to schools by adding the words "child" and "child-care facility" throughout the rule. Amendments also provide for provisional enrollment of foster care children in accordance with 45 C.F.R. §1355.20(a). Additionally, the phrase "health provider" replaces the phrase "public health programs" since not all public health programs are Texas Vaccines for Children providers.

The adopted amendment to §97.67 adds the manner in which immunization records may be maintained by school and child-care facilities (i.e. in paper and/or electronic form), and legitimizes electronic record systems that are already in use throughout Texas.

The adopted amendment to §97.68 adds electronic health record immunization records as acceptable documented evidence of vaccination if it contains clinic contact information and the physician's signature/stamp.

The adopted amendment to §97.69 removes gendered pronouns and replaces "he/she" with "the student" to reflect proper rule-writing guidelines.

The adopted amendment to §97.70 adds language to clarify that the department and local health authorities may advise or assist schools in meeting the requirements in Subchapter B.

The adopted amendment to §97.71 removes the word "schools" and replaces it with the phrase "all public school districts and accredited private schools" to ensure equitable compliance standards for differing educational facilities.

The adopted amendment to §97.72 adds language to clarify the purpose of control measures under Texas Health and Safety Code, Chapter 81, Subchapter E, to prevent the spread of disease.

#### COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The department received comments from the Texas Medical Association (TMA), the Texas Pediatric Society (TPS), the Immunization Partnership (TIP), the JAMIE Group, the University of Texas at Austin (UT), the Texas Department of Family and Protective Services (DFPS), ProMed

Software (ProMed), and from the Director of Health Services at Plano Independent School District (ISD). A public hearing was also held on March 31, 2016, and the department received comments from TMA, TPS, TIP, and the JAMIE Group. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comments Received in Writing during the 30-Day Comment Period:

COMMENT: Concerning §97.63(2)(B)(vii), Plano ISD requested clarification on the age stipulations included in the meningococcal requirements.

RESPONSE: The commission appreciates the commenter's concerns regarding the age at which a dose of quadrivalent meningococcal conjugate vaccine (MCV4) is administered. The department has reviewed the recommendations of the ACIP and maintains that students should receive one dose of MCV4 on or after the student's 11th birthday. No change was made as a result of this comment.

COMMENT: Concerning §97.63(2)(B)(vii), TPS, TMA, and TIP requested a meningococcal booster dose requirement.

RESPONSE: The commission has reviewed the comments and has decided not to incorporate such a requirement at this time. No change was made as a result of this comment.

COMMENT: ProMed recommended amending §97.63(2)(B)(ii), relating to diphtheria, tetanus, and pertussis vaccine requirements, to clarify language and better conform with ACIP recommendations.

RESPONSE: The commission has reviewed and considered the comment and has decided not to amend the language in question. The department responds that current language adequately addresses the complicated scenarios that many students fall into and addresses ACIP nuances in the adolescent Tdap dose. No change was made as a result of this comment.

COMMENT: Concerning §97.63(2)(B)(vi), ProMed recommended extending the hepatitis A requirements after the graded implementation is complete.

RESPONSE: The commission agrees with the comment and has added new language in §97.63(2)(B)(vi)(VII) to extend the hepatitis A requirement beyond SY 2022-2023 which states "Effective SY 2022-2023, students enrolling in kindergarten through 12th grade are required to have two doses of hepatitis A vaccine with the first dose received on or after the first birthday."

COMMENT: ProMed recommended utilizing date of birth rather than date of vaccination for the grandfathering in of certain students in §97.63(2)(B)(iii) concerning MMR.

RESPONSE: The commission acknowledges ProMed's concerns but disagrees with the comment. No change was made as a result of this comment.

COMMENT: In regards to §97.63, ProMed recommended removing the phrase "students enrolling in."

RESPONSE: The commission appreciates the commenter's diligence and effort in providing comments. No change was made as a result of these comments

COMMENT: Concerning §97.64(b)(1), UT recommended incorporating an exclusive Tdap vaccine requirement for students pursuing coursework in health-related fields.

RESPONSE: The commission agrees with the comment. The department responds that Tdap should be included in the entry requirements for health-related coursework in order to conform to ACIP recommendations for health-care workers. The department has amended §97.64(b)(1) to require students enrolling in health-related courses to show proof of one dose of Tdap and one dose of tetanus-containing vaccine within the last ten years.

COMMENT: Concerning §97.62, TIP recommended changing the renewal period of non-medical exemption affidavits from biennially to annually.

RESPONSE: The commission has reviewed the comment and has decided not to incorporate such an amendment at this time. No change was made as a result of this comment.

COMMENT: Concerning §97.62, TIP would like the department to retain the demographic information of individuals who request an affidavit for non-medical exemptions.

RESPONSE: The commission has reviewed the comment and has decided not to incorporate such an amendment at this time. No change was made as a result of this comment.

COMMENT: Concerning §97.62, TIP recommended incorporating a required online education module prior to requesting a non-medical exemption.

RESPONSE: The commission has reviewed the comment and has decided not to incorporate such a requirement at this time. No change was made as a result of this comment.

COMMENT: Concerning §97.62, TIP recommended online publication of campus-level vaccination rates.

RESPONSE: The commission has reviewed the comment and has decided not to incorporate such an amendment at this time. No change was made as a result of this comment.

COMMENT: DFPS requested amending §97.66 to extend provisional enrollment to children in foster care, as a result of the federal Child Care and Development Block Grant Act of 2014.

RESPONSE: The commission agrees with the comment. The department has added new subsection (c) to §97.66 to allow foster children to be enrolled provisionally for 30 days if acceptable evidence of vaccination is not available.

COMMENT: DFPS requested the incorporation of the word "child" throughout Subchapter B to clarify to whom the subchapter applies.

RESPONSE: The commission agrees with the comment. The department has amended §97.66 to address the applicability of the rule to child-care facilities by addressing "child or student," "school or child-care facility," or simply "facility" throughout the rule.

COMMENT: DFPS requests a definition of "child-care facility" in §97.61(a).

RESPONSE: The commission acknowledges DFPS's concerns. However, the department responds that the terms used in §97.61, including "child-care facility," are defined in Texas Human Resources Code, §42.002 and do not need to be repeated in TAC rules.

Comments Received at the Public Hearing held on March 31, 2016:

COMMENT: Concerning §97.63(2)(B)(vi), TPS, TIP, and the JAMIE Group requested a meningococcal booster dose requirement.

RESPONSE: The commission has reviewed the comments and has decided not to incorporate such a requirement at this time. No change was made as a result of this comment.

COMMENT: Concerning §97.62, TIP recommended changing the renewal period of non-medical exemption affidavits from biennially to annually.

RESPONSE: The commission has reviewed the comment and has decided not to incorporate such an amendment at this time. No change was made as a result of this comment.

COMMENT: Concerning §97.62, TIP would like the department to retain the demographic information of individuals who request an affidavit for non-medical exemptions.

RESPONSE: The commission has reviewed the comment and has decided not to incorporate such an amendment at this time. No change was made as a result of this comment.

COMMENT: Concerning §97.62, TIP recommended incorporating a required online education module prior to requesting a non-medical exemption.

RESPONSE: The commission has reviewed the comment and has decided not to incorporate such a requirement at this time. No change was made as a result of this comment.

COMMENT: Concerning §97.62, TIP recommended online publication of campus-level vaccination rates.

RESPONSE: The commission has reviewed the comment and has decided not to incorporate such an amendment at this time. No change was made as a result of this comment.

#### LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The amendments will be adopted under Health and Safety Code, §81.023, which provides the department with the authority to develop immunization requirements for children; Health and Safety Code, §81.081, which grants the department the authority to impose control measures to prevent the spread of disease and protect the public health; Health and Safety Code, §161.004, which allows the department to develop and implement immunization requirements for vaccine-preventable diseases and provides avenues for exemptions from immunization requirements; Health and Safety Code, §161.0041, which delineates requirements for the Immunization Exemption Affidavit Form; Education Code §38.001, which grants the department the authority to require immunizations for school entry; Education Code, §38.002, which requires the department to develop and administer the Annual Report of Immunization Status of Students in conjunction with the Texas Education Agency (TEA); and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

#### §97.63. *Immunization Requirements in Child-care Facilities, Pre-Kindergarten, Early Childhood Programs, and Texas Elementary and Secondary Schools.*

Every child in the state shall be vaccinated against vaccine-preventable diseases caused by infectious agents, in accordance with the following immunization schedule. While the department recommends that providers immunize children according to the recommendations found on the department's website at [www.ImmunizeTexas.com](http://www.ImmunizeTexas.com), this section sets out minimum immunization requirements for school entry for the child. The child must have the indicated vaccinations by the grade level indicated. The vaccination schedule also indicates the grade before which the child should not obtain the specific vaccination. A copy of the current recommended schedule is available at [www.ImmunizeTexas.com](http://www.ImmunizeTexas.com), or by mail by writing the Department of State Health Services, Mail Code 1946, P.O. Box 149347, Austin, Texas 78714-9347.

(1) For those vaccines where it is stated in this section that a certain dose must be received on or after a certain birthday, a vaccine administered up to four days prior to the birthday is considered compliant.

(2) For diseases listed below, a child or student shall show acceptable evidence of vaccination prior to entry, attendance, or transfer to a child-care facility or public or private elementary or secondary school.

(A) Children enrolled in child-care facilities, pre-kindergarten, or early childhood programs shall be immunized against: diphtheria, pertussis, tetanus, poliomyelitis, *Haemophilus influenzae* type b (Hib), measles, mumps, rubella, hepatitis B, hepatitis A, invasive pneumococcal, and varicella diseases. In recognition of the fact that immunization needs vary depending on the age of the child, the minimum number of doses required for each vaccine is indicated in the schedule below:

Figure: 25 TAC §97.63(2)(A) (No change.)

(B) Students in kindergarten through twelfth grade shall have the following vaccines, according to the schedule listed.

(i) Poliomyelitis.

(I) Kindergarten through twelfth grade. Students are required to have four doses of polio vaccine--one of which must have been received on or after the fourth birthday. Or, if the third dose was administered on or after the fourth birthday, only three doses are required. Four doses of oral polio vaccine (OPV) or inactivated poliovirus vaccine (IPV) in any combination by age four to six years old is considered a complete series, regardless of age at the time of the third dose.

(II) Polio vaccine is not required for persons eighteen years of age or older.

(ii) Diphtheria/Tetanus/Pertussis.

(I) Kindergarten through sixth grade. Students are required to have five doses of a diphtheria/tetanus/pertussis-containing vaccine -- one of which must have been received on or after the fourth birthday. Or, if the fourth dose was administered on or after the fourth birthday, only four doses are required.

(II) Students seven years of age or older. Students seven years of age or older are required to have at least three doses of a tetanus/diphtheria-containing vaccine, provided at least one dose was administered on or after the fourth birthday. Any combination of three doses of a tetanus/diphtheria-containing vaccine will meet this requirement.

(III) Tdap.

(-a-) Seventh grade. Students are required to have one booster dose of a tetanus/diphtheria/pertussis-containing vaccine for entry into the 7th grade, if at least five years have passed since the last dose of a tetanus-containing vaccine. If five years have not elapsed since the last dose of a tetanus-containing vaccine at entry into the 7th grade, then this dose will become due as soon as the five-year interval has passed. Td vaccine is an acceptable substitute, if Tdap vaccine is medically contraindicated.

(-b-) Grades 8 - 12. Students who have not already received Tdap vaccine are required to receive one booster dose of Tdap when ten years have passed since the last dose of a tetanus-diphtheria-containing vaccine.

(IV) Children who were enrolled in school, grades K - 12, prior to August 1, 2004, and who received a booster dose of DTaP or polio vaccine in the calendar month of (or prior to) their fourth birthday, shall be considered in compliance with clause (i)(I) (polio) and clause (ii)(I) (DTaP) of this subparagraph.

(iii) MMR. Beginning SY 2016 - 2017, students enrolling in kindergarten through 12th grade are required to have two doses of MMR vaccine with the first dose received on or after the first birthday. Students vaccinated prior to 2009 with two doses of measles and one dose each of rubella and mumps satisfy this requirement.

(iv) Hepatitis B.

(I) Students enrolling in kindergarten through 12th grade are required to have three doses of hepatitis B vaccine.

(II) In some circumstances, the United States Food and Drug Administration may officially approve in writing the use of an alternative dosage schedule for this vaccine. Such an alternative regimen may be used to meet the requirements under this section only when alternative regimens are fully documented. Such documentation must include vaccine manufacturer and dosage received for each dose of that vaccine.

(v) Varicella. Beginning SY 2016 - 2017, students enrolling in kindergarten through 12th grade are required to have two doses of varicella vaccine received on or after the first birthday.

(vi) Hepatitis A. For SY 2016 - 2017, students are required to have two doses of hepatitis A vaccine with the first dose received on or after the first birthday for the following grades and school years:

(I) SY 2016 - 2017: K - 7;

(II) SY 2017 - 2018: K - 8;

(III) SY 2018 - 2019: K - 9;

(IV) SY 2019 - 2020: K - 10;

(V) SY 2020 - 2021: K - 11; and

(VI) SY 2021 - 2022: K - 12.

(VII) Effective SY 2022-2023, students enrolling in kindergarten through 12th grade are required to have two doses of hepatitis A vaccine with the first dose received on or after the first birthday.

(vii) Meningococcal. Effective SY 2016 - 2017, students enrolling in 7th - 12th grades are required to have one dose of quadrivalent meningococcal conjugate vaccine (MCV4) on or after the student's 11th birthday.

§97.64. *Required Vaccinations for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education.*

(a) Students enrolled in (non-veterinary) health-related courses. This section applies to all students enrolled in health-related higher education courses which will involve direct patient contact with potential exposure to blood or bodily fluids in educational, medical, or dental care facilities.

(b) Vaccines Required. Students must have all of the following vaccinations before they may engage in the course activities described in subsection (a) of this section:

(1) Tetanus-Diphtheria Vaccine. Students must show receipt of one dose of tetanus-diphtheria-pertussis vaccine (Tdap). In addition, one dose of a tetanus-containing vaccine must have been received within the last ten years. Td vaccine is an acceptable substitute, if Tdap vaccine is medically contraindicated.

(2) Measles, Mumps, and Rubella Vaccines.

(A) Students born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of two doses of a measles-containing vaccine administered since January 1, 1968 (preferably MMR vaccine).

(B) Students born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of two doses of a mumps vaccine.

(C) Students must show, prior to patient contact, acceptable evidence of one dose of rubella vaccine.

(3) Hepatitis B Vaccine. Students are required to receive a complete series of hepatitis B vaccine prior to the start of direct patient care.

(4) Varicella Vaccine. Students are required to have received two doses of varicella (chickenpox) vaccine.

(c) Limited Exceptions:

(1) Notwithstanding the other requirements in this section, a student may be provisionally enrolled in these courses if the student has received at least one dose of each specified vaccine prior to enrollment and goes on to complete each vaccination series as rapid as medically feasible in accordance with the Centers for Disease Control and Prevention's Recommended Adult Immunization Schedule as approved by the Advisory Committee on Immunization Practices (ACIP). However, the provisionally enrolled student may not participate in coursework activities involving the contact described in subsections (a) and/or (d) of this section until the full vaccination series has been administered.

(2) Students, who claim to have had the complete series of a required vaccination, but have not properly documented them, cannot participate in coursework activities involving the contact described in subsections (a) and/or (d) of this section until such time as proper documentation has been submitted and accepted.

(3) The immunization requirements in subsections (b) and (d) of this section are not applicable to individuals who can properly demonstrate proof of laboratory confirmation of immunity or laboratory confirmation of disease. Vaccines for which this may be potentially demonstrated, and acceptable methods for demonstration, are found in §97.65 of this title (relating to Exceptions to Immunization Requirements (Verification of Immunity/History of Illness)). Such a student cannot participate in coursework activities involving the contact described in subsection (a) of this section until such time as proper documentation has been submitted and accepted.

(d) Students enrolled in schools of veterinary medicine.

(1) Rabies Vaccine. Students enrolled in schools of veterinary medicine whose coursework involves direct contact with animals or animal remains shall receive a complete primary series of rabies vaccine prior to such contact. Serum antibody levels must be checked every two years, with a booster dose of rabies vaccine administered if the rabies virus-neutralizing antibody response is inadequate according to current Centers for Disease Control and Prevention guidelines.

(2) Hepatitis B Vaccine. Students enrolled in schools of veterinary medicine whose coursework involves potential exposure to human or animal blood or bodily fluids shall receive a complete series of hepatitis B vaccine prior to such contact.

(3) Tetanus-Diphtheria Vaccine. One dose of a tetanus-diphtheria toxoid (Td) is required within the last ten years. The booster dose may be in the form of a tetanus-diphtheria-pertussis containing vaccine (Tdap).

(e) Requirements regarding acceptable evidence of vaccination are found at §97.68 of this title (relating to Acceptable Evidence of Vaccination(s)).

§97.66. *Provisional Enrollment for (Non-Higher Education; Non-Veterinary) Students and Children.*

(a) The law requires that children and students be fully vaccinated against the specified diseases. A child or student may be enrolled provisionally if the child or student has an immunization record that indicates the child or student has received at least one dose of each specified age-appropriate vaccine required by this rule. To remain enrolled, the child or student must complete the required subsequent doses in each vaccine series on schedule and as rapidly as is medically feasible and provide acceptable evidence of vaccination to the child-care facility or school. A child-care provider, school nurse, or school administrator shall review the immunization status of a provisionally enrolled child or student every 30 days to ensure continued compliance in completing the required doses of vaccination. If, at the end of the 30-day period, a child or student has not received a subsequent dose of vaccine, the child or student is not in compliance and the facility shall exclude the child or student from attendance until the required dose is administered.

(b) A child or student who is homeless, as defined by §103 of the McKinney Act, 42 USC §11302, shall be admitted temporarily for 30 days if acceptable evidence of vaccination is not available. The facility shall promptly refer the student to an appropriate health provider to obtain the required vaccinations.

(c) A child or student who is a "child in foster care" as defined by 45 C.F.R. §1355.20(a) shall be admitted temporarily for 30 days if acceptable evidence of vaccination is not available. The facility shall promptly refer the child or student to an appropriate health provider to obtain the required vaccinations.

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

Filed with the Office of the Secretary of State on July 8, 2016.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER U. ENHANCED CONTRACTS AND PERFORMANCE MONITORING

##### 28 TAC §1.2201

The Texas Department of Insurance adopts 28 TAC Chapter 1, Subchapter U, consisting of new §1.2201, concerning procedures for contracts for the purchase of goods or services from private vendors. The new section is adopted without changes to the proposed text published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3239).

REASONED JUSTIFICATION. The new section is necessary to implement SB 20, 84th Legislature, Regular Session (2015). SB 20 requires each state agency by rule to establish a procedure to identify contracts that require enhanced contract or performance monitoring and prescribes certain reporting requirements. The adopted rule includes four criteria to determine whether enhanced contract or performance monitoring is appropriate, and establishes the new procedure. The procedure specifies that the procurement director will report all contracts requiring enhanced contract or performance monitoring to the appropriate commissioner. The appropriate commissioner is the commissioner of insurance for contracts related to the department, the commissioner of workers' compensation for contracts related to the Division of Workers' Compensation, or both commissioners for contracts related to both DWC and the department.

##### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received one written comment in support of the proposal, with changes, from one health maintenance organization.

Comment: A commenter requests that government contracted managed care organizations and health maintenance organizations be exempt from this rule. The commenter suggests that existing oversight by the Texas Health and Human Services Commission is sufficient.

Agency Response: The department declines to make a specific exemption. The rule is intended to apply to contracts where the department is a party. Managed care organizations and health maintenance organizations that provide Medicaid and CHIP services do not contract with the department, and therefore do not require a specific exemption.

STATUTORY AUTHORITY. The new section is adopted under Government Code §2261.253, Insurance Code §36.001, and Labor Code §402.00113. Government Code §2261.253(c) provides that each state agency by rule establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the officer who governs the agency. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state. Labor Code §402.00113 provides that DWC is administratively attached to the department.

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

Filed with the Office of the Secretary of State on July 6, 2016.

TRD-201603376

Norma Garcia

General Counsel

Texas Department of Insurance

Effective date: July 26, 2016

Proposal publication date: May 6, 2016

For further information, please call: (512) 687-6584



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 101. GENERAL AIR QUALITY RULES

##### SUBCHAPTER A. GENERAL RULES

###### 30 TAC §101.1, §101.10

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §101.1 and §101.10.

The amendment to §101.10 is adopted *with change* to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1650). Section 101.1 is adopted *without change* to the proposed text and, therefore, will not be republished.

The amended rules will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

###### Background and Summary of the Factual Basis for the Adopted Rules

On February 6, 2015, the EPA finalized revisions (80 FR 8787) to 40 Code of Federal Regulations (CFR) Part 51, Subpart A, Air Emissions Reporting Rule (AERR) that lowered the lead point source reporting threshold to 0.5 tons per year (tpy). The current TCEQ emissions inventory (EI) reporting rule, §101.10 (and previous version of the AERR), language requires a source to submit an EI if it has 10 tpy or more of actual or 25 tpy or more of potential lead emissions. This adopted amendment will lower the lead emissions delineation threshold for point source in §101.10 to align with reporting requirements in the AERR.

Currently, sources that are within 25 miles from the shoreline are required to submit an EI if the source meets one of the reporting thresholds in §101.10. The adopted amendment will change the distance from the shoreline to 9.0 nautical miles for consistency with Texas' legal offshore jurisdiction. Other adopted changes codify existing business processes and clarify the EI requirements.

Additionally, the EPA has made multiple, recent revisions to the federal definition of volatile organic compounds (VOC) in 40 CFR §51.100(s), to exclude certain organic compounds from regulation as a VOC since the agency last updated its VOC definition

in §101.1(116) in 2010. The latest finalized EPA definition of VOC will be incorporated in this adopted rule change. The specific organic compounds that will be excluded from the agency's definition of VOC with this revision include: *trans*-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); *trans* 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; and 2-amino-2-methyl-1-propanol.

###### Section by Section Discussion

###### §101.1, Definitions

The EPA has made multiple, recent revisions to the federal definition of VOC in 40 CFR §51.100(s), to exclude certain organic compounds from regulation as a VOC. The TCEQ definition of VOC in §101.1 was last updated in 2010 and references the federal definition as amended on January 21, 2009; therefore, the TCEQ's definition is not consistent with the current EPA definition. The adopted amendment to the definition of VOC in §101.1(116) incorporates the most recent final revision to the federal definition in 40 CFR §51.100(s), which was published in the *Federal Register* on March 27, 2014 (79 FR 17037).

###### §101.10, Emissions Inventory Requirements

The adopted amendment shortens the applicable distance for a site on waters from 25 miles to 9.0 nautical miles (10.4 statute miles) from the shoreline. Texas' territorial waters only extend 9.0 nautical miles. At this time, no sites located between 9.0 nautical and 25 statute miles from the shoreline report EIs to Texas. If a site existing between 9.0 nautical miles and 25 statute miles from shore should be required to report in the future, this site would be captured in a federal EI. This adopted amendment aligns emissions collection practices to territory included in Texas' legal offshore jurisdiction and reduces the risk of double reporting of emissions from sources existing between 9.0 nautical miles and 25 statute miles from the Texas shoreline.

Section 101.10(a) requires an inventory to be submitted on forms or other media as approved by the commission. The adopted amendment removes the redundant phrase "forms or other" from this subsection. The phrase "media approved by the commission" succinctly covers this requirement.

Section 101.10(a)(3) is adopted to align the reporting requirement with the EPA's AERR in 40 CFR Part 51. On February 6, 2015, the EPA finalized revisions (80 FR 8787) to the AERR that lowered the lead point source reporting threshold to 0.5 tpy. The current TCEQ EI reporting rule, §101.10 (and previous version of the AERR) language requires a source to submit an EI if it has 10 tpy or more of actual or 25 tpy or more of potential lead emissions. This adopted amendment lowers the lead emissions delineation threshold for point source in §101.10 to align with reporting requirements in the AERR. The language in this section was rephrased from proposal to indicate the reporting threshold for lead is "0.5 tpy or more" rather than a "minimum of 0.5 tpy." This change is for clarity and consistency with language elsewhere in the rule. There is no change in the reporting threshold from proposal as a result of this rephrasing. Former §101.10(a)(3) - (5) are renumbered to allow for this additional lead reporting requirement adopted as subsection (a)(3).

Currently, the data needed to meet the new EPA lead reporting threshold requirement are collected under the special inventory requirements in subsection (b)(2) and (3). This adopted amendment makes the requirement clear to the community and does

not require the agency to rely on the special inventory provision to collect data that is reported annually.

In addition to initial EIs, all owners or operators of accounts continuing to meet the reporting requirements in subsection (a) are required to annually update their EI. The adopted amendment adds subsection (a)(5) to the list of applicability requirements listed in subsection (b)(2) that are required to submit an annual emissions inventory update (AEIU). This addition includes the adopted inclusion of the new lead reporting requirement to this existing requirement.

An amendment is adopted in subsection (a)(4) to restructure the sentence to clarify that greenhouse gases are excluded from the applicability determination purposes of the paragraph. Their exclusion was always intended and is the current practice.

An amendment is adopted in subsection (a)(5) to change the units from "tons" to "tpy" to more clearly define the period over which the emissions are calculated. An annual time-period has always been assumed for this applicability but the amendment is adopted to clarify.

The term "microns" is changed to "micrometers" in the adoption to align language in §101.10(b)(1) with the reporting rule in AERR. In applied sciences, a micron is a commonly accepted alternative term to micrometer, and thus, the adopted amendment has no effect on the population of sources required to report an EI or on the methodology for estimating emissions.

Particulate matter with aerodynamic diameter less than or equal to 2.5 micrometers (PM<sub>2.5</sub>) is adopted for addition to the list of contaminants that shall be reported in the EI under subsection (b). The list includes the phrase "any other contaminant subject to NAAQS" (the National Ambient Air Quality Standards). The contaminant, PM<sub>2.5</sub>, is subject to the NAAQS and is already required for inclusion in an EI. However, specifically listing PM<sub>2.5</sub> clarifies the reporting requirement and does not change any existing reporting requirement to the agency.

EIs are not required for accounts with small changes in emissions as listed in subsection (b)(2)(A). A certifying letter may be submitted instead of an AEIU. Because PM<sub>2.5</sub> is specifically being listed in the adoption as a required pollutant (although, as a regulated pollutant, it is already required) in an AEIU, it is added to this list of pollutants and is to be considered when determining if an AEIU is required.

A second certifying statement has been added as §101.10(d)(2). Texas Health and Safety Code (THSC), §382.0215(f) requires that an owner or operator that is required to submit an EI and had no emissions events during the reporting year must include as part of the inventory a statement to this effect. The EI update process and reporting forms already include this certifying statement. An EI cannot be considered complete, or for electronically submitted accounts, submitted without either completing this certification or submitting emissions event data. The adopted amendment does not change this practice nor the wording in the certifying statement on the EI; it only includes the existing practice, which is required by THSC, §382.0215, into §101.10.

Because subsection (b) has been expanded to include a second certifying statement, its structure has been changed. The first requirement has been renumbered as subsection (b)(1) and the new requirement, addressed previously, has been numbered as subsection (b)(2).

Final Regulatory Impact Analysis Determination

The commission reviewed this adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means "a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." Additionally, this adoption rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only 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 amendment to Chapter 101 is adopted to align Texas rules with the current federal regulations found in 40 CFR Part 51. Additionally, the amendment will clarify requirements in §101.10 and change the applicability to sources that are within 9.0 nautical miles of the shoreline in accordance with state and federal jurisdiction over offshore sources.

The adopted rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the Federal Clean Air Act (FCAA) recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the

commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted the adopted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of this adopted rulemaking is to amend sections of the Texas Administrative Code (TAC), which would align TCEQ regulations with current EPA regulations. Additionally, even if the adopted rulemaking was a major environmental rule, it does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because it does not meet the definition of a "major environmental rule," nor does it meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the regulatory impact analysis.

#### Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific intent of this adopted rulemaking is to amend sections of the TAC, which would align TCEQ regulations with current EPA regulations. The adopted rulemaking would substantially advance this stated purpose by updating the TCEQ rules to be consistent with the EPA's rules, codifying existing business processes, and clarifying the EI requirements.

Texas Government Code, §2007.003(b)(4) provides that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal and state law. THSC, §382.0215 requires the agency to develop the capacity for electronic reporting of emissions, including emissions events. Additionally, 42 USC, §7410 requires a state to adopt a SIP that provides for the implementations, maintenance, and enforcement of NAAQS in each air quality control region of the state. Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted rules are neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which otherwise exists in the absence of the regulations.

In addition, because the subject adopted regulations do not provide more stringent requirements, they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which otherwise exists in the absence of the regulations. Therefore, these adopted rules do not constitute a taking under the Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

#### Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor do they affect

any action/authorization identified in Coastal Coordination Act Implementation Rules, §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

#### Effect on Sites Subject to the Federal Operating Permits Program

There is no anticipated change in reporting requirements or number of sources subject to the Federal Operating Permits Program as a result of the adopted changes in Chapter 101. Currently, the adopted excluded VOC compounds are not reported to the EI. If a source subject to the Federal Operating Permits Program emitting one of these compounds should be processed for a permit, these compounds would not need to be included in the permit.

The adopted amendment for lowering the lead reporting threshold aligns §101.10 with the reporting requirements in the EPA's AERR (40 CFR Part 51). At this time, sources subject to this reporting solely on the basis of lower lead emissions reporting threshold are already captured in the inventory through the special inventory requirements of §101.10.

#### Public Comment

The commission scheduled a public hearing on March 29, 2016; however, no members of the public were present to make comments. Therefore, the public hearing was not officially opened. The comment period closed on April 4, 2016. The commission received one supportive written comment from the American Coatings Association (ACA).

#### Response to Comments

##### *Comment*

ACA expressed support for the proposed revision to the definition of VOC.

##### *Response*

The commission appreciates the support.

#### Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §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; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Additionally, the amendments are adopted under THSC,

§382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information so that the commission may develop an emissions inventory; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for measuring and monitoring emissions of air contaminants and to examine records relating to the operation of any air pollution or emission control equipment or facility; and THSC, §382.0215, concerning Assessment of Emissions Due to Emissions Events, which requires an owner or operator of a regulated entity required by THSC, §382.014 to submit an annual emissions inventory report and which has experienced no emissions events during the relevant year to submit a statement stating that no emissions events were experienced that year.

The adopted amendments implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.017, and 382.0215.

#### *§101.10. Emissions Inventory Requirements.*

(a) Applicability. The owner or operator of an account or source in the State of Texas or on waters that extend 9.0 nautical miles from the shoreline meeting one or more of the following conditions shall submit emissions inventories or related data as required in subsection (b) of this section to the commission on media approved by the commission:

(1) an account which meets the definition of a major facility/stationary source, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions);

(2) any account in an ozone nonattainment area emitting a minimum of ten tons per year (tpy) volatile organic compounds (VOC), 25 tpy nitrogen oxides (NO<sub>x</sub>), or 100 tpy or more of any other contaminant subject to National Ambient Air Quality Standards (NAAQS);

(3) any account that emits 0.5 tpy or more of lead (Pb);

(4) any account that emits or has the potential to emit 100 tpy or more of any contaminant, except for greenhouse gases as listed in §101.1 of this title (relating to Definitions) individually or collectively;

(5) any account which emits or has the potential to emit 10 tpy of any single or 25 tpy of aggregate hazardous air pollutants as defined in Federal Clean Air Act (FCAA), §112(a)(1); and

(6) any minor industrial source, area source, non-road mobile source, or mobile source of emissions subject to special inventories under subsection (b)(3) of this section. For purposes of this section, the term "area source" means a group of similar activities that, taken collectively, produce a significant amount of air pollution.

#### (b) Types of inventories.

(1) Initial emissions inventory. Accounts, as identified in subsection (a)(1), (2), (3), (4), or (5) of this section, shall submit an initial emissions inventory (IEI) for any criteria pollutant or hazardous air pollutant (HAP) that has not been identified in a previous inventory. The IEI shall consist of actual emissions of VOC, NO<sub>x</sub>, carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), Pb, particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM<sub>10</sub>), particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM<sub>2.5</sub>), any other contaminant subject to an NAAQS, emissions of all HAPs identified in FCAA, §112(b), or any other contaminant requested by the commission from individual emission units within an account. For purposes of this section, the term "actual emission" is the actual rate of emissions of a pollutant from an emissions unit as it enters the atmosphere. The reporting year will be the calendar year

or seasonal period as designated by the commission. Reported emission activities must include annual routine emissions; excess emissions occurring during maintenance activities, including start-ups and shut-downs; and emissions resulting from upset conditions. For the ozone nonattainment areas, the inventory shall also include typical weekday emissions that occur during the summer months. For CO nonattainment areas, the inventory shall also include typical weekday emissions that occur during the winter months. Emission calculations must follow methodologies as identified in subsection (c) of this section.

(2) Statewide annual emissions inventory update (AEIU). Accounts meeting the applicability requirements during an inventory reporting period as identified in subsection (a)(1), (2), (3), (4), or (5) of this section shall submit an AEIU that consists of actual emissions as identified in paragraph (1) of this subsection if any of the following criteria are met. If none of the following criteria are met, a letter certifying such shall be submitted instead:

(A) any change in operating conditions, including start-ups, permanent shut-downs of individual units, or process changes at the account, that results in at least a 5.0% or 5 tpy, whichever is greater, increase or reduction in total annual emissions of VOC, NO<sub>x</sub>, CO, SO<sub>2</sub>, Pb, PM<sub>10</sub>, or PM<sub>2.5</sub> from the most recently submitted emissions data of the account; or

(B) a cessation of all production processes and termination of operations at the account.

(3) Special inventories. Upon request by the executive director or a designated representative of the commission, any person owning or operating a source of air emissions which is or could be affected by any rule or regulation of the commission shall file emissions-related data with the commission as necessary to develop an inventory of emissions. Owners or operators submitting the requested data may make special procedural arrangements with the Emissions Assessment Section to submit data separate from routine emission inventory submissions or other arrangements as necessary to support claims of confidentiality.

(c) Calculations. Actual measurement with continuous emissions monitoring systems (CEMS) is the preferred method of calculating emissions from a source. If CEMS data is not available, other means for determining actual emissions may be utilized in accordance with detailed instructions of the commission. Sample calculations representative of the processes in the account must be submitted with the inventory.

(d) Certifying statements.

(1) A certifying statement, required by FCAA, §182(a)(3)(B), is to be signed by the owner(s) or operator(s) and shall accompany each emissions inventory to attest that the information contained in the inventory is true and accurate to the best knowledge of the certifying official.

(2) A certifying statement, required by Texas Health and Safety Code, §382.0215(f) is to be signed by the owner(s) or operators(s) required to submit an emissions inventory and shall be submitted with each emission inventory if no emissions events were experienced at the site during the reporting year to the best knowledge of the certifying official.

(e) Reporting requirements. The IEI or subsequent AEIUs shall contain emissions data from the previous calendar year and shall be due on March 31 of each year or as directed by the commission. Owners or operators submitting emissions data may make special procedural arrangements with the Emissions Assessment Section to submit data separate from routine emission inventory submissions or other

arrangements as necessary to support claims of confidentiality. Emissions-related data submitted under a special inventory request made under subsection (b)(3) of this section are due as detailed in the letter of request.

(f) Enforcement. Failure to submit emissions inventory data as required in this section shall result in formal enforcement action under Texas Water Code, Chapter 7.

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

Filed with the Office of the Secretary of State on July 8, 2016.

TRD-201603411

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Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6812



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

##### SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

###### 37 TAC §4.11

The Texas Department of Public Safety (the department) adopts amendments to §4.11, concerning General Applicability and Definitions. This section is adopted without changes to the proposed text as published in the June 3, 2016, issue of the *Texas Register* (41 TexReg 3978) and will not be republished.

These amendments are necessary to harmonize updates to Title 49, Code of Federal Regulations with those laws adopted by Texas.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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

Filed with the Office of the Secretary of State on July 7, 2016.

TRD-201603392



## PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

### CHAPTER 341. JUVENILE PROBATION DEPARTMENT GENERAL STANDARDS

The Texas Juvenile Justice Department (TJJJ) adopts the repeal of §§341.1 - 341.4, 341.9, 341.10, 341.20, 341.29, 341.35 - 341.41, 341.47 - 341.51, 341.65 - 341.71, and 341.80 - 341.91, relating to Juvenile Probation Department General Standards, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1087).

TJJJ simultaneously adopts new §§341.100, 341.102, 341.300, 341.302, 341.400, 341.500, 341.502, 341.600, 341.602, 341.604, 341.606, 341.700, 341.702, 341.704, 341.705, 341.708, 341.710, 341.804, 341.806, 341.810, and 341.812, relating to General Standards for Juvenile Probation Departments, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1087).

TJJJ also adopts new §§341.200, 341.202, 341.504, 341.506, 341.706, 341.712, 341.800, 341.802, and 341.808, relating to General Standards for Juvenile Probation Departments, with changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1087).

Changes to the proposed text of §341.200 consist of replacing "shall" with "must" and correcting a reference to state law.

Changes to the proposed text of §341.202 consist of removing a reference to a specific section number in Chapter 344 of this title and replacing it with a more general reference to the entire chapter.

Changes to the proposed text of §341.504 consist of correcting a typographical error.

Changes to the proposed text of §341.706 and §341.712 consist of correcting grammatical errors.

Changes to the proposed text of §341.800 consist of removing the term "concealed" when referring to licenses to carry handguns.

Changes to the proposed text of §341.802 and §341.808 consist of correcting grammatical errors.

#### JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the new sections will be: 1) more effective probation case plans as a result of basing them on validated risk and needs assessments; 2) enhanced safety and clarified expectations as a result of juvenile probation departments developing local policies to address the taking of juveniles into custody; and 3) more flexibility for juvenile probation departments to develop policies and procedures regarding carrying of handguns and other weapons.

#### SUMMARY OF CHANGES

The repeal of §341.1 allows for the content to be revised and republished as §341.100.

The repeal of §341.2 allows for the content to be revised and republished as §341.200.

The repeal of §341.3 allows for the content to be revised and republished as §341.202.

The repeal of §341.4 allows for the content to be revised and republished as §341.102.

The repeal of §341.9 allows for the content to be revised and republished as §341.300.

The repeal of §341.10 allows for the content to be revised and republished as §341.302.

The repeal of §341.20 allows for the content to be revised and republished as §341.502.

The repeal of §341.29 allows for the content to be revised and republished as §341.400.

The repeal of §341.35 allows for the content to be revised and consolidated with new §341.100.

The repeal of §341.36 allows for the content to be revised and republished as §341.500.

The repeal of §341.37-§341.41 allows for the content to be revised and republished within new §341.504 and §341.506.

The repeal of §341.47 allows for the content to be revised and consolidated with new §341.100.

The repeal of §341.48 allows for the content to be revised and republished as §341.600.

The repeal of §341.49 allows for the content to be revised and republished as §341.602.

The repeal of §341.50 allows for the content to be revised and republished as §341.604.

The repeal of §341.51 allows for the content to be revised and republished as §341.606.

The repeal of §341.65 allows for the content to be revised and consolidated with new §341.100.

The repeal of §341.66 allows for the content to be revised and republished as §341.702.

The repeal of §341.67 allows for the content to be revised and republished as §341.704.

The repeal of §341.68 allows for the content to be revised and republished as §341.706.

The repeal of §341.69 allows for the content to be revised and republished as §341.708.

The repeal of §341.70 allows for the content to be revised and republished as §341.710.

The repeal of §341.71 allows for the content to be revised and republished as §341.712.

The repeal of §341.80 allows for the content to be revised and consolidated with new §341.100.

The repeal of §341.81 allows for the content to be revised and republished as §341.800.

The repeal of §341.82 allows for the content to be revised and republished as §341.802.

The repeal of §341.83 allows for the content to be revised and republished as §341.804.

The repeal of §341.84 allows for the content to be revised and moved to new §341.808. Specifically, the revised chapter no longer requires each juvenile probation officer (JPO) to receive 20 hours of training in empty-hand defense tactics before carrying a firearm in the course of the JPO's duties. New §341.808 requires each juvenile probation department that authorizes a JPO to carry a firearm to specify in the department's policies and procedures the amount of required training in empty-hand defense tactics and intermediate weapons before the JPO may carry a firearm in the course of the JPO's duties. The provision in §341.84 that required the use of force by a JPO who carries a firearm to be consistent with Chapter 9 of the Texas Penal Code is now reflected in new §341.808. Additionally, the provision in §341.84 that required a JPO who carries a firearm to also carry an intermediate weapon is now reflected in new §341.808.

The repeal of §341.85 allows for the content to be revised and republished as §341.806.

The repeal of §341.86 allows for the content to be revised and republished as §341.808.

The repeal of §341.87 allows for the content to be revised and republished as §341.810.

The repeal of §341.88 allows for the content to be revised and republished as §341.812.

Section 341.89 has been repealed to eliminate certain provisions that are redundant with other sections within the chapter. Additionally, the repeal allows for certain provisions in §341.89 to be revised and addressed by other sections within the revised chapter. For example, the revised chapter no longer require JPOs who carry firearms to receive 20 hours of continuing education in certain firearms-related topics every two years. However, new §341.808 requires each juvenile probation department that authorizes a JPO to carry a firearm to specify in its policies and procedures the amount of required continuing education in those firearms-related topics. The repeal of §341.89 also allows for the requirement for firearms-related training to be provided by an instructor approved by the Texas Commission on Law Enforcement to be moved to new §341.808.

Section 341.90 has been repealed because it duplicates information found elsewhere in the chapter.

Section 341.91 has been repealed to allow new §341.808 to address the justification for discharging a firearm and to address whether use of striking weapons is allowable. However, new §341.808 does not authorize or prohibit any specific practices in this regard. New §341.808 requires each juvenile probation department that authorizes a JPO to carry a firearm to establish in its policies and procedures the circumstances and limitations under which a JPO who carries a firearm may use force. New §341.808 also requires such policies and procedures to specify the type(s) of intermediate weapons to be used.

New §341.100 revises and republishes information previously found in §341.1. Changes include: 1) consolidating definitions throughout the chapter into one rule; 2) adding definitions of *Alternative Referral Plan*, *Criminogenic Needs*, *Department*, *Initial Disposition*, *Inter-County Transfer*, *Intern*, *Juvenile*, *Juvenile Board*, *Resident*, *Responsivity Factors*, *TCOLE*, *Title IV-E*

*Approved Facility*, *TJJD Mental Health Screening Instrument*, *Transport Personnel*, and *Volunteer*; 3) deleting the definitions of *Alleged Victim*, *Case Plan*, *Case Plan Review*, *Courtesy Supervision*, *Exit Plan*, *Referral*, *On-Duty*, *Paper Complaint*, *Paper Formalized*, and *Substitute Care Provider*; 4) changing the term *Approved Physical Restraint* to *Approved Personal Restraint Technique* and revising the definition to match existing definitions in other TAC chapters adopted by TJJD; 5) clarifying the definition of *Approved Mechanical Restraint Devices* to reflect that the devices must be commercially available, removing the requirement for the juvenile board to adopt the approved mechanical restraint devices, adding *Soft Restraints* to the list of TJJD-approved devices, and removing *Anklelets* and *Wristlets* from the list of TJJD-approved devices; and 6) changing the definition of *Intermediate Weapons* to reflect that electronic restraint devices, irritants, and impact weapons are examples of intermediate weapons, rather than the only allowable types of such weapons.

New §341.102 republishes information previously found in §341.4.

New §341.200 revises and republishes information previously found in §341.2. Changes include: 1) removing the requirement for the juvenile board to specify the responsibilities and functions of the juvenile probation department and the chief administrative officer; 2) clarifying that the required ratio of one juvenile probation officer for every 100 annual referrals is based on formal referrals; 3) clarifying that a person designated by the juvenile board (rather than the juvenile board itself) must participate in community resource coordination groups; 4) clarifying that the signs provided by TJJD relating to complaint procedures must be posted in English and Spanish; 5) combining the items relating to research studies and experimentation and moving the combined item from 341.3 to 341.200; 6) providing more explanation regarding what constitutes prohibited experimentation; 7) clarifying that if the juvenile board designates a board member or staff member to approve research studies on behalf of the board, the designation must be in writing; and 8) adding a requirement that for juvenile boards who adopt an alternative referral plan under Texas Family Code §53.01(d), the most recent version of the plan must be submitted to TJJD's general counsel.

New §341.202 revises and republishes information previously found in §341.3. Changes include: 1) clarifying that the requirement to establish a deferred prosecution policy applies only if the juvenile board adopts a fee schedule for the collection of deferred prosecution fees, removing the specific reference to the \$15 maximum monthly fee, and referring to the Family Code section that contains the monthly maximum; 2) adding a requirement for the policy on volunteers and interns to include a prohibition on having unsupervised contact with juveniles if the volunteer/intern has a criminal history that does not meet the requirements of 37 TAC Chapter 344 and removing the requirement for the policy to require the volunteer/intern sign-in log to record the names of the juveniles contacted or served; 3) clarifying that the zero-tolerance policy refers to sexual abuse as defined in 37 TAC Chapter 358 and adding that the policy must address conduct by volunteers, interns, and contractors; 4) adding a requirement for the juvenile board to establish a policy that specifies whether juveniles under age 17 who have been transferred for criminal prosecution under Family Code §54.02 may be detained in a juvenile facility pending trial; and 5) adding a requirement for the juvenile board to establish a policy that specifies whether juvenile probation officers may take a juvenile into custody and whether force is allowed in doing so. If force is allowed, the policy must ad-

dress certain topics related to the use of force, such as training, circumstances when force is authorized, prohibited conduct, and documentation.

New §341.300 revises and republishes information previously found in §341.9. Changes include requiring the annual review of policies and procedures to occur within the same calendar month as the previous year's review, rather than once every 365 days.

New §341.302 republishes information previously found in §341.10.

New §341.400 revises and republishes information previously found in §341.29. Changes include: 1) adding several items to the list of duties that may be performed only by certified juvenile probation officers (i.e., acting as the primary supervising officer in a collaborative supervision agreement; taking a child into custody under applicable Texas Family Code sections; serving as the designated inter-county transfer officer and performing the duties required by Texas Family Code §51.072; referring a child to a local mental health or mental retardation authority as required by Texas Family Code §54.0408; explaining to the juvenile and parent/guardian/custodian who will have access to the juvenile's record and when the record may be eligible for restricted access or sealing; and providing a written copy of the explanation); 2) clarifying that persons hired as juvenile probation officers who are not yet certified may perform the duties of a certified officer if they have completed 40 hours of training including the mandatory topics listed in 37 TAC Chapter 344 (rather than an unspecified number of training hours covering the duties previously listed in §341.29); and 3) clarifying that a non-certified officer may continue to perform duties of a certified officer as long as the application for certification has been filed by the deadline in Chapter 344.

New §341.500 revises and republishes information previously found in §341.36. Changes include: 1) clarifying that a mental health screening is not required if a licensed mental health professional completes a clinical assessment within the established time frame; and 2) clarifying that the person who administers the mental health screening instrument must have received training from TJJD or its predecessor agency or from a person who is documented to have received training from TJJD or its predecessor agency.

New §341.502 revises and republishes information previously found in §341.20. Changes include: 1) adding a requirement to complete the risk and needs assessment at least once every six months after disposition; and 2) clarifying that the risk and needs assessment is required before each disposition in a child's case (in the event there is more than one disposition).

New §341.504 establishes basic requirements for a juvenile probation department's policies and procedures relating to case management.

New §341.506 establishes requirements for case plans. This new section significantly revises information previously found in §§341.37 - 341.41. Changes include: 1) requiring completion of the case plan within 30 days after initial disposition, rather than 60 days; 2) requiring the case plan to address relevant criminogenic need(s), goals, action steps, responsible persons, time frames, and status; 3) removing the requirement to complete signed case plan reviews every six months; 4) adding a requirement for the juvenile probation officer to document monthly discussions with the juvenile and parent/guardian/custodian regarding the juvenile's progress; 5) adding a requirement for the juvenile probation officer to document monthly updates to the status

of the case plan goals and action steps; 6) adding an exemption from certain case plan requirements while an inter-county transfer request is being processed; 7) requiring documentation when the parent/guardian/custodian cannot be located or is unable or unwilling to participate in case planning; and 8) adding an exemption from all requirements of §341.506 for juveniles who receive specialized case plans under the Title IV-E foster care program or the Special Needs Diversionary Program.

New §341.600 republishes information previously found in §341.48 with minor, non-substantive wording changes.

New §341.602 republishes information previously found in §341.49 with minor, non-substantive wording changes.

New §341.604 republishes information previously found in §341.50 with minor, non-substantive wording changes.

New §341.606 revises and republishes information previously found in §341.51. Changes include narrowing backup and restoration requirements to apply only to juvenile probation departments who do not use the Juvenile Case Management System (JCMS).

New §341.700 limits Subchapter G (Restraints) to apply only to juveniles who are not residents of a secure pre-adjudication detention facility, secure post-adjudication correctional facility, or non-secure correctional facility.

New §341.702 revises and republishes information previously found in §341.66. Changes include: 1) adding transport personnel as individuals who are authorized to use restraints; and 2) clarifying that the criteria for using restraints (i.e., imminent or active self-injury, injury to others, or serious property damage) and the requirement to terminate the restraint when the criteria are no longer present does not apply to restraints used during routine transportation or when a juvenile probation officer takes a juvenile into custody.

New §341.704 revises and republishes information previously found in §341.67. Changes include: 1) replacing the term *face down* with *prone or supine position* to match wording used in other TAC chapters adopted by TJJD; and 2) adding that restraints that place anything around the juvenile's neck are prohibited.

New §341.705 requires transport personnel to maintain current certification in cardiopulmonary resuscitation, first aid, and a TJJD-approved personal restraint technique.

New §341.706 revises and republishes information previously found in §341.68. Changes include: 1) adding that using mechanical restraints during routine transportation and taking a juvenile into custody are not required to be documented as restraints unless cooperation is compelled through the use of a personal restraint or the juvenile receives an injury related to the restraint event; 2) requiring that documentation of a restraint must include a narrative description of the event from each staff member who participated in the restraint; and 3) clarifying that the documentation must indicate the specific type of personal restraint hold or type of mechanical restraint applied.

New §341.708 revises and republishes information previously found in §341.69. Changes include: 1) changing the required frequency of retraining in the personal restraint technique to be once every 365 calendar days or as required by the specific restraint technique, whichever time frame is shorter (instead of once every two years); and 2) moving the requirement for juve-

nile probation departments to use only TJJJ-approved personal restraint techniques to this section from §341.65.

New §341.710 revises and republishes information previously found in §341.70. Changes include: 1) specifying that mechanical restraint devices must have documented inspections at least once each year within the same calendar month as the previous year's inspection; 2) adding a requirement to restrict faulty or malfunctioning mechanical restraint devices from use until they are repaired; 3) adding a requirement for all maintenance of mechanical restraint equipment to adhere to the manufacturer's guidelines; 4) clarifying that mechanical restraints may not be used to secure a juvenile in a prone, supine, or lateral position with arms and hands behind his/her back and secured to his/her legs; and 5) moving the requirement for juvenile probation departments to use only TJJJ-approved mechanical restraint devices to this section from §341.65.

New §341.712 revises and republishes information previously found in §341.71. Changes include deleting the provision that excludes routine transportation and taking a juvenile into custody from the requirement to document the use of mechanical restraints. That provision is now addressed in new §341.706.

New §341.800 revises and republishes information previously found in §341.81. Changes include: 1) clarifying that a juvenile probation officer is not disqualified from carrying a firearm if he/she has been found to be a designated perpetrator in a TJJJ abuse, neglect, or exploitation investigation if that designation has since been overturned; and 2) removing the provision that states this subchapter does not authorize an officer to carry a firearm while not on duty. There is no longer a definition of on duty in this chapter. Instead, the chapter will now use the statutory phrase "in the course of the officer's official duties" when describing when an officer is authorized to carry the firearm.

New §341.802 revises and republishes information previously found in §341.82. Changes include: 1) increasing the deadline to 30 calendar days (instead of five workdays) for submitting required documents to TJJJ after receiving the initial or renewal firearms proficiency certificate; and 2) adding a requirement for the juvenile probation department to include its current weapons-related policies and procedures when submitting required documents to TJJJ.

New §341.804 revises and republishes information previously found in §341.83. Changes include removing the requirement for a juvenile probation officer who carries a firearm to notify TJJJ if the officer is arrested for, charged with, or convicted of any criminal offense. New §341.806 requires the chief administrative officer to notify TJJJ in such cases.

New §341.806 revises and republishes information previously found in §341.85. Changes include: 1) removing the requirement for the chief administrative officer or the supervisor of an officer who carries a firearm to comply with all requirements of this subchapter. New §341.808 requires the juvenile probation department to determine any such responsibilities and address them in department policies and procedures; 2) removing the requirement for the juvenile probation department to notify the Texas Commission on Law Enforcement within 24 hours when the department rescinds its authorization for an officer to carry a firearm or when an officer who carries a firearm separates from employment; 3) clarifying that an internal investigation must be conducted whenever an officer does any of the following during the course of his/her official duties: uses an empty-hand defense tactic in an incident involving another person; draws or uses an

intermediate weapon in an incident involving another person; or draws or discharges a firearm in any incident; 4) specifying that in cases where the chief administrative officer is the subject of the investigation, the juvenile board or the board's designee must conduct the investigation; 5) removing use of empty-hand defense tactics as an incident that requires the officer to be placed on administrative leave or reassigned to a no-contact position; 6) specifying that an officer must be placed on administrative leave or reassigned to a no-contact position when the officer, in the course of his/her official duties, draws or uses an intermediate weapon in an incident involving another person or draws or discharges a firearm in any incident; and 7) adding a requirement for the chief administrative officer to ensure TJJJ is notified within 24 hours after the chief administrative officer learns that an officer who carries a firearm is arrested for, charged with, or convicted of a criminal offense.

New §341.808 revises and republishes information previously found in §341.86. Changes include adding that, in juvenile probation departments that authorize a juvenile probation officer to carry a firearm, the department's weapons-related policies and procedures must: 1) specify the amount of training in empty-hand defense tactics and intermediate weapons that is required before an officer may carry a firearm; 2) specify the amount of continuing education required for officers who carry a firearm; 3) specify the duties and training requirements of a chief administrative officer or direct supervisor when the direct supervisor does not carry a firearm but supervises an officer who does carry a firearm; 4) require all weapons-related training to be received from a Texas Commission on Law Enforcement-certified instructor; 5) state whether intermediate weapons are to be purchased and maintained by the department or by the officer; 6) specify whether the firearm must be fully loaded when carried or worn in the course of official duties (this replaces a requirement that it must always be fully loaded); 7) specify how the officer must carry or display his/her identifying credentials when carrying a firearm in the course of official duties (this replaces a requirement to always display them); 8) specify the type(s) of intermediate weapons to be used; 9) state the manner in which the firearm must be worn or carried (this replaces a requirement to be encased in a holster); 10) require documentation of each incident in which an officer, in the course of official duties, uses an empty-hand defense tactic, uses an intermediate weapon, or draws or discharges a firearm (this replaces a general requirement to define the process for reporting use of force incidents); 11) require an officer to carry an intermediate weapon at all times while carrying a firearm; and 12) specify the manner in which the intermediate weapon(s) must be carried.

New §341.810 revises and republishes information previously found in §341.87. Changes include specifying that reports to TJJJ are required when an officer, in the course of official duties, uses an empty-hand defense tactic in an incident involving another person; draws or uses an intermediate weapon in an incident involving another person; or draws or discharges a firearm in any incident.

New §341.812 revises and republishes information previously found in §341.88. Changes include: 1) removing the requirement for juvenile probation departments to keep the Firearms Proficiency for Juvenile Probation Officers Application in the officer's personnel file; and 2) adding a requirement to keep in the officer's personnel file an acknowledgment that the officer has reviewed the department's current weapons-related policies and procedures.

PUBLIC COMMENTS

TJJD did not receive any public comments concerning the proposed rulemaking actions.

**SUBCHAPTER A. DEFINITIONS**

**37 TAC §341.1**

STATUTORY AUTHORITY

The repeal is adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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

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**SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES**

**37 TAC §§341.2 - 341.4**

STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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**SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES**

**37 TAC §341.9, §341.10**

STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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**SUBCHAPTER D. ASSESSMENT AND SCREENING**

**37 TAC §341.20**

STATUTORY AUTHORITY

The repeal is adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The repeal is also adopted under Texas Human Resources Code §221.003(e), which requires TJJD to adopt rules to ensure that youth in the juvenile justice system are assessed using a validated risk and needs assessment.

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**SUBCHAPTER F. REQUIREMENTS FOR CERTIFIED OFFICERS**

**37 TAC §341.29**

STATUTORY AUTHORITY

The repeal is adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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## SUBCHAPTER G. CASE MANAGEMENT STANDARDS

### 37 TAC §§341.35 - 341.41

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The repeals are also adopted under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide case management standards for all probation services provided by local probation departments.

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## SUBCHAPTER H. DATA COLLECTION STANDARDS

### 37 TAC §§341.47 - 341.51

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The repeals are also adopted under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

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## SUBCHAPTER J. RESTRAINTS

### 37 TAC §§341.65 - 341.71

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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## SUBCHAPTER K. CARRYING OF WEAPONS

### 37 TAC §§341.80 - 341.91

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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CHAPTER 341. GENERAL STANDARDS FOR  
JUVENILE PROBATION DEPARTMENTS  
SUBCHAPTER A. DEFINITIONS AND  
GENERAL PROVISIONS

37 TAC §341.100, §341.102

STATUTORY AUTHORITY

The new sections are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The new sections are also adopted under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide case management standards for all probation services provided by local probation departments and to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

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SUBCHAPTER B. JUVENILE BOARD  
RESPONSIBILITIES

37 TAC §341.200, §341.202

STATUTORY AUTHORITY

The new sections are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

§341.200. *Administration.*

(a) Local Juvenile Probation Services Administration.

(1) For each autonomous juvenile probation department, the juvenile board must employ a chief administrative officer who meets the standards set forth in Chapter 344 of this title.

(2) When probation services for adult and juvenile offenders are provided by a single probation office, the juvenile board must ensure that the juvenile probation department's policies, programs, and procedures are clearly differentiated.

(b) Referral Ratio. The juvenile probation department must employ at least one certified juvenile probation officer for each 100 formal referrals made to the juvenile probation department annually.

(c) Participation in Community Resource Coordination Groups.

(1) A person designated by the juvenile board must participate in the system of community resource coordination groups pursuant to Texas Government Code §531.055.

(2) The chair of the juvenile board or his/her designee must serve as representative to the interagency dispute resolution process required by Texas Government Code §531.055.

(d) Notice of Complaint Procedures. The juvenile board must ensure the English and Spanish signs provided by TJJD relating to complaint procedures are posted in a public area of:

(1) the juvenile probation department; and

(2) any facility operated by the juvenile board or by a private entity through a contract with the juvenile board.

(e) Research Studies and Experimentation.

(1) The juvenile board must establish a policy that prohibits participation by juveniles in research that employs an experimental design to test a medical, pharmaceutical, or cosmetic product or procedure.

(2) Participation by juveniles in any other kind of research is prohibited unless:

(A) the research study is approved in writing by the juvenile board or its designee; and

(B) the juvenile board has established policies that:

(i) govern all authorized research studies;

(ii) prohibit studies that involve medically invasive procedures; and

(iii) adhere to all federal requirements governing human subjects and confidentiality.

(3) If the juvenile board authorizes a board member or staff member to approve research studies on behalf of the board, the authorization must be in writing.

(4) Approved research studies must adhere to all applicable policies of the authorizing juvenile board.

(5) Before a research study approved by the juvenile board begins, the research study must be reported to TJJD in a format prescribed by TJJD.

(6) Results of a completed study must be made available to TJJD upon request.

(f) Alternative Referral Plans. If a juvenile board adopts an alternative referral plan under Texas Family Code §53.01(d), the board must ensure the most recent version of the plan is submitted to the TJJD general counsel.

§341.202. *Policies and Procedures.*

(a) Personnel Policies. The juvenile board must establish written personnel policies.

(b) Department Policies. The juvenile board must establish written department policies and procedures. These policies must include, at a minimum, the following provisions, if applicable.

(1) Deferred Prosecution.

(A) If the juvenile board adopts a fee schedule for the collection of deferred prosecution fees, the board must establish a written policy that includes the following requirements.

(i) The monthly fee must be determined after obtaining a financial statement from the parent or guardian and may not exceed the maximum set by Texas Family Code §53.03.

(ii) The fee schedule must be based on total parent/guardian income.

(iii) The chief administrative officer or his/her designee must approve in writing the fee assessed for each child including any waiver of deferred prosecution fees.

(B) A deferred prosecution fee may 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 utilizes volunteers or interns, the juvenile board must establish policies for the volunteer and/or internship program that include:

(A) a description of the scope, responsibilities, and limited authority of volunteers and interns who work with the department;

(B) selection and termination criteria, including disqualification based on specified criminal history;

(C) a requirement to conduct criminal history searches as described in Chapter 344 of this title for volunteers and interns who will have direct, unsupervised access to juveniles;

(D) a prohibition on having unsupervised contact with juveniles for volunteers and interns whose criminal history does not meet the requirements in Chapter 344 of this title;

(E) the orientation and training requirements, including training on recognizing and reporting abuse, neglect, and exploitation;

(F) a requirement that volunteers and interns meet minimum professional requirements if serving in a professional capacity; and

(G) a requirement to maintain a sign-in log that documents the name of the volunteer/intern, the purpose of the visit, the date of the service, and the beginning and ending time of the service performed for the department.

(3) Zero-Tolerance for Sexual Abuse. The juvenile board must establish zero-tolerance policies and procedures regarding sexual abuse as defined in Chapter 358 of this title. The policies and procedures must:

(A) prohibit sexual abuse of juveniles under the jurisdiction of the department by department staff, volunteers, interns, and contractors;

(B) establish the actions department staff must take in response to allegations of sexual abuse and TJJD-confirmed incidents of sexual abuse; and

(C) provide for administrative disciplinary sanctions and referral for criminal prosecution.

(4) Pretrial Detention for Certain Juveniles. As required by Texas Human Resources Code §152.0015, the juvenile board must establish a policy that specifies whether a person who has been transferred for criminal prosecution under Texas Family Code §54.02 and is younger than 17 years of age may be detained in a juvenile facility pending trial.

(5) Taking Juveniles into Custody. The juvenile board must establish a policy that specifies whether juvenile probation officers may take a juvenile into custody as allowed by Texas Family Code §§52.01(a)(4), 52.01(a)(6), or 52.015.

(A) If the policy allows juvenile probation officers to take a juvenile into custody, the policy must specify whether the officers are allowed to use force in doing so.

(B) If the policy allows juvenile probation officers to use force in taking a juvenile into custody, the policy must:

(i) address prohibited conduct, circumstances under which force is authorized, and training requirements;

(ii) require each use of force to be documented, except when the only force used is the placement of mechanical restraints on the juvenile.

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**SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES**

**37 TAC §341.300, §341.302**

**STATUTORY AUTHORITY**

The new sections are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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**SUBCHAPTER D. REQUIREMENTS FOR JUVENILE PROBATION OFFICERS**

**37 TAC §341.400**

**STATUTORY AUTHORITY**

The new section is adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of

the operation of a juvenile board that are necessary to provide adequate and effective probation services.

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## SUBCHAPTER E. CASE MANAGEMENT

### 37 TAC §§341.500, 341.502, 341.504, 341.506

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The new sections are also adopted under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide case management standards for all probation services provided by local probation departments. Additionally, §341.500 and §341.502 are adopted under Texas Human Resources Code §221.003(e), which requires TJJD to adopt rules to ensure that youth in the juvenile justice system are assessed using a validated risk and needs assessment and also using a mental health screening instrument or clinical assessment.

#### §341.504. *Case Management Policies and Procedures.*

Each department's case management policies and procedures must:

(1) establish that individualized case management practices are based on a consideration of the following factors, at a minimum:

- (A) results of the department's risk and needs assessment instrument;
- (B) criminogenic needs;
- (C) risk level to reoffend;
- (D) responsivity factors; and
- (E) involvement of the parent(s), guardian, or custodian; and

(2) require a minimum of one face-to-face contact per month with each juvenile under supervision unless otherwise noted in the case plan.

#### §341.506. *Case Plans.*

(a) A case plan must be developed for each juvenile assigned to progressive sanctions level three, four, or five, as defined in Texas Family Code Chapter 59, and for each juvenile given determinate sentence probation under Texas Family Code §54.04(q).

(b) The case plan must be completed within 30 calendar days after the date of initial disposition. The case plan must be:

(1) developed by a juvenile probation officer in coordination with the juvenile and the juvenile's parent, guardian, or custodian;

(2) signed by a juvenile probation officer, the juvenile, and the juvenile's parent, guardian, or custodian; and

(3) retained, with copies provided to:

(A) the juvenile;

(B) the juvenile's parent, guardian, or custodian; and

(C) upon placement of a juvenile in a residential placement, staff at the residential placement.

(c) The case plan must address:

(1) relevant criminogenic need(s), as determined by the department; and

(2) the following information for each criminogenic need addressed in the case plan:

(A) goal(s); and

(B) for each goal:

(i) action step(s);

(ii) person(s) responsible for completing the action step(s);

(iii) time frame for completing the action step(s);

and

(iv) status of the goal;

(3) identification of relevant community services for the juvenile and the juvenile's parent(s), guardian, or custodian to access while the juvenile is under supervision and after supervision ends;

(4) facility name and phone number, if the juvenile is in a residential placement; and

(5) level of supervision.

(d) Except as noted in subsection (f) of this section, the juvenile probation officer must complete and document the following actions each calendar month after the case plan has been developed:

(1) discuss progress toward meeting case plan goals with:

(A) the juvenile;

(B) the juvenile's parent(s), guardian, or custodian; and

(C) the residential provider where the juvenile is placed, if applicable; and

(2) update the status and progress toward meeting case plan goals and action steps.

(e) If the parent, guardian, or custodian cannot be located or is unable or unwilling to participate in developing or updating the case plan as required in subsection (b) or (d) of this section, documentation of the reason the parent, guardian, or custodian did not participate must be maintained.

(f) The requirements in subsection (d) of this section do not apply after a request for an inter-county transfer has been submitted and before the sending and receiving counties have agreed on the official start date, as described in Texas Family Code §51.072 (f-1).

(g) Within 30 calendar days after the official start date for an inter-county transfer, the receiving county must:

(1) assume responsibility for the monthly updates described in subsection (d) of this section; or

(2) complete a new case plan in accordance with subsections (b) and (c) of this section.

(h) Section 341.506 of this title does not apply to:

(1) juveniles on field supervision in departments that currently participate in Title IV-E reasonable candidacy;

(2) juveniles who have been certified or are pending certification as Title IV-E eligible; or

(3) juveniles who are receiving services under the Special Needs Diversionary Program administered by TJJD.

(i) A case plan is required in accordance with subsections (b) and (c) of this section within 30 calendar days after any of the following events:

(1) a juvenile is discharged from the Title IV-E foster care reimbursement program or is determined to be ineligible for the Title IV-E program;

(2) a juvenile is discharged from the Special Needs Diversionary Program; or

(3) a department ceases to participate in claiming Title IV-E reasonable candidate costs.

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## SUBCHAPTER F. DATA COLLECTION

**37 TAC §§341.600, 341.602, 341.604, 341.606**

### STATUTORY AUTHORITY

The new sections are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The new sections are also adopted under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

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## SUBCHAPTER G. RESTRAINTS

**37 TAC §§341.700, 341.702, 341.704 - 341.706, 341.708, 341.710, 341.712**

### STATUTORY AUTHORITY

The new sections are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

§341.706. *Documentation.*

(a) Restraints must be fully documented and the documentation must be maintained, except as noted in subsection (b) of this section. Written documentation regarding the use of restraints must include, at a minimum:

(1) name of the juvenile;

(2) name and title of each staff member who administered the restraint;

(3) narrative description of the restraint event from each staff member who participated in the restraint;

(4) date of the restraint;

(5) duration of each type of restraint (e.g., personal or mechanical), including notation of the time each type of restraint began and ended;

(6) location of the restraint;

(7) events and behavior that prompted the initial restraint and any continued restraint;

(8) de-escalation efforts and restraint alternatives attempted;

(9) type of restraint(s) applied, including, as applicable:

(A) the specific type of personal restraint hold applied; and

(B) the type of mechanical restraint device(s) applied; and

(10) any injury that occurred during the restraint.

(b) The following events are not required to be documented as a restraint, except as noted in subsection (c) of this section:

(1) using mechanical restraints during routine transportation; and

(2) a juvenile probation officer taking a juvenile into custody under Texas Family Code §52.01 or §52.015.

(c) The exception in subsection (b) of this section does not apply when:

(1) the juvenile's cooperation is compelled through the use of a personal restraint; or

(2) the juvenile receives an injury in relation to the restraint event or restraint devices.

§341.712. *Transporting.*

(a) During transportation in a vehicle, a juvenile may not be affixed to any part of the vehicle.

(b) During transportation in a vehicle, a juvenile may not be secured to another juvenile.

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

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## SUBCHAPTER H. CARRYING OF WEAPONS

**37 TAC §§341.800, 341.802, 341.804, 341.806, 341.808, 341.810, 341.812**

### STATUTORY AUTHORITY

The new sections are adopted under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

§341.800. *Applicability and Authorization.*

(a) *Applicability.* This subchapter applies only to actively certified juvenile probation officers who are authorized to carry firearms under this subchapter.

(b) *Authorization to Carry a Firearm.*

(1) In accordance with §142.006 of the Texas Human Resources Code, a juvenile probation officer is authorized to carry a firearm during the course of the officer's official duties if:

(A) the juvenile probation officer has been employed for at least one year by the juvenile probation department described in subparagraph (B) of this paragraph;

(B) the chief administrative officer of the juvenile probation department that employs the juvenile probation officer authorizes the juvenile probation officer to carry a firearm in the course of the officer's official duties; and

(C) the juvenile probation officer possesses a certificate of firearms proficiency issued by the Texas Commission on Law Enforcement (TCOLE) under §1701.259 of the Texas Occupations Code.

(2) A juvenile probation officer is disqualified from being authorized to carry a firearm during the course of the officer's official duties if the officer has been found to be a designated perpetrator in a TJJD abuse, neglect, or exploitation investigation, unless that designation has been overturned.

(3) In accordance with §221.35 of this title, a juvenile probation officer must successfully complete TCOLE's current firearms

training program for juvenile probation officers to be authorized to carry a firearm in the course of the officer's official duties.

(4) A license to carry a handgun obtained under Chapter 411, Subchapter H, of the Texas Government Code does not enable a certified juvenile probation officer to carry a firearm in the course of the officer's official duties and does not satisfy, and may not be accepted in lieu of, the requirements in this subchapter.

§341.802. *Documentation Requirements.*

(a) *Documents Required After Obtaining an Initial Firearms Proficiency Certificate.* Within 30 calendar days after receiving the initial firearms proficiency certificate from TCOLE, the chief administrative officer must ensure the following documents are provided to TJJD:

(1) a copy of the Juvenile Probation Officer Firearms Proficiency Certificate from TCOLE; and

(2) a completed, signed, and notarized copy of TJJD's Verification of Eligibility for Juvenile Probation Officer to Carry Firearm form, including the following required attachments:

(A) appropriate documentation that the juvenile probation officer has been subjected to a complete search of local, state, and national records to disclose any criminal record or criminal history;

(B) written documentation from each chief administrative officer who has authorized the juvenile probation officer's participation in the juvenile probation officer firearms proficiency training program that the officer has been examined by a psychologist who was selected by the current employing department and who is licensed by the Texas State Board of Examiners of Psychologists;

(C) a written declaration from the examining psychologist that the juvenile probation officer possesses the requisite psychological and emotional health to carry a firearm in the course of the officer's official duties;

(D) documentation of successful completion of TCOLE's current firearms training program for juvenile probation officers;

(E) documentation of successful completion of the amount of training specified by the department's policies and procedures in the following areas:

(i) use of an empty-hand defense tactic; and

(ii) use of an intermediate weapon; and

(F) the department's current policies and procedures described in §341.808 of this title.

(b) *Documents Required After Obtaining Renewed Firearms Proficiency Certificate.* Within 30 calendar days after receiving a renewal of a firearms proficiency certificate from TCOLE, the chief administrative officer must ensure the following documents are provided to TJJD:

(1) a copy of the renewed Juvenile Probation Officer Firearms Proficiency Certificate from TCOLE;

(2) a completed, signed, and notarized copy of TJJD's Renewal of Verification of Eligibility for Juvenile Probation Officer to Carry Firearm form;

(3) documentation of successful completion of the amount of continuing education specified by the department's policies and procedures relating to the use of a firearm, intermediate weapon, and empty-hand defense tactic; and

(4) the department's current policies and procedures described in §341.808 of this title.

§341.808. *Written Policies and Procedures.*

Each juvenile probation department that employs a juvenile probation officer who is authorized to carry a firearm in accordance with the requirements in this subchapter must maintain and implement written policies and procedures that:

(1) define which juvenile probation officers within the department are authorized to carry firearms;

(2) specify the amount of required training hours in the following areas before a juvenile probation officer may carry a firearm in the course of the officer's duties:

- (A) use of an empty-hand defense tactic; and
- (B) use of at least one intermediate weapon;

(3) specify the amount of continuing education hours required every two years for an officer to continue to carry a firearm in the course of the officer's duties;

(4) require continuing education hours to be in areas that enhance the officer's skills and knowledge relating to the proficient and legal use of a firearm, empty-hand defense tactics, and intermediate weapons in the context of self-defense and defense of third parties, including the following topics, at a minimum:

- (A) use of force;
- (B) weapons retention; and
- (C) crisis intervention;

(5) specify the duties and training requirements of the chief administrative officer or the direct supervisor of a juvenile probation officer in cases where the following circumstances exist:

(A) a juvenile probation officer is authorized to carry a firearm in the course of his/her official duties; and

(B) the direct supervisor of the juvenile probation officer does not carry a firearm in the course of his/her official duties;

(6) require all training described in this section to be received from a TCOLE-certified instructor;

(7) state whether firearms and intermediate weapons are to be purchased and maintained by the department or the individual officer;

(8) require that the firearm and intermediate weapons remain under the control of the officer authorized to carry the firearm and weapon(s);

(9) specify whether the firearm must be fully loaded when carried or worn when the officer is in the course of his/her official duties;

(10) specify how credentials identifying the officer as a certified juvenile probation officer must be carried and/or displayed while the officer is carrying a firearm in accordance with this subchapter;

(11) describe the circumstances and limitations under which the officer is justified to use force, which must be consistent with Chapter 9 of the Texas Penal Code;

(12) specify the firearms to be carried, including the type of firearm, manufacturer, model, and caliber;

(13) specify the type of ammunition authorized for use in the firearm;

(14) specify the type(s) of intermediate weapons to be used;

(15) state whether the firearm must be carried in plain view or concealed and the manner in which it must be worn or carried;

(16) require documentation of each incident in which a juvenile probation officer, while in the course of his/her official duties, uses an empty-hand defense tactic, uses an intermediate weapon, or draws or discharges a firearm;

(17) require the officer to carry an intermediate weapon at all times while the officer is carrying a firearm;

(18) specify the manner in which the intermediate weapon(s) must be carried;

(19) define the process for rescinding or suspending the authorization to carry a firearm;

(20) prohibit the consumption of alcohol while carrying a firearm or intermediate weapon;

(21) define the process for conducting an internal investigation when required by §341.806(b) of this title; and

(22) require that a juvenile probation officer be placed on administrative leave or be reassigned to a position having no contact with juveniles or relatives of the juvenile involved in the incident when required by §341.806(d) of this title.

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

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## CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

### SUBCHAPTER D. SECURE POST- ADJUDICATION CORRECTIONAL FACILITY STANDARDS

The Texas Juvenile Justice Department (TJJD) adopts amendments to §343.616, concerning Content of Resident Records, and §343.688, concerning Case Plan Coordination, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1104).

TJJD also adopts the repeal of §343.690, concerning Residential Case Plan Review, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1104).

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the sections will be enhanced continuity of care and reduced duplication of effort through the use of one case plan for a juvenile's entire time on probation, including time spent in a secure placement.

#### SUMMARY OF CHANGES

The amended §343.616 removes references to the case plan and case plan review from the list of documents that must be included in each resident's record. These documents will no longer be required in post-adjudication facilities as a result of changes in Chapter 341 of this title.

The amended §343.688 no longer requires facility staff to complete an initial case plan for each resident upon admission to a secure post-adjudication facility. This amendment corresponds with changes in Chapter 341 of this title, which are also adopted in this issue of the *Texas Register*. The revised Chapter 341 requires the supervising juvenile probation officer to maintain a juvenile's case plan throughout the duration of the juvenile's time on probation, including time spent in a secure post-adjudication facility. The amended §343.688 instead requires the facility administrator to ensure: 1) the resident is made available to the juvenile probation officer to participate in monthly status and progress reviews; 2) a staff member who is knowledgeable about the resident's progress in facility programming participates in the monthly reviews with the juvenile probation officer and provides a written monthly summary of the resident's progress in facility programming; and 3) documentation of these monthly activities is maintained in the resident's file.

Section 343.690 has been repealed due to corresponding changes in Chapter 341 of this title, which are also adopted in this issue of the *Texas Register*. Post-adjudication facilities are no longer required to complete 90-day case plan reviews. The revised Chapter 341 requires the supervising juvenile probation officer to complete monthly status and progress updates, which will encompass any time a youth may spend in a post-adjudication facility.

#### PUBLIC COMMENTS

TJJD did not receive any public comments concerning the proposed rulemaking actions.

#### **37 TAC §343.616, §343.688**

#### STATUTORY AUTHORITY

The amended sections are adopted under Texas Human Resources Code §221.002(a), which authorizes TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile post-adjudication secure correctional facilities.

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

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**37 TAC §343.690**

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Human Resources Code §221.002(a), which authorizes TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile post-adjudication secure correctional facilities.

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

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**CHAPTER 355. NON-SECURE CORRECTIONAL FACILITIES**

#### **SUBCHAPTER F. RESIDENT RIGHTS AND PROGRAMMING**

#### **37 TAC §355.654**

The Texas Juvenile Justice Department (TJJD) adopts an amendment to §355.654, concerning Case Plan Coordination, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1105).

#### JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the sections will be enhanced continuity of care and reduced duplication of effort through the use of one case plan for a juvenile's entire time on probation, including time spent in a non-secure placement.

#### SUMMARY OF CHANGES

The amended section requires the facility administrator to ensure: 1) the resident is made available to the juvenile probation officer to participate in monthly status and progress reviews; 2) a staff member who is knowledgeable about the resident's progress in facility programming participates in the monthly reviews with the juvenile probation officer and provides a written monthly summary of the resident's progress in facility programming; and 3) documentation of these monthly activities is maintained in the resident's file.

This amendment corresponds with changes in Chapter 341 of this title, which are also adopted in this issue of the *Texas Register*. The revised Chapter 341 requires the supervising juvenile probation officer to maintain a juvenile's case plan throughout the duration of the juvenile's time on probation, including time spent in a non-secure facility.

#### PUBLIC COMMENTS

TJJD did not receive any public comments concerning the proposed rulemaking action.

STATUTORY AUTHORITY

The amended section is adopted under Texas Human Resources Code §221.002(a), which authorizes TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile non-secure correctional facilities.

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

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