

# TEXAS REGISTER



## IN THIS ISSUE

Volume 19, Number 72 September 27, 1994

Page 7563-7605

### **Texas Ethics Commission**

#### **Opinions**

AOR-254.....	7573
AOR-255.....	7573

#### **Emergency Sections**

#### **Department of Information Resources**

#### **Planning and Management of Information Resources Technologies**

1 TAC §201.15.....	7575
--------------------	------

#### **Texas Department of Agriculture**

#### **Boll Weevil Control**

4 TAC §6.4.....	7576
-----------------	------

#### **Texas Department of Criminal Justice**

#### **State Jail Felony Facilities**

37 TAC §157.10.....	7576
---------------------	------

### **Proposed Sections**

#### **Texas Department of Licensing and Regulation**

#### **Talent Agencies**

16 TAC §§78.10, 78.20, 78.30.....	7577
-----------------------------------	------

#### **Texas Department of Criminal Justice**

#### **State Jail Felony Facilities**

37 TAC §§157.1, 157.23, 157.25, 157.33, 157.35, 157.37, 157.39, 157.41, 157.45, 157.47, 157.55, 157.59, 157.63, 157.91, 157.93.....	7578
---	------

37 TAC §157.10.....	7584
---------------------	------

#### **Community Justice Standards**

37 TAC §§163.21, 163.23, 163.25, 163.31, 163.33, 163.35, 163.37, 163.39, 163.43.....	7584
--	------

#### **Texas Department of Human Services**

#### **Nurse Aides**

40 TAC §§94.2, 94.5-94.9, 94.11.....	7589
--------------------------------------	------

## Volume 19, Numbers 72, Part I

Contents Continued Inside



The Texas Register is printed on recycled paper



a section of the Office of the Secretary of State P.O. Box 13824 Austin, TX 78711-3824 (512) 463-5561 FAX (512) 463-5569

Secretary of State Ronald Kirk

Director Dan Procter

Assistant Director Des Wright

Circulation/Marketing Roberta Knight Jill S. Ledbetter

TAC Editor Dana Blanton

TAC Typographer Michelle Christian

Documents Section Supervisor Paddy Webster

Document Editors

Open Meetings Clerk Jamie Alworth

Production Section Supervisor Ann Franklin

Production Editors/Typographers Carla Carter Roy Felts Mimi Sanchez

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except March 11, July 22, November 11, and November 29, 1994. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy.

Material in the Texas Register is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the Texas Register Director, provided no such republication shall bear the legend Texas Register or "Official" without the written permission of the director. The Texas Register is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

POSTMASTER: Please send form 3579 changes to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824.

How to Use the Texas Register

Information Available: The 11 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC. West Publishing Company, the official publisher of the TAC, publishes on an annual basis.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

40 TAC §94.13 ..... 7591

**Adopted Sections**

**Health and Human Services  
Commission**

**Coordinated Planning and Delivery of Health  
and Human Services**

1 TAC §351.9 ..... 7593

**Texas Department of Agriculture**

**Quarantines**

4 TAC §§5.1-5.9 ..... 7593

4 TAC §§5.1-5.5 ..... 7593

**Plant Quality**

4 TAC §9.18, §9.19 ..... 7594

**Office of Consumer Credit  
Commissioner**

**Administration**

7 TAC §82.2 ..... 7594

**Texas Education Agency**

**State Adoption and Distribution of Instructional  
Materials**

19 TAC §§67.1, 67.4, 67.7, 67.10 ..... 7596

**Instructional Resources**

19 TAC §67.11, §67.13 ..... 7596

19 TAC §67.21, §67.23 ..... 7596

19 TAC §§67.21, 67.24, 67.27, 67.30, 67.33, 67.36, 67.39,  
67.42, 67.45, 67.48, 67.51, 67.54, 67.57, 67.60, 67.63,  
67.66, 67.69, 67.72, 67.75, 67.78, 67.81, 67.84, 67.87,  
67.90 ..... 7597

19 TAC §§67.31, 67.33, 67.35-67.37 ..... 7601

19 TAC §§67.41, 67.43, 67.45, 67.51-67.53, 67.55-67.57,  
67.61, 67.63, 67.65-67.68, 67.71, 67.81, 67.83,  
67.85-67.88, 67.91, 67.93, 67.95, 67.97 ..... 7601

19 TAC §§67.100, 67.102, 67.103, 67.105, 67.106,  
67.121 ..... 7602

19 TAC §§167.101, 167.104, 167.107, 67.110,  
67.113 ..... 7602

19 TAC §67.121, §67.124 ..... 7603

19 TAC §67.131, §67.133 ..... 7603

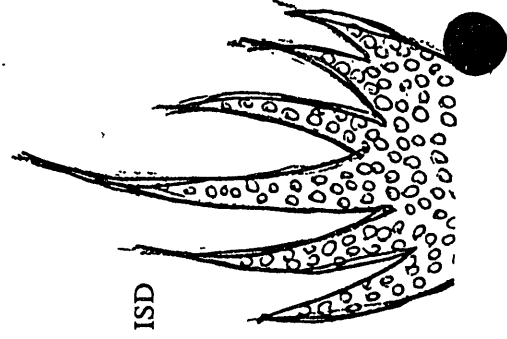
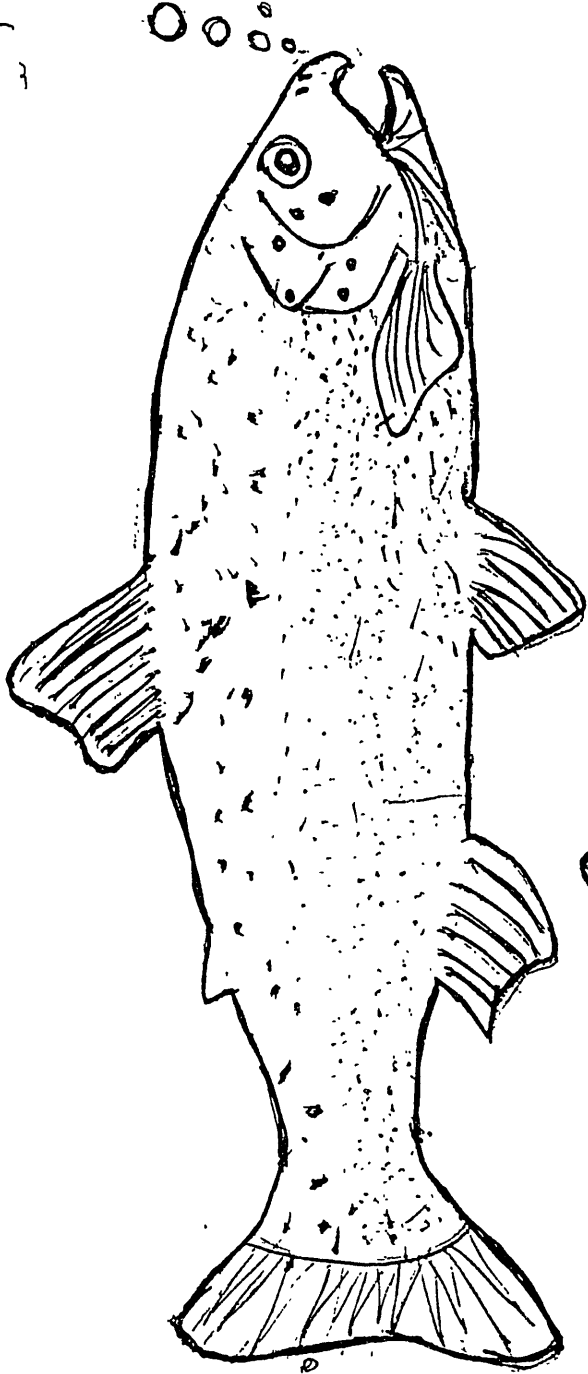
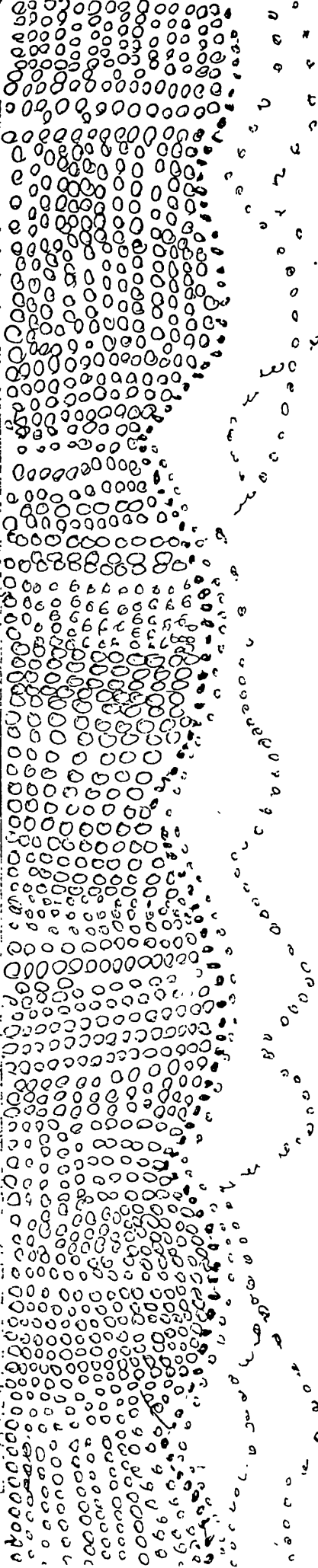
**Texas Department of Health**

**Family Planning**

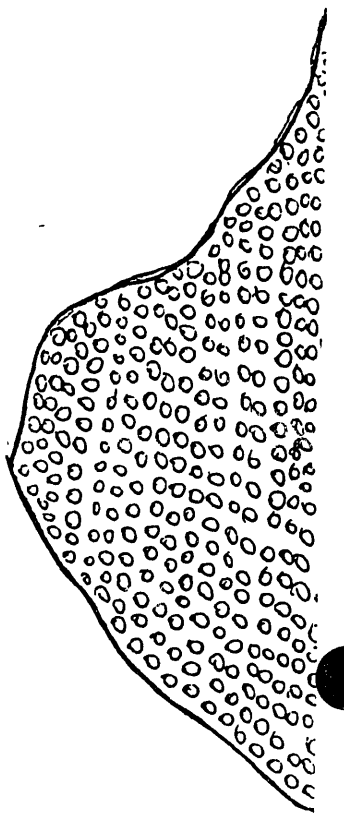
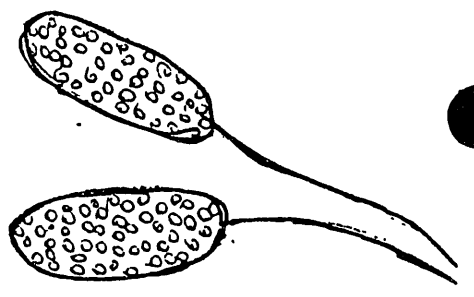
25 TAC §§56.503-56.511, 56.515, 56.518, 56.519, 56.522,  
56.523 ..... 7604

25 TAC §§56.503-56.511, 56.515, 56.518, 56.519, 56.522,  
56.523, 56.525 ..... 7604

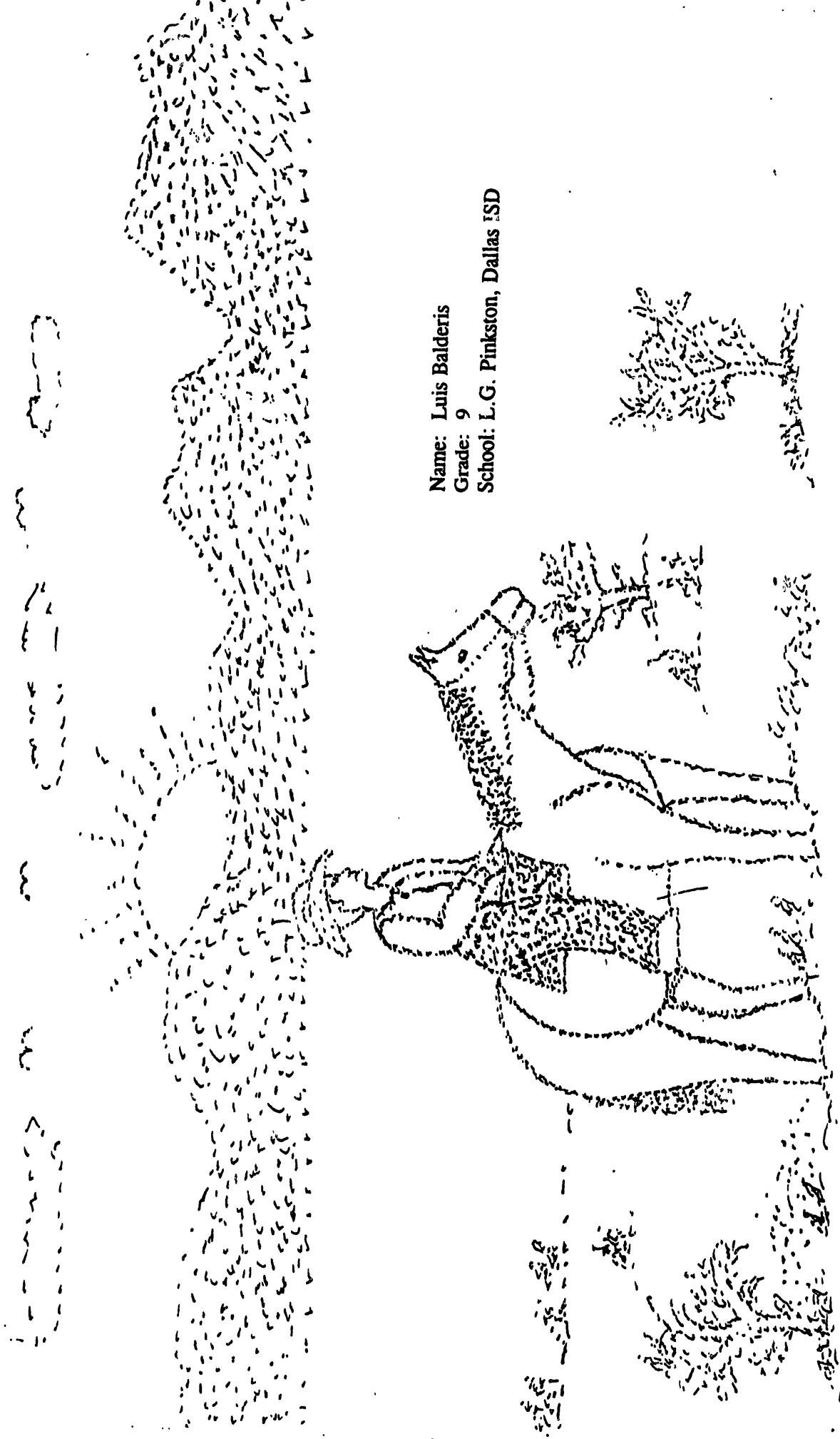
25 TAC §§56.512-56.514, 56.515, 56.517, 56.520,  
56.521 ..... 7605



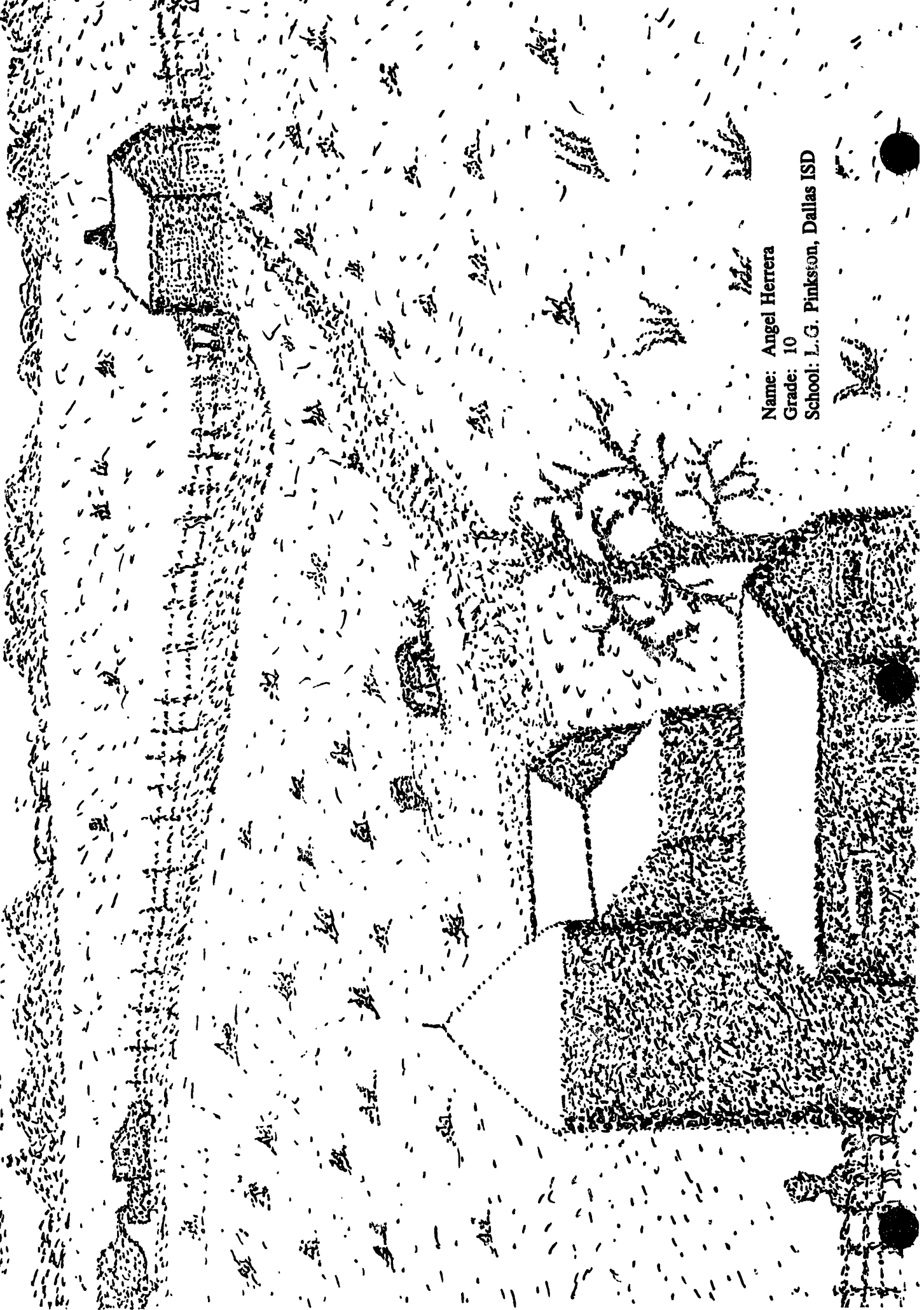
Name: Mac Villareal  
Grade: 11  
School: L.G. Pinkston, Dallas ISD



Name: Luis Balderis  
Grade: 9  
School: L.G. Pinkston, Dallas ISD



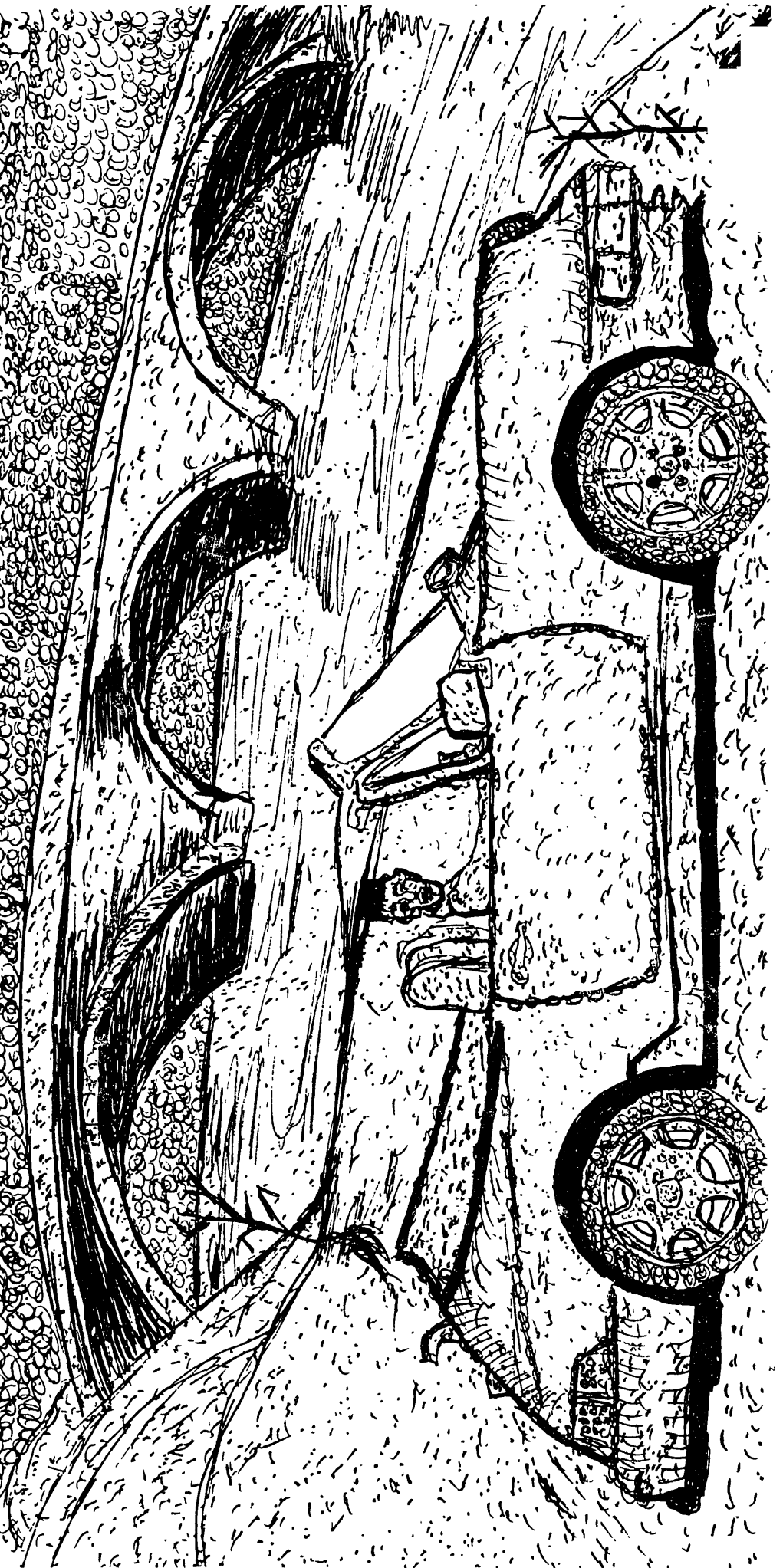
Name: Angel Herrera  
Grade: 10  
School: L.G. Pinkston, Dallas ISD



Name: Delbert Rodgers

Grade: 11

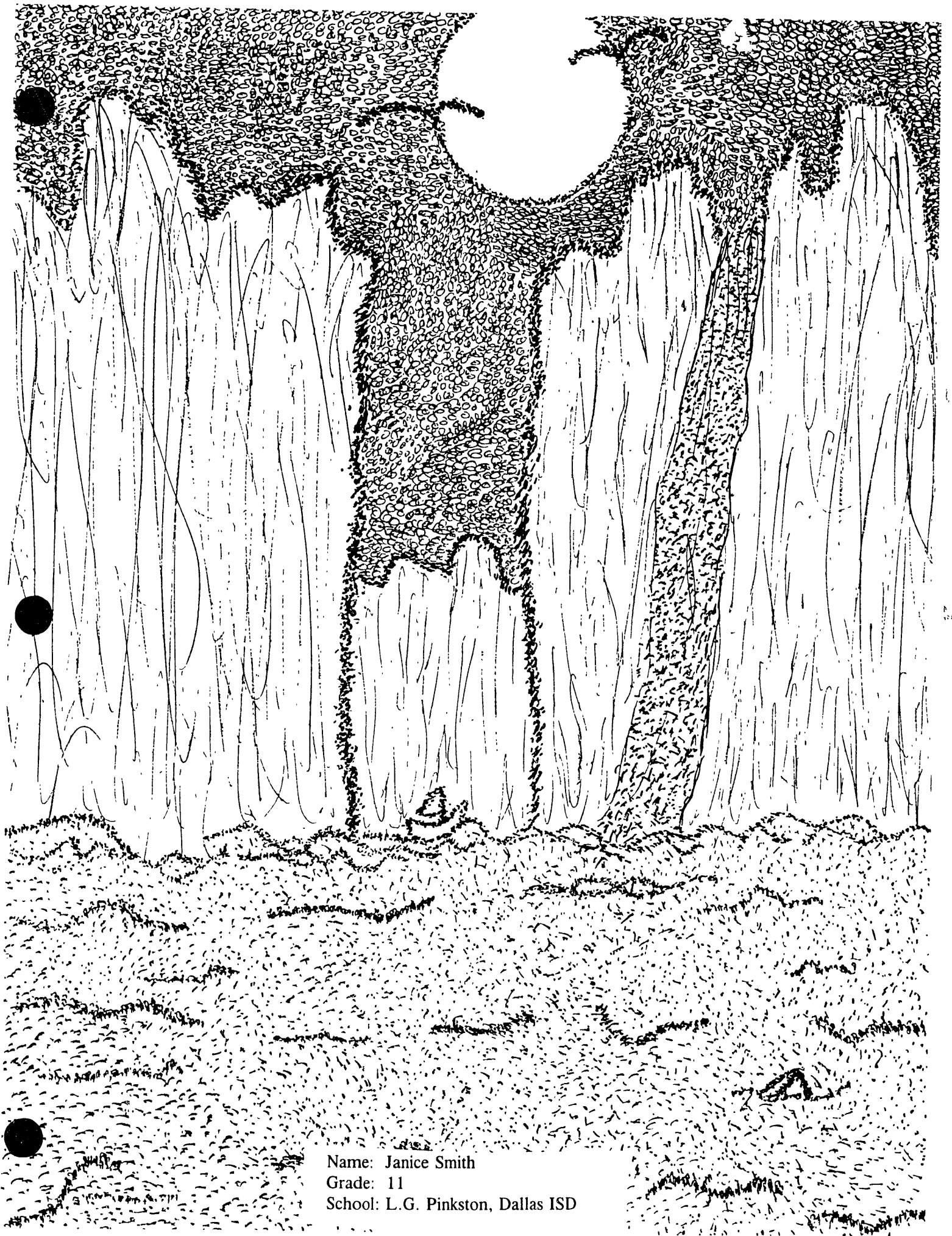
School: L. G. Pinkston, Dallas ISD





Name: Cesar Garcia  
Grade: 9  
School: L.G. Pinkston, Dallas ISD





Name: Janice Smith  
Grade: 11  
School: L.G. Pinkston, Dallas ISD



**Name: Richard Burgess**  
**School: Lomax Junior High School, La Porte ISD**

# TEXAS ETHICS COMMISSION

---

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

---

## Texas Ethics Commission

### Opinions

**AOR-254.** The Ethics Commission has been asked to consider the following questions:

1. May a member of the legislature serve on the board of directors of a nonprofit agency?
2. May the member of the legislature vote on a bill that appropriates funds to or otherwise affects the nonprofit agency?
3. May the legislator accept reimbursement of expenses for attending board meetings if the reimbursement is paid from non-state sources?
4. May the legislator accept a dinner provided at board meetings if the dinners are paid for from non-state sources?

**AOR-255.** The Ethics Commission has been asked to consider whether a lawyer who was previously a regular employee of a state agency may independently contract with the agency to perform work as a hearings examiner.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

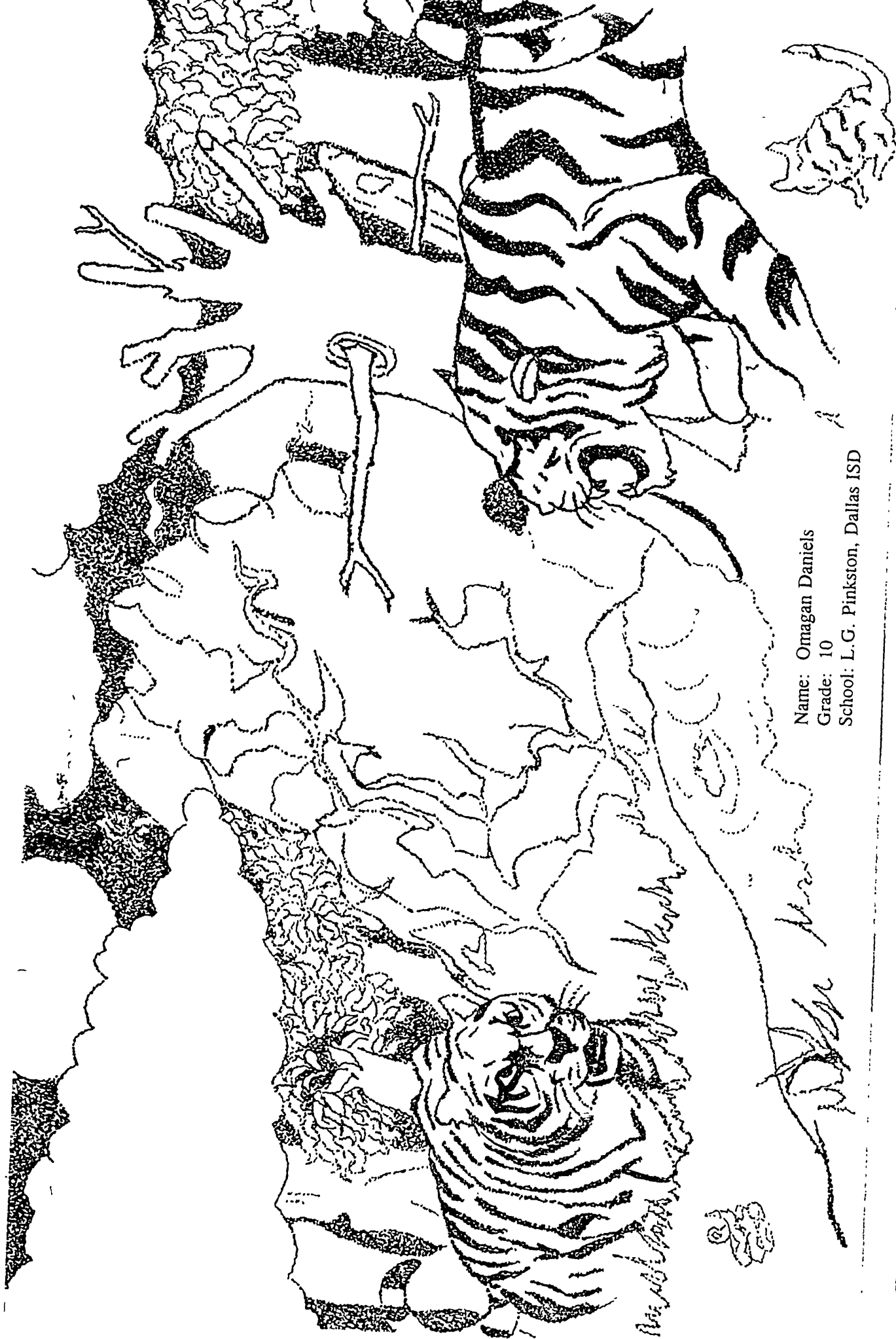
Issued in Austin, Texas, on September 20, 1994.

TRD-9448301

Sarah Woelk  
Director, Advisory Opinions  
Texas Ethics Commission

Filed: September 20, 1994

◆     ◆     ◆



Name: Omagan Daniels  
Grade: 10  
School: L.G. Pinkston, Dallas ISD

# EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the **Texas Register**, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

**Symbology in amended emergency sections.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

## TITLE 1. ADMINISTRATION

### Part X. Department of Information Resources

#### Chapter 201. Planning and Management of Information Resources Technologies

##### • 1 TAC §201.15

The Department of Information Resources adopts on an emergency basis new §201.15, concerning charges for copies of public records. The section defines and details the charges for copies of public records maintained by the Department. The section is adopted on an emergency basis and is contemporaneously proposed for public comment in this issue of the *Texas Register*. The section is adopted on an emergency basis to comply with the provisions of Chapter 428, Acts, 73rd Legislature, Regular Session (1993), which requires agencies to adopt rules establishing charges for copies of public records.

The section is adopted on an emergency basis under Government Code, §2054.052(a), which authorizes the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management Act.

##### §201.15. Charges for Copies of Public Records.

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

(1) Full Cost—The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost should be determined in accordance with generally accepted methodologies.

(2) Nonstandard-size copy—A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, and nonstandard-size paper copies are examples of nonstandard-size copies.

(3) Readily available information—Information that already exists in printed form, or information that is stored

electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information.

(4) Standard-size copy—A printed impression on one side of a piece of paper that measures up to 8-1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single-copy. A piece of paper that is printed on both sides is counted as two copies.

(b) The following is a summary of the charges for copies of public information on file in the Department of Information Resources.

(1) Standard-size paper copy—\$.10 per page.

(2) Nonstandard-size copy:

(A) Diskette—\$1.00 each;

(B) Computer magnetic tape—\$10 each;

(C) VHS video cassette—\$2.50 each;

(D) Audio cassette—\$1.00 each;

(E) Paper copy—\$.50 each;

(F) Other Actual cost.

(3) Personnel charge—\$15 per hour.

(4) Overhead charge—20% of personnel charge.

(5) Microfiche or microfilm charge:

(A) Paper copy—\$.10;

(B) Fiche or film copy Actual cost.

(6) Remote document retrieval charge Actual cost.

(7) Computer resource charge:

(A) Mainframe—\$17.50 per minute;

(B) Midsize—\$3.38 per minute;

(C) Client/Server—\$1.00 per minute;

(D) PC or LAN—\$.50 per minute.

(8) Programming time charge—\$26 per hour.

(9) Miscellaneous supplies Actual cost.

(10) Postage and shipping charge Actual cost.

(11) Fax charge:

(A) local—\$.10 per page;

(B) long distance, same area code—\$.50 per page;

(C) long distance, different area code—\$1.00 per page.

(12) Other costs—Actual cost.

(c) The Department of Information Resources shall furnish public records without charge or at a reduced charge if it is determined that waiver or reduction of the fees is in the public interest.

issued in Austin, Texas, on August 18, 1994.

TRD-9448322

Edward Serna  
Deputy Director  
Department of Information  
Resources

Effective date: September 20, 1994

Expiration date: January 18, 1995

For further information, please call: (512) 475-4759

**TITLE 4. AGRICULTURE**  
**Part I. Texas Department of Agriculture**

**Chapter 6. Boll Weevil Control**

**• 4 TAC §6.4**

The Texas Department of Agriculture (the department) adopts on an emergency basis an amendment to §6.4, concerning the authorized cotton destruction date for the Lower Coastal Bend pest management zone.

The department is acting upon requests from the pest management committee of the Lower Coastal Bend Zone, and on behalf of cotton farmers in Aransas, Jim Wells, Nueces, San Patricio, Bee and Live Oak counties for an immediate change of the cotton destruction date in those counties. The current cotton destruction deadline is September 10. The committee members have requested that the cotton destruction date be extended through September 27 for regrowth and volunteer cotton only. The department believes that changing the cotton destruction date as requested is both necessary and appropriate.

Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction date for certain counties in the Lower Coastal Bend Zone. The continuation of unusually wet weather since the beginning of the cotton destruction period has prevented many cotton producers from cotton destruction by the September 10 deadline. A failure to act to extend the cotton destruction deadline could create a significant loss to Texas cotton producers and the state's economy.

The department believes that extending the cotton destruction deadline in the counties in the Lower Coastal Bend Zone designated previously as requested will not result in significant pest population increasing in the zone.

The emergency amendment to §6.4(a)(2)(A)(ii) and (iii) will extend the date for cotton destruction through September 27 of this year in Aransas, Jim Wells, Nueces and San Patricio counties and those sections of Bee and Live Oak counties lying south and east of Highway 59, for regrowth and volunteer cotton only.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and §74.004, which provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

**§6.4. Authorized Planting Dates, Cotton Destruction Dates, and Prescribed Methods of Destruction.**

(a) Except as provided in subsection (c) of this section, all cotton in the pest management zones must be planted and/or mechanically destroyed by the following authorized dates. Destruction must be accomplished by shredding and plowing out the plants to prevent further growth and to prohibit any cotton plants from remaining after the following cotton destruction dates.

(1) (No change.)

(2) Lower Coastal Bend and South Texas pest management zone.

(A) Area (1):

(i) (No change.)

(ii) Cotton destruction date: on or before September 10, except as provided in clause (iii) of this subparagraph.

(iii) For Aransas, Jim Wells, Nueces and San Patricio counties and that area of Bee and Live Oak counties lying east of Highway 59, the cotton destruction date is before September 28. This date applies only to regrowth and volunteer cotton. Regrowth is defined as new growth sprouting from original stalks after some type of stalk destruction has been attempted.

(B) (No change.)

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

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

Issued in Austin, Texas, on September 20, 1994.

TRD-9448310

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: September 20, 1994

Expiration date: September 30, 1994

For further information, please call: (512) 463-7583

**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**Part VI. Texas Department of Criminal Justice**

**Chapter 157. State Jail Felony Facilities**

**Subchapter A. Admissions and Allocations**

**• 37 TAC §157.10**

The Texas Board of Criminal Justice adopts on an emergency basis an amendment to

§157.10, concerning the temporary designation of certain facilities as state jail felony facilities. Dangerously high population levels in many jails in the state have created conditions leading to both potential and actual outbreaks of disease and inmate disturbances, justifying emergency action. Further, an entirely new sentencing law went into effect on September 1, 1994, creating state jail felonies, requiring a regional dispersion of state jail felony facilities. A previous emergency enactment created the designation in subsection (a) of this section. The new subsection (b) designates part or all of additional facilities under the control of the Board of Criminal Justice as state jail felony facilities to fill the gap prior to availability of constructed state jail felony facilities. The subsection is simultaneously proposed for permanent adoption.

The amendment is adopted on an emergency basis under the Government Code, §507.026, allowing the Board of Criminal Justice to designate facilities as state jail felony facilities, and by the Government Code, §492.013, which gives the Board of Criminal Justice general authority to adopt rules.

**§157.10. Designation of Facilities as State Jails.** The Board designates the 668 bed dormitory building designed to be a boot camp at the Coffield Unit as a state jail for male state jail felons. The Board designates a 48 bed dormitory of the Gatesville-Hackberry Unit as a state jail for female state jail felons. This designation takes effect September 1, 1994. Effective September 19, 1994, the Board delegates to the State Jail Division Director the authority to designate all of, or any semi-autonomous housing within, the following detention facilities, to be used as state jails: Diboll, San Saba, Cotulla, Ft. Stockton, and Tulia.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448397

Carl Reynolds  
General Counsel  
Texas Board of Criminal  
Justice

Effective date: September 21, 1994

Expiration date: December 30, 1994

For further information, please call: (512) 463-9693

# PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

**Symbology in proposed amendments.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 78. Talent Agencies

##### • 16 TAC §§78.10, 78.20, 78.30

The Texas Department of Licensing and Regulation proposes amendments to §§78.10, 78.20, and 78.30, concerning talent agencies. "Talent agency location" has been defined in §78.10. The amendment to §78.20 specifies that anyone who advertises as a talent agent or whose advertising implies he is a talent agent must be registered under the Act. The amendment to §78.30 changes the definitions within that section to agree with the definitions in the Act.

James D. Brush, II, Director, Policies and Standards Division of the Texas Department of Licensing and Regulation, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Mr. Brush also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be better protection for the consumer. There will be no effect on small businesses. There is no economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 5221a-9, which authorize the department to license and regulate talent agencies.

The following is the Article that is affected by these rules: Rule 78.10, Article 5221a-9, §4, Rule 78.20, Article 5221a-9, §3, Rule 78.30, Article 5221a-9, §3.

**§78.10. Definitions.** The following words and terms, when used in this chapter, shall

have the following meanings, unless the context clearly indicates otherwise.

**Talent agency location**-An office or other physical location from which the talent agency operates all aspects of its operations. A location within the municipality or metropolitan area in which the talent agency is licensed which is used no more than two consecutive days during a six-month period to hold a model call is not considered a talent agency location for purposes of registration under the Act.

**§78.20. Registration Requirements-General.**

(a) (No change.)

(b) Unless exempted by §78.30 of these rules, any person, partnership, corporation, or association that advertises a model call or casting call, or implies in any advertisement that employment as an artist or representation by an agent might be obtained by responding to such advertisement is a talent agent under the Act, and must be registered under the provisions of the Act.

(c)[(b)] A certificate of registration is not assignable or transferable.

(d)[(c)] All applications shall include a statement that all owners, partners, members of associations, trustees, or fiduciaries, have read and are familiar with the provisions of the Act.

(e)[(d)] Any talent agency using an assumed name(s) must comply with the Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 36.

(f)[(e)] Any incorporated talent agency must comply with the Texas Business Corporation Act, §2.05.

(g)[(f)] The talent agency must furnish a copy of all registrations filed with the clerk of the county in which the talent agency is located, or the registration filed with the Secretary of State. A copy of any changed or revised registrations must be

furnished to the department within 30 days of filing.

**§78.30. Exemptions.**

(a) (No change.)

(b) The term "talent agency" applies only to persons who obtain or attempt to obtain employment for an actor [who performs in a motion picture, theatrical, radio, television, or other entertainment production; and/] or a model, as those terms are [that term is] defined in the Act [herein]. Based upon a review of the specific language throughout the entire statute, it is the department's interpretation that the legislation was intended to apply only to talent agencies dealing with those types of artists as described herein. While there is a reference to other types of artists in the statute, the department finds application of the statute to those other artists in conflict with the apparent legislative intent as it is expressed in specific provisions throughout the statute. In the alternative, and without waiving the position stated, there is insufficient legislative guidance to promulgate administrative rules regarding those other types of artists. Therefore, talent agencies representing only such artists are not required to comply with the requirements of the Act.

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

Issued in Austin, Texas, on September 20, 1994.

TRD-9448314

Jack W. Garison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: October 28, 1994

For further information, please call: (512) 463-7357

# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## Part VI. Texas Department of Criminal Justice

### Chapter 157. State Jail Felony Facilities

- 37 TAC §157.1, 157.23, 157.25, 157.33, 157.35, 157.37, 157.39, 157.41, 157.45, 157.47, 157.55, 157.59, 157.63, 157.91, 157.93

The Texas Department of Criminal Justice proposes amendments to §§157.1, 157.23, 157.25, 157.33, 157.35, 157.37, 157.39, 157.41, 157.45, 157.47, 157.55, 157.59, 157.63, 157.91, and 157.93, concerning operation and design of state jails. The amendments are permitted by Chapter 507 and the Government Code, §492.013(a). The effect of the proposed amendments is to: change many references from "inmates" to "confinees," in keeping with the language in the Penal Code and Code of Criminal Procedure; clarify the authority of the State Jail Division Director to approve policy and procedure manuals and provide waiver of standards; reconcile use of force policies with state law; clarify distinctions between disciplinary procedures and special management custody classification procedures; provide adequate timelines for confinee disciplinary hearings; add certain elements to the reception and orientation procedure; rephrase the provision for religious dietary policy; disallow furloughs unless provided for by law or further Board rule; remove references to "qualified" staff where qualifications are not defined; remove exceptions from the physical plant standards that dilute compliance with the Americans with Disabilities Act; eliminate redundancies in the standards; and correct wording irregularities.

David P. McNutt, assistant director for budget and management services of the Department of Criminal Justice, has determined that the amendments will have no effect on state or local government for the first five-year period of operations.

Mr. McNutt also has determined that the public benefit anticipated as a result of enforcing these rules will be when the facilities are operational, the public safety benefit of confinement of felony offenders in facilities funded by the state. There will be no effect on small businesses, as they will not have to comply with the rules.

The amendments will not impose any economic costs on persons, as no individuals have a duty to comply.

Comments should be directed to Carl V. Reynolds, General Counsel, Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of the proposed amendments

The amendments are permitted by the Government Code, §492.013(a) and Chapter 507, which respectively, give the Board of Criminal

Justice authority to adopt rules and govern the implementation of state jail felony facilities.

Cross Reference to Statute: Government Code, Chapter 507.

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

Inmate, confinee and offender—Used interchangeably to mean a person who is convicted of a state jail felony offense whose suspended sentence is revoked or who is required to submit to a term of confinement in a state jail as an initial condition of community supervision, except that in §157.31 of this title (relating to Use of Facility for Transfer Inmates), "inmate" means a paper-ready felon eligible for confinement under the Government Code, §499.152.

§157.23. *Administration, Management and Operations.*

(a)-(f) (No change.)

(g) *Policies and procedures manual.*

The policies and procedures for operating and maintaining the facility and its satellites shall be specified in a manual that is accessible to all employees and the public. This manual shall be [is] reviewed at least annually and updated as needed. These manuals will be submitted for approval by the State Jail Division Director [appropriate state oversight authority] 60 days prior to acceptance of offenders into the facility. Offenders cannot be accepted into the facility until approval is granted by TDCJ. Changes to the manuals must have the same approval prior to implementation of those changes.

(h)-(i) (No change.)

(j) *Media access.* The facility administrator shall, through written policy, procedure and practice, grant representatives of the media access to the facility consistent with preserving confinee's [inmate's] right to privacy and maintaining order and security.

(k) *Waiver.* The TDCJ may grant a waiver, to a State Jail facility administrator/operator, from a State Jail facility standard or standards upon receipt and approval of a Request for Waiver by the State Jail Division Director [appropriate TDCJ division director]. The Request for Waiver must include a plan to comply with said standard or standards by a specific date, and an explanation as to why the facility is not currently in compliance with said standard or standards. If the waiver is approved by the State Jail Division Director [TDCJ division director], the waiver becomes part of the audit record for compliance with that standard.

(l)-(n) (No change.)

§157.25. *Personnel.* A written body of policy and procedure establishes the facility's staffing, recruiting, promotion, benefits, and review procedures for employees.

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

(3) *Qualifications.* The qualifications, authority and responsibilities of the facility administrator and other appointed personnel [tenure] will be specified in writing by the responsible government agency.

(4) (No change.)

(5) *Staff representation.* Significant efforts, consistent with TDCJ Personnel Policies and Procedures, in the case of facilities operated by TDCJ, shall be made to employ persons with racial and cultural backgrounds similar to the offender population being served.

§157.33. *Security and Control.* The facility shall use a combination of supervision, inspection, accountability and clearly-defined policies and procedures on use of force to promote safe and orderly operations.

(1) *Operations manual.* Each facility will develop and maintain a manual containing all procedures for facility security and control, with detailed instructions for implementing these procedures. The manual is available to all staff, reviewed at least annually and updated if necessary. In the case of facilities operated by TDCJ, the State Jail Division Director shall develop and maintain a uniform operations manual.

(2) *Correctional officer assignments.* Facility administrators shall ensure that correctional officer posts are located in or immediately adjacent to confinee [inmate] areas to permit officers to be deployed in such a manner as to ensure safety and security.

(3) *Security staff.* The facility administrators shall ensure that the facility has the staff needed to provide full coverage of designated security posts, full surveillance of confinees [inmates] and to perform all ancillary functions.

(4)-(5) (No change.)

(6) *Staff and inmate interactions.* Facility administrators will develop written policy, procedure and practice to facilitate appropriate personal contact and interaction between staff and confinees [inmates]. The policy shall define both security and rehabilitative interactions.

(7) *Co-ed staffing.* Facility administrators shall ensure that when both male and female confinees [males and females] are housed in the facility, at least one male and one female staff member are on duty at all times.



(8) Prohibition of confinee [inmate] authority. Facility administrators shall ensure that no confinee [inmate] or group of confinees [inmates] is given control or authority over other confinees [inmates].

(9) Permanent log. Facility administrators will ensure that written policy, procedure and practice require that correctional staff maintain a permanent log and prepare shift reports that record routine information, emergency situations and unusual incidents.

(10) Patrols and inspections. Facilities will maintain written policy, procedure and practice to ensure that supervisory staff conduct a daily patrol, including holidays and weekends, of all areas occupied by confinees [inmates] and submit a daily written report to their supervisor. Unoccupied areas are to be inspected weekly.

(11) Regular observation by corrections officers. Every facility will develop a security staffing plan that provides visual, face to face observation of all confinees [inmates] by corrections officers on a continuous basis. At least one corrections officer shall be provided on each floor where confinees [inmates] are housed and sufficient officers must be provided to meet the continuous observation requirement.

(12) Confinee [Inmate] counts. The facility shall have a system for physically counting confinee [inmates]. The system includes strict accountability for confinees [inmates] assigned to work, medical, educational or program activities involving absence from the facility [release], and other approved temporary absences.

(13) Inmate movement. Each facility will maintain written policy, procedure and practice to provide that staff regulate confinee [inmate] movement.

(14) Inmate transportation. Facility administrators will ensure that written policy and procedure govern the transportation of confinees [inmates] outside the facility and from one jurisdiction to another.

(15) Use of restraints. Facility administrators shall ensure that written policy, procedure and practice provide that instruments of restraint, such as handcuffs, irons and straightjackets, are never applied as punishment and are applied only with the approval of the facility administrator or designee. This policy shall include a description of the routine use of restraints.

(16) Control of contraband. Facility administrators shall establish written policy, procedure and practice to require facility shakedown and pat searches of confinees [inmates] to control contraband and provide for its disposal.

(17) Body cavity searches. Facility administrators shall ensure that an

established written policy and procedure provide that body cavity searches only will be conducted for reasons of security and will be done in private, by medical personnel or by correctional personnel of the same sex as the confinee [inmate], who have been trained by a physician or other health care provider to probe body cavities (without the use of instruments) so as to cause neither injury to tissue nor infections.

(18) Strip searches. Facility administrators will establish written policy, procedure and practice to provide for strip searches of confinees [inmates] based on specific guidelines, [(e.g., entry into the facility, after/before visitation, returning from furlough, or when there is a reasonable belief)] that the confinee [inmate] is carrying contraband or any other prohibited items. Such searches shall be conducted by personnel of the same sex as the confinee [inmate] being searched whenever reasonably possible.

(19) Controlled access and use of keys. Each facility will develop and maintain written policy and procedure to detail the control and use of keys.

(20) Tools and equipment. Each facility will develop and maintain written policy and procedure to govern the control and use of tools and culinary and medical equipment.

(21) Monitoring system. Security areas may have electronic monitoring systems to assist in confinee [inmate] supervision and enhance the overall security of the facility. Monitoring systems may be used to supplement and reduce corrections officers, but will not be used as a replacement for minimum security personnel requirements.

(22) Security equipment. Facility administrators will ensure that written policy and procedure govern the availability, control, and use of chemical agents, and related security devices and specify the level of authority required for their access and use. Chemical agents are used only with the authorization of the facility administrator or designee.

(23) Emergency distribution. Facility administrators will ensure that written policy, procedure and practice provide that the facility maintains a written record of routine and emergency distributions of security equipment.

(24) Security equipment inventory. Facility administrators will ensure that firearm, chemical agents and related security equipment are inventoried at least monthly to determine their condition and expiration dates.

(25) Written reports. Facility administrators shall require that personnel discharging firearms, using chemical agents or

any other weapon, or any other security equipment to control confinees [inmates] with the use of force, submit written reports to the facility administrator or designee no later than the conclusion of the tour of duty.

(26) Injuries. Facility administrators will ensure that written policy, procedure and practice provide that all persons injured in an incident receive immediate medical examination and treatment.

(27) Use of force. Facility administrators will ensure that written policy, procedure and practice restrict the use of physical force to commensurate instances of justifiable self-defense, protection of others, protection of property, maintenance of security in the facility, and prevention of escapes. Physical force may be used in these circumstances [and] only as a last resort and in accordance with statutory authority. In no event is physical force justifiable as punishment. A written report shall be [is] prepared following all uses of force and is submitted to administrative staff for review.

(28) Use of weapons. Facility administrators will develop written policy and procedure to govern the use of weapons and include the following listed requirements.

(A) Security equipment are subjected to stringent safety regulations and inspections.

(B) Firearms, chemical agents and other security items are stored in separate but readily accessible facility armories that are outside confinee housing and activity areas. [A secure weapons locker is located outside the primary security perimeter of the facility.]

(C) Except in emergency situations, firearms and security equipment such as batons are permitted only in designated areas to which confinees [inmates] have no access.

(D) Employees supervising confinees [inmates] outside the facility perimeter follow procedures for the security of security equipment.

(E) Employees are instructed to use deadly force only after other actions have been tried and found ineffective, and only when the employee believes that a person's life is immediately threatened.

(F) Employees on duty only use weapons or other security equipment that have been approved through the facility and only when directed by or authorized by the facility administrator.

(29)-(38) (No change.)

**§157.35. Rules and Discipline.** The facility rules of conduct and sanctions and procedures for violations are defined in writing and communicated to all confinees [inmates] and staff. Disciplinary procedures are carried out promptly and with respect for due process. For purposes of this section, "disciplinary detention" means punitive segregation (solitary) and in-cell restriction.

(1) Rules of conduct. Facility administrators shall provide all inmates and staff with written rules of inmate conduct which specify acts prohibited within the facility and penalties that can be imposed for various degrees of violation. The written rules are reviewed annually and updated if necessary.

(2) Disciplinary procedures. Facility administrators will ensure that there is a written set of disciplinary procedures governing confinee [inmate] rule violations. These are reviewed annually and updated if necessary. In the case of facilities operated by TDCJ, the State Jail Division Director shall develop and maintain a uniform written set of disciplinary procedures.

(3) Rulebook. During facility orientation, a rulebook that contains all chargeable offenses, ranges of penalties and disciplinary procedures is given to each confinee [inmate] and is translated into those languages spoken by significant numbers of confinees [inmates]. When a literacy or language problem prevents a confinee [an inmate] from understanding the rulebook, a staff member or translator assists the confinee [inmate] in understanding the rules. Each staff member shall be given a copy of the rulebook.

(4) Training requirements. Facility administrators shall ensure that all personnel who work with confinees [inmates] shall receive sufficient training so that they are thoroughly familiar with the rules of confinee [inmate] conduct and [inmate staff,] the rationale for the rules and the sanctions available.

(5) Resolutions of minor infractions. Each facility will maintain written guidelines for resolving minor confinee [inmate] infractions that include a written statement of the rule violated and a hearing and decision according to the timelines in this section [within seven days, excluding weekends and holidays], by a person not involved in the rule violation. The confinee [inmate] may waive the hearing.

(6) Criminal violations. Each facility will establish written policy, procedure and practice to provide that, when a confinee [where an inmate] allegedly commits an act covered by criminal law, the case is referred to appropriate court or law

enforcement officials for consideration for prosecution.

(7) Disciplinary reports. Facility administrators shall ensure that written policy, procedure and practice provide that when rule violations require formal resolution, staff members prepare a disciplinary report and forward it to the designated supervisor.

(8) Report content. Disciplinary reports prepared by staff members shall include, but are not limited to, the following information:

(A) specific rule(s) allegedly violated;

(B) a formal statement of the charge;

(C) any unusual confinee [inmate] behavior;

(D) any staff witness;

(E) an explanation of the event that should include who was involved, what transpired, and the time and location of occurrence;

(F) any physical evidence and its disposition;

(G) any immediate action taken, including the use of force; and

(H) reporting staff member's signature and date and time of report.

(9) Prehearing action. Facility administrators shall ensure that written policy, procedure, and practice specify that, when an alleged rule violation is reported, an appropriate investigation is begun within 24 hours of the time the violation is reported and is completed without unreasonable delay, unless there are exceptional circumstances for delaying the investigation.

(10) Prehearing detention. The [Within the] disciplinary procedures shall include [document there is] a provision for prehearing [preheating] detention of confinees [inmates] who are charged with a rule violation. The confinee's prehearing [inmate's preheating] status shall be reviewed by the facility administrator or designee within 72 hours, including weekends and holidays. Facility administrators shall ensure written policy and procedure provide that inmates in disciplinary detention are allowed limited telephone privileges consisting of telephone calls related specifically to access to the judicial

process and family emergencies as determined by the facility administrator or designee.

(11) Written statement of charges. Facility administrators shall ensure that written policy, procedure and practice provide that a confinee [an inmate] charged with a rule violation receives a written statement of the charge(s), including a description of the incident and specific rules violated. The confinee [inmate] is given the statement at the same time that the disciplinary report is filed with the disciplinary committee and the hearing date is scheduled, which shall occur within 20 calendar days of the alleged incident, but no less than 24 hours prior to the disciplinary hearing. The hearing may be held within 24 hours with the confinee's [inmate's] written consent.

(12) Presence at hearing. Facility administrators shall ensure that written policy and procedure provide that confinees [inmates] charged with rule violations are present at the hearing, unless they waive that right in writing or through behavior. Confinees [Inmates] may be excluded during the testimony of any confinee [inmate] whose testimony must be given in confidence. The reasons for the confinee's [inmate's] absence or exclusion are documented.

(13) Disciplinary hearing. Each facility shall maintain written policy, procedure and practice to provide that confinees [inmates] charged with rule violations receive a [are scheduled for] hearing as soon as practicable but no later than 30 calendar days from the date of scheduling [seven days, excluding weekends and holidays, after the alleged violation]. Confinees shall be [Inmates are] notified of the time and place of the hearing at least 24 hours in advance of the hearing.

(14) Postponement or [of] continuance. Each facility shall maintain written policy, procedure and practice to provide for postponement or continuance of the disciplinary hearing for reasonable period and good cause.

(15) Conduct [Conducting] of hearing. Each facility shall maintain written policy, procedure and practice to provide that disciplinary hearings on rule violations are conducted by an impartial person or panel of persons. A record of the proceedings is made and maintained for at least six months.

(16) Confinee [Inmate] rights. Each facility shall maintain written policy, procedure and practice to provide that confinees [inmates] have an opportunity to make a statement and present documentary evidence at the hearing and can request witnesses on their behalf. The reasons for denying such a request are stated in writing.

(17) Confinee [inmate] assistance. Each facility shall maintain written policy, procedure and practice to provide that a staff member or agency representative assist confinees [inmates] at disciplinary hearings if requested. A representative is appointed when it is apparent that a confinee [an inmate] is not capable of collecting and presenting evidence effectively on his or her own behalf.

**§157.37. Special Management.** Confinees [Inmates] who threaten the secure and orderly management of the facility may be removed from the general population and placed in special units.

(1) General policy. Each facility shall maintain written policy, procedure and practice to govern the operation and supervision of confinees [inmates] under administrative segregation and [.] protective custody [and disciplinary detention].

(2) Immediate segregation. The facility administrator or shift supervisor can order immediate segregation when it is necessary to protect the confinee [inmate] or others. That action is reviewed within 72 hours by the appropriate authority as designated in the policy.

(3) Admission and review of status. Facility administrators shall ensure that written policy, procedure and practice provide that a confinee [an inmate] is admitted to protective custody status when there is documentation that protective custody is warranted and no reasonable alternatives are available.

(4) Disciplinary detention. Disciplinary detention shall be governed by §157.35 of this title (relating to Rules and Discipline). [Each facility shall maintain that written policy, procedure and practice provide that an inmate is placed in disciplinary detention for a rule violation only after a hearing.]

(5) Status review. Facility administrators shall establish written policy, procedure and practice to provide for a review of the status of confinees [inmates] in administrative segregation and protective custody every seven days for the first two months and at least every 30 days thereafter. The facility administrator shall designate staff responsible for this review.

(6) Review process. Facility administrators shall ensure that written policy, procedure and practice specify the review process used to release a confinee [an inmate] from administrative segregation or protective custody.

(7) Daily visits. Facility administrators shall ensure that written policy and procedure provide that confinees [inmates] in segregation receive daily visits from the chief security officer or shift supervisor,

member of the program staff on request and a qualified health care provider three times per week as specified in the Health Services Policy and Procedure Manual.

(8) Log. Facility administrators shall ensure that written policy, procedure and practice provide that staff operating special management units maintain a permanent log.

(9) General conditions of confinement. Facility administrators shall ensure that all confinees [inmates] in special management units provide prescribed medication, clothing that is not degrading and access to basic personal items for use in their cells unless there is imminent danger that any confinee will have access to an item and [an inmate or any other inmate(s)] will destroy it [an item] or use it to induce self-injury.

(10) Ongoing services. Facility administrators shall ensure that confinees [inmates] in special management units receive laundry, barbering, hair care services and are issued and exchanged, bedding and linen on the same basis as confinees [inmates] in the general population. Exceptions are permitted only when found necessary by the senior officer on duty; any exception is recorded in the unit log and justified in writing.

(11) Action report. Each facility will maintain written policy and procedure to provide that whenever a confinee [an inmate] in segregation is deprived of any usually authorized item or activity, a report of the action is made and forwarded to the facility administrator.

(12) Programs and services for special management units. Facility administrators shall ensure written policy, procedure and practice provide that confinees [inmates] in special management units can write and receive letters on the same basis as inmates in the general population.

(13) Visiting. Facility administrators will ensure written policy, procedure and practice provide that confinees [inmates] in special management units have opportunities for visitation unless there are substantial reasons for withholding such privileges.

(14) Access to legal materials. Each facility shall maintain written policy, procedures and practice to provide that confinees [inmates] in special management units have access to legal materials, counsel and the courts.

(15) Access to reading materials. Each facility shall maintain written policy, procedure and practice to provide that confinees [inmates] in special management units have access to reading materials.

(16) Exercise outside of cell. Facility administrators shall ensure written

policy, procedure and practice provide that confinees [inmates] in these units receive a minimum of one hour of exercise per day outside their cells, unless security or safety considerations dictate otherwise.

(17) Telephone privileges. Facility administrators shall ensure written policy, procedure and practice provide that confinees [inmates] are allowed telephone privileges.

[(18) Telephone privileges - segregation/custody. Facility administrators shall ensure written policy and procedure provide that inmates] in administrative segregation and protective custody are allowed telephone privileges.

[(19) Telephone privileges - disciplinary detention. Facility administrators shall ensure written policy and procedure provide that inmates in disciplinary detention are allowed limited telephone privileges consisting of telephone calls related specifically to access to the judicial process and family emergencies as determined by the facility administrator or designee.]

**§157.39. Confinee [Inmate] Rights.** The facility protects the safety and constitutional rights of confinees [inmates] and seeks a balance between expression of individual rights and preservation of facility order.

(1) Access to courts. Each facility will maintain written policy, procedure and practice to ensure the right of confinees [inmates] to have access to courts.

(2) Access to counsel. Each facility will maintain written policy, procedure and practice to ensure and facilitate confinee [inmate] access to counsel and assist confinees [inmates] in making confidential contact with attorneys and their authorized representatives; such contact includes, but is not limited to, telephone communications, uncensored correspondence and visits.

(3) Access to law library. Each facility will maintain written policy, procedure and practice to provide that confinees [inmates] have access to legal materials if there is not adequate free legal assistance to help them with criminal, civil and administrative legal matters. Indigent confinees [Inmates] shall have access to paper, writing materials, postage and other supplies and services related to legal matters.

(4) Access to programs and services. Facility administrators shall ensure written policy, procedure and practice provide that program access, work assignments and administrative decisions are made without regard to confinees' [inmates'] race, religion, national origin, sex, handicap, or political views.

(5) Administrative segregation. Confinees [Inmates] in administrative seg-

regation because of behavioral problems should be provided with programs conducive to their well-being.

(6) Protective custody. Confinées [Inmates] in protective custody should be allowed to participate in as many of the programs afforded the general population, providing such participation does not threaten facility security.

(7) Equal opportunity. Where males and females are housed in the same facility, equal opportunities shall be provided for participation in programs and services. They are provided separate sleeping quarters but equal access to all available services and programs. Neither sex is denied opportunities solely on the basis of their smaller number of the total population.

(8) Confinée [Inmate] communications. Each facility shall maintain written policy, procedure and practice to grant confinées [inmates] the right to communicate or correspond with persons or organizations, subject only to the limitations necessary to maintain order and security.

(9) Grievance procedures. Facility administrators shall ensure that there is a written confinement [inmate] grievance procedure that is made available to all confinées [inmates] which includes at least one level of appeal.

(10) Confinée [Inmate] requests. Each facility shall maintain a written policy describing the manner in which confinées [inmates] may make written requests of the staff.

(11) Prohibition of harassment. There will be no harassment of or retaliation against any confinement [inmate] for exercising their access to the courts or filing a grievance.

**§157.41. Institutional Services.** All incoming confinées [inmates] undergo thorough screening and assessment at admission and receive thorough orientation to the facility's procedures, rules, programs and services.

(1) Reception and orientation. Each facility will maintain written policies and procedures to govern the admission of confinées [inmates] new to the system and are reviewed annually and updated if necessary. These procedures include at a minimum the following:

(A) determination that confinement [inmate] is legally committed to the facility;

(B) substance abuse screening [drug/alcohol use];

(C)-(J) (No change.)

(K) explanation of mail, commissary, chaplaincy, telephone, and visiting procedures;

(L) assistance to confinées [inmates] in notifying their next of kin and families of admission;

(M) [medical, dental, substance abuse and mental health screening;

(N) ] assignment of registered number to the confinement [inmate];

(N)(O) giving written orientation materials to the confinement [inmate];

(O)(P) telephone calls by confinement [inmate];

(P)(Q) criminal history check; and

(Q)(R) assignment to a case manager to develop supervision/treatment plan.

(2) Confinée [Inmate] location. Confinées [inmates] will be separated from the general population of the facility during the admissions process.

(3) Personal property. Confinée [Inmate] admission will include a written, itemized inventory of all personal property of newly admitted confinées [inmates] and secure storage of confinement [inmate] property, including money and other valuables. The confinement [inmate] is given a receipt for all property held until release. If the confinement [inmate] arrives with medications or prosthetic devices, the items should be submitted to the unit medical staff for a determination of appropriate disposition.

(4) Searches of Legal Material. Facility administrators shall establish written policy, procedure and practice to govern the search of legal materials of all incoming confinées [inmates].

**§157.45. Food Service.** Meals are nutritionally balanced, well-planned, and prepared and served in a manner that meets established governmental health and safety codes.

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

(3) Dietary allowances. Each facility shall maintain documentation that the facility's dietary allowances are reviewed at least annually by a qualified nutritionist or dietician to ensure that they meet [met] the nationally recommended allowances for basic nutrition. Menu evaluations are con-

ducted at least quarterly by facility food service supervisory staff to verify adherence to the established basic daily servings.

(4)-(5) (No change.)

(6) Religious dietary policy. Each facility will, through written policy, procedure and practice, provide for abstinence from eating those food items served to the general population that are prohibited by the confinement's religion, and for replacement of those items with comparable dietary alternatives [special diets for inmates whose religious beliefs require the adherence to religious dietary laws].

(7)-(12) (No change.)

**§157.47. Sanitation and Hygiene.** The facility's sanitation and hygiene program complies with applicable regulations and standards of good practice to protect the health and safety of confinées [inmates] and staff.

(1) Sanitation inspections. Each facility will provide written policy, procedure and practice to require the following inspections:

(A) weekly sanitation inspections of all facility areas by a [qualified] departmental staff member;

(B) comprehensive and thorough monthly inspections by a safety/sanitation specialist; and

(C) at least annual inspections by a state and/or local sanitation specialist.

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

(4) Housekeeping. A written housekeeping plan for all areas of the facility's physical plant shall provide for daily housekeeping and regular maintenance by assigning specific duties and responsibilities to staff and confinées [inmates].

(5) Clothing and bedding supplies. Facility administrators shall ensure that [the storage of] clothing, linen and bedding supplies exceed [exceeds] that required for the facility's confinement [inmate] population.

(6) Clothing issue. Facility administrators, through written policy, procedure and practice, provide for the issuance of suitable clothing to all confinées [inmates]. Clothing is properly fitted, climatically suitable, durable, clean and presentable. Each confinement [inmate] shall be provided with a change of outer clothing at least three times per week. Each confinement [inmate] will receive a daily change of underwear.

(7) Protective clothing. Each facility shall establish written policy, procedure and practice to provide for the issue of appropriate clothing to those participating in special work assignments and, when appropriate, protective clothing and equipment to confinees [inmates].

(8) (No change.)

(9) Personal hygiene. Each facility shall maintain written policy, procedure and practice to require that articles necessary for maintaining proper personal hygiene are provided to all confinees [inmates].

(10) Hair care services. Facility administrators shall ensure that hair care services and facilities are available to confinees [inmates]. Hair care services shall comply with applicable health requirements.

*§157.55. Mail, Telephone, Visiting.* A written body of policy and procedure governs the facility's mail, telephone and visiting service for confinees [inmates], including mail inspection, public phone use and routine and special visits.

(1)-(12) (No change.)

(13) Furloughs. Furloughs shall not be permitted unless provided for by rule of the Board of Criminal Justice, or by statute. [As provided by written policy, procedure and practice, facility administrators shall provide that inmates with appropriate security classifications are allowed furloughs to the community to maintain community and family ties, seek employment opportunities and for other purposes consistent with the public interest.]

(14)-(15) (No change.)

*§157.59. Religious Programs.* A written body of policy and procedure governs the facility's religious programs for confinees [inmates], including program coordination and supervision, opportunities to practice the requirements of one's faith and use of community resources.

(1) Program coordination and supervision. Each facility shall have a full-time chaplain(s) with two minimum qualifications of:

(A) clinical pastoral education or equivalent specialized training; and

(B) endorsement by the appropriate religious certifying body.

(2) Chaplain role. The chaplain(s), in cooperation with the facility administrator (and/or his designee) plans, directs and supervises all aspects of the religious program, including approval and training of both lay and clergy volunteers

from faiths represented by the confinee [inmate] population. [The chaplain(s) has physical access to all areas of the facility to minister to inmates and staff.]

(3) Chaplain access. Facility administrators shall ensure that the chaplain has physical access to all areas of the facility to minister to confinees [inmates] and staff.

(4) Community resource. The chaplain or designated religious staff member shall develop and maintain close relationships with community religious resources.

(5) Opportunity to practice one's faith. Facility administrators, in cooperation with the chaplains, [D] will develop and maintain written policy, procedure and practice to provide that confinees [inmates] have the opportunity to participate in practices of their religious faith that are deemed essential by the faith's judicatory, limited only by documentation showing threat to the safety of persons involved in such activity or that the activity itself disrupts order in the facility.

(6) Chaplain assistance. When a religious leader of an inmate's faith is not represented through the chaplaincy staff or volunteers, the chaplain(s) shall assist the inmate in contacting such a person. That person shall have the appropriate credentials from the faith judicatory and may minister to the confinee [inmate] under the supervision of the chaplain.

(7) [Religious practices. Facility administrators shall ensure written policy, procedure and practice provide that inmates have the opportunity to participate in practices of their religious faith that are deemed essential by the faith's judicatory, limited only by documentation showing threat to the safety of persons involved in such activity or that the activity itself disrupts order in the facility.]

[(8) ] Religious facilities and equipment. Facility administrators shall ensure written policy, procedure and practice require that the facility provide space and equipment adequate for the conduct and administration of religious programs. The facility provides for the availability of non-confinee [noninmate] clerical staff for confidential material.

(8) [(9)] Donations. The chaplain(s), in cooperation with the facility administrator or designee, shall develop and maintain communications with faith communities and approve donations of equipment or materials for use in religious programs.

*§157.63. Citizen Involvement and Volunteers.* A written body of policy and procedure establishes the responsibility,

screening, training and operating procedures for a citizen involvement and volunteer program.

(1) Program coordination. The facility administrator shall ensure that the facility has a [qualified] staff person who coordinates the volunteer services program.

(2)-(9) (No change.)

*§157.91. Program and Service Facilities.* Adequate space is essential for the various programmatic, non-programmatic and service functions conducted on each unit.

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

(10) Clothing and supplies. The unit provides space for the storage and issuance of clean clothing, bedding, cleaning supplies and other items required for daily operations.

[(A) Inmate property. Space is provided for storing authorized personal property and legal material of inmates safely and securely.]

[(B) Facility storage. Facilities provide 2.5 square feet of storage space per inmate for furniture, fixtures and equipment.]

[(C) General storage. Facilities provide adequate space within each functional area for the storage of items used in that area.]

(11) Personal property. Space is provided for [facility and general storage and for] storing[-]authorized personal property and legal material of confinees safely [inmates safety] and securely.

[(A) Inmate property. Space is provided for storing authorized personal property and legal material of inmates safely and securely.]

[(B) Facility storage. Facilities provide 2.5 square feet of storage space for spare per inmate for furniture, fixtures and equipment.]

[(C) General storage. Facilities provide adequate space within each functional area for the storage of items used in that area.]

(12)-(20) (No change.)

*§157.93. Administrative and Staff Areas.* All levels of staff must be provided with space sufficient to carry out their responsibilities safely and effectively.

(1) Facility administrative areas. Space is provided for administrative, security, professional and clerical staff to include conference rooms, storage area for records, toilet facilities and a public lobby.

(2) Security staff areas. Staff needs are met through providing adequate spaces in locations that are convenient for use. Staff are provided with, but not limited to, the following:

(A) an area to change clothes and to shower;

(B) an area, room and/or employee lounge that offers privacy from confinees [inmates] and provides space for meals;

(C) space for training;

(D) space for shift change briefings;

(E) toilets and wash basins that are not used by inmates.

(3) Accessibility to the handicapped. Public and staff areas shall comply with all the provisions of the United States Americans with Disabilities Act and the State of Texas Elimination of Architectural Barriers Act. [Non-correctional staff areas shall comply with those regulations specific to the mobility impaired. Corrections officers by policy are non-handicapped and areas specific to these officers need not comply with the requirements above.]

(4) Chaplains area. Facilities shall provide adequate space and equipment for the conduct and administration of religious programs. Religious programs may utilize other confinee [inmate] program spaces wherever possible (e.g., classrooms with operable partitions).

(5) Classification. Facilities shall provide adequate space and equipment for the following functions:

(A) Community Supervision and Transitional Planners;

(B) Classification Case Managers;

(C) Classification Processing; and

(D) Confinee [Inmate] Reception Housing.

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

Issued in Austin, Texas, on September 19, 1994.

TRD-9448398

Carl Reynolds  
General Counsel  
Texas Department of  
Criminal Justice

Earliest possible date of adoption: October 28, 1994

For further information, please call: (512) 463-9693

### Subchapter A. Admissions and Allocations

#### • 37 TAC §157.10

The Texas Department of Criminal Justice proposes new §157.10, concerning designation of facilities as state jails. The new section is permitted by the Government Code, §507.026. A previous emergency enactment created the designation in the first sentence of this section (19 TexReg 5919). The new second sentence designates part or all of additional facilities under the control of the Board of Criminal Justice as state jail felony facilities; to fill the gap in a regionally disperse manner prior to availability of constructed state jail felony facilities.

David P. McNutt, assistant director for budget and management services of the Department of Criminal Justice, has determined that there will be the following effect on state government for the first five-year period of operations: to the extent that designated facilities are made available to state jail admissions, they cannot be used for admission of "paper-ready" felons for whom the state has a financial obligation to counties; therefore, payments to counties may be higher due to this amendment, but in an amount that cannot be determined.

There will be the following effect on local government for the next five-year period: counties will receive payments for non-accepted paper-ready felons as explained previously.

Mr. McNutt also has determined that there will be the following generalized benefit to the public for the last four years of the next five-year period: timely admissions to state jails, without creating a backlog in counties; and regional placement of state jail felons.

There will be no effect on small businesses, as they will not have to comply with the section.

The section will not impose any measurable economic cost on persons, as they will not have a duty to comply.

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

The new section is proposed under the Government Code, §492.013(a), which gives the Board of Criminal Justice authority to adopt rules, and by the Government Code, §507.026, which gives the Board authority to designate as state jails any facilities within its control.

Cross Reference to Statute: Government Code, §507.026.

§157.10. Designation of Facilities as State Jails. The Board designates the 668 bed dormitory building designed to be a boot camp at the Coffield Unit as a state jail for male state jail felons. The Board designates a 48 bed dormitory of the Gatesville-Hackberry Unit as a state jail for female state jail felons. This designation takes effect September 1, 1994. Effective September 19, 1994, the Board delegates to the State Jail Division Director the authority to designate all of, or any semi-autonomous housing within, the following detention facilities, to be used as state jails: Diboll, San Saba, Cotulla, Ft. Stockton, and Tulia.

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

Issued in Austin, Texas, on September 19, 1994.

TRD-9448398

Carl Reynolds  
General Counsel  
Texas Board of Criminal  
Justice

### Chapter 163. Community Justice Standards

#### • 37 TAC §§163.21, 163.23, 163.25, 163.31, 163.33, 163.35, 163.37, 163.39, 163.43

The Texas Department of Criminal Justice proposes amendments to 37 TAC §§163.21, 163.23, 163.25, 163.31, 163.33, 163.35, 163.37, 163.39, and 163.43, concerning administration of community supervision and corrections departments (CSCDs); requirements of community justice councils; requirements for community justice plans; requirements for CSCD programs and services; training for CSCD employees; definition of supervision duties; accountability for program outcomes; purposes, definition of, and public hearing requirements for, residential services; and requirements for CSCD funding and financial management. The amendments are permitted by the Government Code, §492.013(a). The effect of the proposed amendments is to clarify the standards and to update them in accordance with statutes amended by the 73rd Legislature.

David P. McNutt, assistant director for budget and management services of the Department of Criminal Justice, has determined that there will be the following effect on state government for the first five-year period of operations: the allowance in §163.39 for additional offenders to be placed in residential facilities may have an impact on state funding for such placements, but the impact cannot be determined.

David P. McNutt has further determined that there will be the following effect on local government for the next five-year period: the amendment in §163.43 regarding fees for fiscal services allows a potentially lower amount to be used by the judicial district, but the actual impact cannot be determined.

Mr. McNutt also has determined that there will be the following generalized benefit to the public for the last four years of the next five-year period: improved training of officers with regard to offenders graduating from substance abuse felony punishment facilities (§163.33), and improved accountability for outcomes of community supervision and corrections programs (§163.37).

There will be no effect on small businesses.

The amendment will not impose any measurable economic costs on persons, as persons will not have a duty to comply.

Comments should be directed to Carl Reynolds, General Counsel, Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas, 78711. Written comments from the general public should be received within 30 days of the publication of the proposed amendments.

The amendments are proposed under the Government Code, §492.013(a), which gives the Board of Criminal Justice authority to adopt rules.

Cross-Reference to Statute: The proposed amendments are specifically authorized by Code of Criminal Procedure, Article 42.13.

#### §163.21. Administration.

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

(c) Administrative Manual. CSCD directors shall be responsible for the development of an administrative manual defining general purposes and functional objectives, incorporating all written policies and procedures, and assuring that they are made available to all staff members. These policies and procedures should include, at a minimum, the guidelines as noted in the Guidelines for the Organization, Management and Operation of Local CSCDs, as amended, the "Guidelines for Community Supervision and Corrections Departments Administrative Manuals," and CJAD policy statements. The policies and procedures shall be reviewed by the CSCD director periodically and revised as necessary. The CSCD director shall provide the CJAD director with a copy of the CSCD's administrative manual for review and approval of compliance with the minimum guidelines, policies, and procedures stated above in this section, at least every two years or as requested.

(d)-(j) (No change.)

(k) Complaint Notice. Each CSCD [recipient of CJAD funding] shall post in a conspicuous public area (specifically, areas frequented by offenders and/or their family members and the general citizenry) of each of its offices and facilities a CJAD-approved sign notifying offenders and members of the public that they can direct written complaints to the CJAD. The sign shall include the CJAD's mailing address and shall be posted in both English and Spanish.

(l) (No change.)

#### §163.23. Community Justice Councils and Community Justice Task Forces.

(a) (No change.)

(b) Community justice task force. The community justice council shall appoint a community justice task force to provide support staff for the development of a community justice plan. The task force may consist of any number of members, but should include:

(1)-(7) (No change.)

(8) the [chief/]director of the CSCD;

(9) the local or regional representative of the [Board of] Pardons and Paroles Division of the Texas Department of Criminal Justice with responsibility for the area to be served by the CSCD;

(10)-(13) (No change.)

(14) a representative of a community service organization that provides educational or vocational services to the area served by the CSCD; and

(15) (No change.)

(c) (No change.)

(d) Continuing recognition. In order for a CJC to maintain its recognition status the judge(s) responsible for establishing the CJC shall file with the CJAD director, on September 1 of each even numbered year, [by September 1 each year] a list of active members of the council and of the task force. It is the intent that [for establishing] jurisdictions [to] replace members of the councils as vacancies occur and notify CJAD of such changes.

#### §163.25. Community Justice Plan.

(a) Purpose. In accordance with the Texas Code of Criminal Procedure, beginning September 1, 1991, in order for a jurisdiction to receive any state aid, a plan and supporting documentation must be submitted to, and determined acceptable by, the Community Justice Assistance Division (CJAD). [The plan and supporting documentation shall include, but not be limited to:

[(1) a description as to how the current and proposed community based correctional programs will achieve a targeted level of intermediate sanctions; and

[(2) a comprehensive description as to how CJAD resources for community corrections programs, including revenues of the Community Supervision and Corrections Department (CSCD), will be effectively used.]

(b) Development. All community justice plans must be approved by the dis-

trict judge(s) who manage the department. Unless otherwise specified by the district judge(s), the CSCD director or designee shall serve as the primary manager of the planning process, coordinating council activities, data collection, plan composition, [program prioritization] and plan drafting and submission. The community justice council shall provide direction for the development of the community justice plan. The council, after judicial approval, shall submit the plan to the CJAD director.

(c) Format. The community justice plan and supporting documentation must include all items required by law and guidelines published by the CJAD. The plan shall demonstrate an effective planning process which results in strategies to achieve a [the] targeted level of alternative sanctions other than jail and prison. A format outline shall be provided by the CJAD director.

(d) Policies and procedures. Each council shall provide continuing policy guidance for the development of the plans, community corrections facilities and programs. Procedures should also outline how action will be taken and what recommendations will be made for funding these proposals. [The recommendations of the local council, with approval of the district judge(s), will then be submitted to the CJAD director for review and acceptance of the plan.]

(e) Plan submission. After the district judge managing the department has approved the community justice plan, the council shall submit the plan to the CJAD director in accordance with CJAD submission requirements distributed to the CSCDs.

(f) Review and acceptance.

(1) [Each plan will be reviewed by the CJAD staff to determine if it presents a comprehensive description of how each jurisdiction will achieve the intent of the Texas Code of Criminal Procedure.

[(2)] The CJAD director may conditionally accept plans and revisions to plans that meet established review criteria. Final acceptance, for purposes of state aid eligibility under subsection (a) of this section, may be conditioned upon review and evaluation by the CJAD staff and the Judicial Advisory Council of the plan and all supporting documentation, as well as any grant-in-aid applications submitted by the jurisdiction pursuant to this subchapter.

(2) A plan may be amended at any time with the approval of CJAD, through an amendment process as defined by CJAD.

#### §163.31. Programs and Services.

(a) Continuum of sanctions. All community supervision and corrections department (CSCD) directors shall ensure the

development and implementation of a continuum of sanctions to address the risk and needs of persons under community supervision [probationers] in their jurisdictions and to provide alternatives to incarceration for offenders. The continuum shall be based upon the offender population's [populations,] risks and needs as addressed in the jurisdiction's [CSCD's] community justice plan. The continuum shall include core services and programs, based on an assessment of the individual offender's risk and/or needs, that address the following areas as defined by CJAD: community service restitution, education/literacy, job skills/employment, life skills, specialized caseloads, and substance abuse.

(b) (No change.)

(c) Information for offenders. CSCD directors shall ensure the development of written information describing purposes, functions, and services that [which] shall be made available to offenders under supervision. The information may be in written form or audio-visual form. All offenders under supervision by the CSCD shall be shown the written and/or audio-visual information. Appropriate provisions shall be made to impart this information to offenders who understand only a non-English language, are illiterate, are visually impaired, or are hearing impaired.

(d) Services for Offenders. Services shall be designed to address offender risk and needs as identified through assessments of the offender [in the CSCD's community justice plan]. Participation by the offenders may be ordered as a condition of community supervision [probation] or term of release; however, efforts shall be made to present the services at a time, place and in a manner that which assists successful adjustment.

(e) (No change.)

(f) Community Service Restitution (CSR). CSCD director shall maintain written agreement with governmental and/or non-profit agencies and organizations to provide offenders opportunity to comply with court-ordered community service restitution [and work probation programs] according to Article 42.12, §16 of the Texas Code of Criminal Procedure. The agreement shall specify the type of opportunities each agency/organization will be able to provide offenders. The CSCD director shall have written policies and procedures specifying how CSR referrals are made, how offenders CSR hours are documented and how those hours will be monitored.

(g)-(i) (No change.)

#### §163.33. Probation Officers.

(a) (No change.)

(b) Training. CSCD directors and all supervision [probation] officers shall be

provided not less than 40 documented hours of professional skilled-based training per fiscal year. All of the hours are to be approved by the CSCD director with at least 20 of these hours to be approved by the CJAD director, or her/his designee. Up to 20 hours, in excess of the 40 hours, may be carried over from one fiscal year to the next. The CSCD director shall ensure that training records are maintained and available for CJAD auditors. The CSCD director shall provide CJAD with copies of all employees' training records every fiscal year. The training records shall be provided to CJAD as requested. Those records shall reflect the number of training hours accrued, and the type of training attended, for all employees required to have training as designated in this section. A [probation] supervision officer failing to obtain the required 40 hours of training within a fiscal year will be ineligible to serve as a [probation] supervision officer until the required training hours achieved. Any training hours less than the 40 required hours for a given fiscal year must be achieved within the first quarter of the following fiscal year. If those hours are not achieved within that time frame, the individual will be subject to losing certification and/or the certification exemption.

(c)-(j) (No change.)

(k) Residential personnel training. All [CSCD] direct care staff of community corrections facilities and county correctional centers funded by CJAD [a residential facility] shall be provided at least 40 hours of training applicable to their job duties every two consecutive fiscal years beginning September 1, 1993. All direct care staff of a residential facility shall receive training in: specific reintegration model training programs offered by the CJAD designed to improve their skills in working with probationers in residential facilities; first aid procedures as well as CPR certification, and they must continue to receive the necessary training required to maintain certification in those procedures. Additional training requirements for specific residential staff include: all staff whose primary duty is to transport facility residents must receive defensive driving courses, or course updates, annually, and all other direct care staff must receive this training at least once every three years; substance abuse treatment facility direct care staff shall receive a minimum of 20 hours of substance abuse training every two consecutive fiscal years; court residential treatment center direct care staff shall receive a minimum of 20 hours of training, every two consecutive fiscal years, in working with the mentally impaired offender and/or substance abusers. The facility administrator will be responsible for arranging the appropriate training and keeping documentation of the successful completion of

staff training. Such documentation shall be provided to the CSCD director and CJAD auditors upon request. CSCD directors contracting for residential services shall ensure that the services offered by the contractors include a case management system equivalent to the residential training modules offered by the CJAD.

(l) Supervision officers of SAFPFs. Supervision officers who supervise graduates of substance abuse felony punishment facilities (SAFPFs) shall be required to attend and complete CJAD-approved training designed specifically for officers who supervise SAFPF graduates. The required training shall be completed prior to supervising SAFPF graduates. Supervision officers who supervise SAFPF graduates as of the adoption date of this requirement and who have not attended the required training, must complete the training within 12 months of the adoption date.

#### §163.35. Supervision.

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

(1) (No change.)

(2) Collateral contact- A supervision officer communicates by telephone, in person, or in written form [probation officer telephones, initiates an office visit with, or receives from] with any person providing information about the offender.

(3)-(7) (No change.)

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

(d) Supervision Process. Supervision [Probation] officers who provide direct supervision for cases shall perform [include], but not be limited to, the following tasks.

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

#### §163.37. Reports and Records.

(a)-(i) (No change.)

(j) Program outcomes. CSCD directors shall monitor the outcomes of offenders in community supervision and corrections programs. Outcomes should include indicators of criminal justice involvement, short-term and long-term goals of the specific program, and social/behavioral change. CSCDs shall comply with uniform measures of outcomes as required by CJAD.

#### §163.39. Residential Services.

(a) Purpose. Residential facilities and contract residential beds funded by



Community Justice Assistance Division (CJAD) shall provide the courts with a sentencing alternative for the purpose of [designated to]:

(1) confining persons placed on community supervision and other persons who are eligible in accordance with law and this subchapter; and

(2) providing services and programs to modify criminal behavior, deter criminal activity, protect the public, and restore victims of crime. [reduce reliance on incarceration in jails and prisons;

(2) provide public protection by ensuring levels of security appropriate for the population served by the facility, including as a minimum a monitored and structured environment in which residents' interior and exterior movements and activities can be supervised by specific destination and time;

(3) provide an intermediate sanction for offenders who require a level of supervision/services greater than that of nonresidential supervision to ensure compliance with the conditions of probation and law-abiding behavior; and

(4) provide services that target reintegration of the offender back into the community.]

(b) Types of programs. Residential facilities and contract residential beds funded by CJAD may include the following.

(1) Community corrections facilities (CCF).

(A) CCFs include, but are not limited to, the following types of facilities:

- (i) restitution centers;
- (ii) court residential treatment centers;
- (iii) substance abuse treatment facilities;
- (iv) custody facilities [camps] and boot camps;
- (v) residential facilities for the mentally impaired;
- (vi) intermediate sanction facilities; and
- (vii) state jail felony facilities. [halfway houses;
- [(viii) work facilities; and
- [(ix) pre-parole transfer facilities.]

(B) Only community supervision and corrections departments (CSCD) are authorized to establish and operate

CCFs. CSCDs may contract with another local governmental entity or private contractor for the operation of the CCF [leasing of the facility and/or delivery of services].

(C) Community corrections facilities must provide levels of security appropriate for the population served by the facility, including as a minimum a monitored and structured environment in which residents' interior and exterior movements and activities can be supervised by specific destination and time.

(2) County correctional centers (CCC).

(A) CCCs include, but are not limited to, the following types of facilities:

- (i) restitution centers;
- (ii) court residential treatment centers;
- (iii) substance abuse treatment facilities;
- (iv) custody facilities [camps] and boot camps;
- (v) residential facilities for the mentally impaired; and
- (vi) intermediate sanction facilities.[:]
- [(vii) halfway houses;
- [(viii) work facilities; and
- [(ix) pre-parole transfer facilities.]

(B) The commissioner's court of a county may establish a CCC after receiving written consent of the sheriff.

(C) The sheriff of the county in which a CCC has been established is responsible for the operation of the CCC and must consult with the [chief/] director of the CSCD serving the county about issues related to persons under community supervision [probationers] participating in the CCC programs.

(D) The sheriff through the CCC program may:

- (i) house and provide work programs and counseling for eligible defendants; and
- (ii) in cooperation with the CSCD serving the county, operate work programs and counseling programs for persons under community supervision [probationers].

(3) Contract residential services (CRS).

(A) CJAD funds may be used by CSCDs, sheriffs' departments, or other governmental entities to contract for residential services that include, but are not limited to, the following types of beds and services:

- (i) restitution centers;
- (ii) court residential treatment centers;
- (iii) substance abuse treatment facilities;
- (iv) custody facilities [camps] and boot camps;
- (v) residential facilities for the mentally impaired; and
- (vi) intermediate sanction facilities.[:]
- [(vii) halfway houses;
- [(viii) work facilities; and
- [(ix) pre-parole transfer facilities.]

(B) CRS provided to CSCDs, sheriffs' departments, or other governmental entities through CJAD funds must meet all applicable CJAD residential services standards.

(c) Target population and offender eligibility. A CSCD, sheriff's department, or other governmental entity that operates a residential facility, contracts for the operation of a residential facility, or contracts for residential beds/services, shall define a specific target population of offenders to be served. Placement of offenders in a CCF or CRS facility shall only be by an order of the court and shall meet minimum eligibility criteria as outlined in this section. Placement of offenders in a CCC shall only be by an order of the court, or upon [Upon] placement into a jail, the sheriff may transfer eligible offenders [the offender] into a CCC. CCFs, CCCs, and CRS providers shall accept only those residents who are physically and mentally capable of participating in any program offered at the facility that requires strenuous physical activity, if participation in the program is required of all residents of the facility. In addition, eligibility [Eligibility] criteria for residential placement must include, but are [is] not limited to, the following.

(1) Community corrections facilities:

(A) for restitution centers only, the defendant must be employable; [the defendant did not cause serious bodily injury or death of another as a result of the commission of the offense as determined by the trier of facts;

[(B) the defendant did not use a deadly weapon during the commission of or flight from the offense as determined by the trier of facts;]

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

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

[(D) for restitution centers only:

[(i) the defendant must have been convicted or pled guilty or nolo contendere to a felony offense other than those under Title 5 of the Texas Penal Code; and

[(ii) the defendant must be employable.]

(2) County correctional centers. The defendant is eligible for placement:

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

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

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

(D) if required as a condition of community supervision [probation] to participate in a work program or counseling program through a county correctional center and:

(i) the defendant matches the profile of offenders historically committed to county jail/prison from that jurisdiction; or

(ii) the defendant has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of community supervision [probation].

(3) Contract residential services. Placement of offenders into a residential facility other than a community corrections facility or county correctional center must meet the facility's eligibility criteria, and the defendant matches the profile of offenders historically committed to county jail/prison from that jurisdiction; or the defendant has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of community supervision [probation].

(d) Denying admission. An offender placed into a community corrections facility or a county correctional center as a condition of community supervision [probation] and who is an inappropriate placement, by statute or standard, or does not meet eligibility criteria of the facility as approved by the CJAD shall be returned to the court of original jurisdiction by the agency director who is responsible for the management of the CCF or CCC. If placement occurs as a condition of community supervision [probation], an eligible offender for residential placement may be placed on a waiting list or returned to the court for an alternative sanction if the facility has reached capacity.

(e) Term of participation and discharge. All discharges from residential placement shall only be by an order of the court. Terms of participation in residential facilities shall be based on the following criteria:

(1) the offender has made sufficient progress towards meeting the objective of the supervision plan and program requirements;

(2) the offender has satisfied a sentence of confinement;

(3) the offender has satisfied a period of placement as a condition of community supervision [probation]; or,

(4) the offender has demonstrated non-compliance with program criteria or a court order.

(f)-(h) (No change.)

(i) Public meetings [hearing]. A jurisdiction shall not take action to establish a community corrections facility unless the community justice council serving the jurisdiction holds a public meeting, on the proposed action, in accordance with law. In addition, entities [agencies] interested in establishing a CCF shall hold a public meeting, in accordance with law, [hearing] regarding the proposed site of the CCF. [A minimum of 30 days prior to the public hearing, the agency proposing to operate the CCF shall:

[(1) publish notice of the date, hour, place, and subject of the public hearing along with the address of the proposed site of the CCF in three consecutive issues of a newspaper, or in newspapers that collectively have general circulation in the county in which the proposed CCF is to be located;

[(2) mail a copy of the notice to each city council member, county commissioner, state representative and state senator who represents the area in which the proposed CCF is to be located. A copy of the notice is also to be mailed to each member of the jurisdiction's community justice council; and

[(3) hold the public hearing at a site as close as practical to the proposed location of the CCF.]

(j) Data. Entities [Agencies] operating or utilizing residential facilities under this section shall submit on a timely basis data as required by the CJAD.

(k) Courtesy supervision. CCFs shall, on a space-available basis, accept eligible adult offenders needing the residential services on courtesy supervision from other jurisdictions. Community supervision and corrections departments that manage CCFs are responsible for the direct supervision of all residents [probationers] in the CCF while in the residential placement.

(l) Training. Supervision [Probation] officers, CCF personnel, and community supervision and corrections department personnel who work in a CCC shall meet minimum training standards as set forth in §163.33 of this title (relating to Supervision [Probation] Officers).

(m)-(n) (No change.)

§163.43. Funding and Financial Management.

(a) Funding.

(1) (No change.)

(2) Qualifying for CJAD grant funding. CSCSDs, counties, municipalities, and nonprofit organizations whose judicial district's CSCSDs comply with CJAD standards qualify for CJAD grant funding by:

(A)-(C) (No change.)

(D) having the grant funding recipient designate [designating] a [chief] fiscal officer to account for, disburse, and report on all CJAD grant funding.

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

(b) Financial procedures.

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

(12) Fees for fiscal services.

The judicial district, if approved by CJAD and as set forth in the Financial Management Manual for CJAD Funding, may use up to [3.0% of the state funding received for the first quarter or] .75% of total funding received on grant funding and state aid to contract annually with the county or counties providing services for auditing, bookkeeping and those services set forth in the statutes and other services deemed necessary by the judicial district. Other services deemed necessary include the following.

(A) (No change.)

(B) preparation of a Statement of Financial Position as required by the Financial Management Manual for CJAD Funding [at the close of each fiscal year or designed funding period].

(13)-(18) (No change.)

(c) Determination and recovery of unexpended monies.

(1) CJAD funding. CJAD funding allocated to any entity, organization, or CSCD shall require separate budgets in accordance with the Financial Management Manual for CJAD Funding. At the close of the fiscal year, all unexpended/unencumbered CJAD grant funding shall be refunded to CJAD. At the close of the biennium, all unexpended/unencumbered CJAD state aid funding shall be refunded to CJAD.

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

(4) Revenue percentage calculation for CSCDs. At the end of a biennium and after [After] the close out financial report is submitted to CJAD, a determination will be made by CJAD staff whether [that] an unexpended balance does exist. CJAD will identify all monies deposited into the fund for the fiscal year as either locally generated or state generated. Locally generated monies include, but are not limited to, supervision [probation] fees and interest on time deposits. After the sources of monies are identified, CJAD will prepare a calculation to indicate the percentage contributed by each source.

(5)-(6) (No change.)

(d) Facilities, utilities, and equipment.

(1) (No change.)

(2) Residential facilities. CJAD funding as approved may be used to:

(A) lease or purchase buildings, land, or other real property for use as community corrections facilities (CCF) or county correctional center (CCC);

(B)-(D) (No change.)

(3) (No change.)

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

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

Issued in Austin, Texas, on September 19, 1994.

TRD-9448394

Carl Reynolds  
General Counsel  
Texas Department of  
Criminal Justice

Earliest possible date of adoption: October 28, 1994

For further information, please call: (512) 463-9693

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 94. Nurse Aides

##### • 40 TAC §§94.2, 94.5-94.9, 94.11

The Texas Department of Human Services (DHS) proposes amendments to its Chapter 94, Nurse Aides, §§94.2, 94.5-94.9, and 94.11, concerning definitions; competency evaluation program requirements; program director and skills examiner requirements; filing and processing an application for a nurse aide training and competency evaluation program (NATCEP), or skills examiner; approval, reapproval, and inspection of a NATCEP; withdrawal of approval of a NATCEP; and skills examiner; and registry, findings, inquiries; and proposes the repeal of and new §94.13, concerning requirements for criminal conviction checks of nurse aides.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Raiford also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be updated rules that concern the regulation of NATCEPs and nurse aides. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Wendy Francik at (512) 450-3167 in DHS's Institutional Policy Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-375, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32; the Health and Safety Code, Chapter 250; and Texas Civil Statutes, Article 4413 (502), §16. The Human Resources Code, Chapters 22 and 32, provide the department with the authority to administer public and medical assistance programs. The Health and Safety Code, Chapter 250, provides the department with the authority to administer the nurse aide program and registry. Texas Civil Statutes, Article 4413(502), §16, provides the Health and Human Services Commission with the authority to administer medical assistance funds.

The amendments implement the Human Resources Code, §§32.001-32.042, and the Health and Safety Code, Chapter 250, §§250.001-250.009.

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

**Nurse aide**—An individual certified to provide [providing] nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This individual has completed a training and competency evaluation program approved by the state as meeting the requirements of the Code of Federal Regulations (CFR), Chapter 42, §§493.151-493.154, or has been determined competent as provided in 42 CFR, §483.150(a) and (b), and is listed as certified on the nurse aide registry of the Texas Department of Human Services. This definition does not include an individual who is a licensed health professional or a registered dietitian or who volunteers such services without monetary compensation. A nurse aide is not authorized to provide nursing and/or nursing-related for which a license [, certification,] or registration is required under state or federal law.

**Sexual abuse**—Any touching or exposure of the anus, breast, or any part of the genitals of a resident without the voluntary, informed consent of the resident and with the intent to arouse or gratify the sexual desire of any person and includes, but is not limited to, sexual harassment, sexual coercion, [or] sexual assault, or indecent exposure to a resident, as defined in the Texas Penal Code, Chapter 21.

**§94.5. Competency Evaluation Program Requirements.**

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

(c) Requirements for the free-standing CEP are as follows.

(1) An individual is eligible to take a CEP if he or she completes the documentation required by the department and:

(A) (No change.)

(B) [successfully completes the training portion of a NATCEP approved under the Act by or in another state;

[(C) successfully completes military training of 100 hours or more on or after July 1, 1989, equivalent to civilian nurse aide training;

[(D)] successfully complete[d] [completes] a [state accredited] registered nurse (RN) or licensed vocational nurse (LVN) program accredited by the state of Texas, at the time of completion, on or after July 1, 1989, and:

(i) is not licensed as a RN or LVN; and

(ii) has not held a license as a RN or LVN which has been revoked;

(C)[(E)] is currently enrolled in a state accredited school of nursing and has demonstrated competency in providing basic nursing skills in accordance with the school's curriculum, as verified by the school's dean or designee; or

(D) is currently licensed in Texas as a Home Health Aide in good standing.

[(F) successfully completes a home health aide training and competency evaluation program in accordance with federal law and approved by the state.]

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

(4) An eligible individual may only take the free-standing CEP once.

(d)-(f) (No change.)

(g) The examination must [shall] consist of:

(1) the skills examination which includes a demonstration by the trainee of [a minimum of five] randomly selected skills drawn from a pool of skills which are generally performed by nurse aides [and are listed on the performance record]. This pool of skills includes all of the personal care skills listed in the curriculum; and

(2) (No change.)

(h)-(o) (No change.)

#### §94.6. Program Director and Skills Examiner Requirements.

(a) Program director. The training of nurse aides must be performed by or under the general supervision of an approved program director. Each approved nurse aide training and competency evaluation program (NATCEP) must have an approved program director during the time training is occurring.

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

(5) A NATCEP or applicant for a NATCEP must submit an application for approval of its program director or approval for a change of its program director [A program director shall complete an application for approval. An applicant who meets the requirements of this subsection shall be approved as a program director].

(b) (No change.)

(c) Skills examiner. The competency evaluation of a nurse aide must be conducted by the department directly or an approved skills examiner.

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

#### §94.7. Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program. [Program Director.] or Skills Examiner.

(a) (No change.)

(b) The Texas Department of Human Services (department) will [shall] consider whether the applicant complies with the Omnibus Budget Reconciliation Act of 1987 (Act) and this chapter.

(c) [Incomplete or deficient applications may cause delays in the date of approval.

[(1) A notice of deficiency in the application will be mailed to an applicant within 15 days of the date of filing.

[(2) The applicant will be given an opportunity to correct any deficiencies.

[(d)] Notice of approval or proposed disapproval of the application or request for additional information will be given to the applicant within 90 [30] days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Act or this chapter, the reason for disapproval must [shall] be given in the notice.

(d) The applicant will be notified in writing of any deficiencies found in the complete application and given an opportunity to demonstrate compliance with provisions of the Act and this chapter by written response within 10 days of receipt.

(e) An applicant for approval of a nurse aide training and competency evaluation program (NATCEP) [or as a program director] or skills examiner may request a hearing on a proposed disapproval. Such request must be made, in writing within 10 [20] days of the date the notice is mailed or personally delivered to the applicant. Such hearing will be held pursuant to the applicable provisions of the department's informal hearing procedures as provided in §§79.1001-79.1007 [Chapter 79] of this title (relating to Informal Hearings [Legal Services]). The final hearing decision will be made as provided in this subsection. The hearing examiner, upon completion of the hearing, must [shall] prepare a written decision based solely on the evidence presented at the hearing and the statutory and regulatory provisions of the Act and this chapter. The decision must [shall] state the reasons for the decision.

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

#### §94.8. Approval, Reapproval, and Inspection of a Nurse Aide Training and Competency Evaluation Program.

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

(e) A NATCEP must file the renewal application [form] 30 days before the expiration date of the approval. An application filed after the 30 days or failure to file an application will result in the expiration of approval. [A NATCEP which makes timely application for renewal may continue to train. A NATCEP which files the renewal application form after the expiration date may not train until the renewal application form is approved by the department.]

(f) The results of an on-site visit to determine NATCEP compliance with the Omnibus Budget Reconciliation Act of 1987 (Act) and this chapter will be used in the decision to renew the approval of a NATCEP. [After receipt of the completed renewal application form, the department shall schedule and conduct an on-site review of the NATCEP to determine if it is in compliance with the requirements of the Act and this chapter.]

(g) (No change.)

(h) The department must [shall] present to a NATCEP a written report of the results of any on-site review summarizing any violations of or noncompliance with the Act or this chapter.

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

(3) A NATCEP not meeting the requirements of the Act and this chapter may be subject to [further on-site reviews or proposed disapproval or] withdrawal of approval.

**§94.9. Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program, [Program Director,] and Skills Examiner.**

(a) Approval of a nurse aide training and competency evaluation program (NATCEP), [program director,] or skills examiner may be withdrawn for any violation of or noncompliance with the Omnibus Budget Reconciliation Act of 1987 [Act] or this chapter.

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

(d) If the department proposes to withdraw approval of a NATCEP, [program director,] or skills examiner, the department must [shall] notify the NATCEP, [program director,] or skills examiner by mail at the last known address as shown in the department's records or by personal delivery. The notice must state the facts or conduct alleged to warrant the action and state that the individual has an opportunity to request in writing a hearing.

(e) The NATCEP or individual notified may request a hearing. A [Such] request for a hearing must be made, in writing, within 10 [20] days of the date the notice is mailed or personally delivered to the NATCEP or individual. Such hearing will be held pursuant to the applicable provisions of the department's formal hearing procedures as provided in §§79.1601-79.1614 [Chapter 79] of this title (relating to Formal Hearings [Legal Services]). The final hearing decision will be made as provided in this subsection. The hearing examiner, upon completion of the hearing, must [shall] prepare a written decision based solely on the evidence presented at the hearing and the statutory and regulatory provisions of the Act and this chapter. The [Such] decision must [shall] state the reasons for the decision.

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

(f) (No change.)

**§94.11. Registry; Findings; Inquiries.**

(a) (No change.)

(b) Nurse aide certification expires 24 months after being added to the Nurse Aide Registry or after the last date of verified employment. [A nurse aide shall provide documentation to the department every 24 months using a form provided by the department that the nurse aide has performed nursing or nursing-related services or acted as a nurse aide for monetary compensation for any period of time within the previous 24 months.] The department will [shall] remove a Nurse Aid Registry [registry] entry for which appropriate employment verification has not been received prior to the expiration date [an

individual who does not provide such documentation], unless a finding of abuse, neglect, or misappropriation of resident property is on the registry for that individual. To maintain current Nurse Aide Registry status, the following requirements must be met:

(1) Facilities must submit a department form to the department annually to document all nurse aides who are performing or have performed paid nursing or nursing-related services at the facility during the past year.

(2) A nurse aide must submit a department form to the department prior to the expiration of his certification to document that the nurse aide has performed paid nursing or nursing-related services.

(c) The department [shall] reviews [review] and investigates [investigate] allegations of abuse, neglect, or misappropriation of resident property by a nurse aide. A nurse aide must [shall] be given written notice by the department of a proposed finding on an allegation and may request a hearing. The [Such] request must be made, in writing, within 20 days of the date the notice is mailed or personally delivered to the nurse aide. The [Such] hearing is [will be] held pursuant to the applicable provisions of the department's informal hearing procedures as provided in §§79.1001-79.1007 [Chapter 79] of this title (relating to Informal Hearings [Legal Services]). The final hearing decision is [will be] made as provided in paragraph (3) of this subsection.

(1) A copy of the department's investigative report concerning the incident which is the subject of the hearing must [shall] be provided prior to the hearing by the hearing coordinator [examiner] to the nurse aide, upon written request by the nurse aide. Such report may be used in the preparation of the nurse aide's defense, but is otherwise confidential in accordance with Health and Safety Code, Chapter 242, Section 127, and no other use and no subsequent release is authorized.

(2) (No change.)

(3) The hearing officer [examiner], upon completion of the hearing, must [shall] prepare a written decision based solely on the evidence presented at the hearing and the statutory and regulatory provisions of the Omnibus Budget Reconciliation Act of 1987 [Act] and this chapter. The decision must [shall] state the reasons for the decision.

(d) If an alleged act of abuse, neglect, or misappropriation by a certified nurse aide, who also is a permitted medication aide under Chapter 95 of this title (relating to Medication Aides), violates

the rules in this chapter and Chapter 95 of this title, the nurse aide's request for an appeal of the department's finding on abuse, neglect, and/or misappropriation must be conducted through the department's formal hearing procedures under §§79.1601-79.1612 of this title (relating to Formal Appeals) and the Administrative Procedures Act, Title 10 of the Texas Government Code, §§2001.051 et seq. Through the formal hearing, determinations are made on both the certificate of nurse aide practice and the permit for medication aide practice.

(e)[(d)] The department must [shall] not make a finding that an individual has neglected a resident if the individual demonstrates that the [such] neglect was caused by factors beyond the individual's control [control of the individual].

(f)[(e)] The registry, the nurse aide, and the administrator of the facility where the event occurred must [shall] be notified of the findings.

(g)[(f)] The registry must [shall] include the documented findings involving an individual listed on the registry, as well as any brief statement of the individual disputing the findings.

(h)[(g)] The information on the registry must [shall] be made available to the public.

(i)[(h)] The department, in the case of inquiries to the registry, must [shall] verify if the individual is listed on the registry and must [shall] disclose any information concerning a finding of neglect, abuse or misappropriation of resident property involving an individual listed on the registry. It must [shall] also disclose any statement by the individual related to the finding or a clear and accurate summary of such a statement.

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

Issued in Austin, Texas, on September 20, 1994.

TRD-9448371

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: February 15, 1995

For further information, please call (512) 450-3765

◆ ◆ ◆  
• 40 TAC §94.13

(Editor's note The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services or in the

Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32; the Health and Safety Code, Chapter 250; and Texas Civil Statutes, Article 4413 (502), §16. The Human Resources Code, Chapters 22 and 32, provide the department with the authority to administer public and medical assistance programs. The Health and Safety Code, Chapter 250, provides the department with the authority to administer the nurse aide program and registry. Texas Civil Statutes, Article 4413(502), §16, provides the Health and Human Services Commission with the authority to administer medical assistance funds.

The repeal implements the Human Resources Code, §§32.001-32.042, and the Health and Safety Code, Chapter 250, §§250.001-250.009.

**§94.13. Requirements for Criminal Conviction Checks of Nurse Aides and Trainees.**

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

Issued in Austin, Texas, on September 20, 1994.

TRD-8448370 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: February 15, 1995

For further information, please call: (512) 450-3785

◆ ◆ ◆

• 40 TAC §94.13

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32; the Health and Safety Code, Chapter 250; and Texas Civil Statutes, Article 4413 (502), §16. The Human Resources Code, Chapters 22 and 32, provide the department with the authority to administer public and medical assistance programs. The Health and Safety Code, Chapter 250, provides the department with the authority to administer the nurse aide program and registry. Texas Civil Statutes, Article 4413(502), §16, provides the Health and Human Services Commission with the authority to administer medical assistance funds.

The new section implements the Human Resources Code, §§32.001-32.042, and the Health and Safety Code, Chapter 250, §§250.001-250.009.

**§94.13. Requirements for Criminal Conviction Checks of Nurse Aides and Trainees.**

(a) Persons convicted of certain crimes may not be employed in nursing facilities. As required by the Health and Safety Code, Chapter 250, and as found in §§76.101-76.108 of this title (relating to Criminal History Check of Employees in Facilities for Care of the Aged and Persons with Disabilities), a facility may not employ a person in a position with duties that involve direct contact with a consumer without the performance of a criminal history check.

(b) A nurse aide training and competency evaluation program (NATCEP) must inform individuals participating in the program of the following:

(1) individuals will receive a criminal history check when applying for employment at facilities, as defined in §76.101 of this title (relating to Definitions), that provide care for the aged and persons with disabilities; and

(2) the results of a criminal history check may bar individuals from employment in facilities, as defined in §76.101 of this title (relating to Definitions), that provide care for the aged and persons with disabilities.

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

Issued in Austin, Texas, on September 20, 1994.

TRD-8448369 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: February 15, 1995

For further information, please call: (512) 450-3785

◆ ◆ ◆

# ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 1. ADMINISTRATION

### Part XV. Health and Human Services Commission

#### Chapter 351. Coordinated Planning and Delivery of Health and Human Services

##### • 1 TAC §351.9

The Health and Human Services Commission (HHSC) adopts new §351.9, concerning the method by which the public, consumers, and service recipients can file complaints regarding HHSC and the 11 health and human services agencies subject to oversight, without changes to the proposed text as published in the August 16, 1994, issue of the *Texas Register* (19 TexReg 6411).

The new rule is required by Texas Civil Statutes, Article 4413(502), §12(c).

The new rule's function is to notify the public, consumers, and service recipients of the mailing address and telephone number of appropriate agency personnel for the purpose of directing complaints to the commission.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4413(502), §12(c), which give the Health and Human Services Commission authority to adopt a rule to establish methods by which it receives complaints.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448307

Debby Gardner  
General Counsel  
Health and Human  
Services Commission

Effective date: October 11, 1994

Proposal publication date: August 16, 1994

For further information, please call: (512) 502-3200

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 5. Quarantines

#### Imported Fire Ant Quarantine

##### • 4 TAC §§5.1-5.9

The Texas Department of Agriculture (the department) adopts the repeal of §§5.1-5.9, concerning the imported fire ant quarantine, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5430).

The repeals are adopted in order to allow the department to restructure Chapter 5 and add new general provisions applicable to all sections in Chapter 5.

The department in a separate submission has renumbered this undesignated head and submitted the newly adopted numbered sections simultaneously with these repeals. In addition, the department is adopting in a separate submission new §§5.1-5.9. The repeals delete old sections providing designations of quarantined articles and areas, requirements for movement and inspection of quarantined articles and penalties.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Agriculture Code, §71.007, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the protection of agricultural and horticultural interests.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448311

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: October 11, 1994

Proposal publication date: July 15, 1994

For further information, please call: (512) 463-7583

## General Provisions

### • 4 TAC §§5.1-5.5

The Texas Department of Agriculture (the department) adopts new §§5.1-5.5, concerning general provisions for quarantines established by the Texas Department of Agriculture, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5431).

The new sections are adopted to provide terminology and other general requirements related to quarantine regulatory functions.

The new sections provide definitions applicable to all quarantines to be used in Chapter 5; provide for quarantine inspection requirements; provide for quarantine inspection certificates; provide for quarantine inspection fees and provides fees for the issuance of phytosanitary certificates, and phytosanitary growing season inspection certificates.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Agriculture Code, §71.005, which provides the Texas Department of Agriculture with the authority to establish a fee for inspection required for the movement of plants into or out of a quarantined area; §71.007, which provides the department with the authority to adopt rules necessary for the protection of agricultural and horticultural interests; and §12.021, which authorizes the department to collect an inspection fee for the issuance of a phytosanitation fee certificate.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448312

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: October 11, 1994

Proposal publication date: July 15, 1994

For further information, please call: (512) 463-7583

## Chapter 9. Plant Quality

### Miscellaneous Fees

#### • 4 TAC §9.18, §9.19

The Texas Department of Agriculture (the department) adopts the repeal of §9.18 and §9.19, concerning miscellaneous fees, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5434).

The repeal of §9.18 as adopted eliminates the fees for aflatoxin testing because the department no longer tests agricultural products for aflatoxins. The repeal of §9.19 as adopted deletes this section in order to move it to a more appropriate Chapter in Title 4. The section has been added to Chapter 5 concerning quarantines in a separate submission.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Agriculture Code, §71.007, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the protection of agricultural and horticultural interests; the Texas Agriculture Code, §12.018, which authorizes the department to set a fee for aflatoxin testing; and §12.021, which authorizes the department to collect a fee for the issuance of a phytosanitation fee certificate.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448313      Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: October 11, 1994

Proposal publication date: July 15, 1994

For further information, please call: (512) 463-7583

## TITLE 7. BANKING AND SECURITIES

### Part V. Office of Consumer Credit Commissioner

#### Chapter 82. Administration

##### Open Records Requests Charges

#### • 7 TAC §82.2

The Consumer Credit Commissioner and the Finance Commission adopt new §82.2, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3403).

Pursuant to Acts 1993, 73rd Legislature, Chapter 428, §4, and amendments to the Act

made therein (see text following Texas Government Code, §552.261), each agency must adopt rules to recover the agency's full cost of providing copies of public records. Proposed §82.2 will accomplish this objective. In addition, minimal procedural requirements are established to provide guidance to persons desiring to access public records held by the Commissioner.

A person seeking to inspect public records held by the commissioner is informed that the person should make an appointment for inspection and that inspection may only be done during normal office hours. A person desiring copies of public records is informed as to the definition of readily available information, that prompt responses to requests can be expected, and the charges (if any) that the agency may impose for readily available information, and the rate of charges that may be imposed if significant time is required on the part of agency personnel in making the requested information available.

No comments were received regarding adoption of the new section.

The new section is proposed under the provisions of Acts 1993, 73rd Legislature, Chapter 428, and Government Code, §§552.230, 552.261, and 552.263, which authorizes the agency to promulgate reasonable rules of procedure under which public records may be inspected efficiently, safely and without delay, and which require the agency to prescribe rules specifying the charges the agency will make for copies of public records.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448303      Leslie L. Pettijohn  
Acting Commissioner  
Office of Consumer Credit  
Commissioner

Effective date: October 11, 1994

Proposal publication date: April 28, 1994

For further information, please call: (512) 479-1280

## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 67. State Adoption and Distribution of Instructional Materials

The Texas Education Agency (TEA) adopts new §§67.1, 67.4, 67.7, 67.10, 67.21, 67.24, 67.27, 67.30, 67.33, 67.36, 67.39, 67.42, 67.45, 67.48, 67.51, 67.54, 67.57, 67.60, 67.63, 67.66, 67.69, 67.72, 67.75, 67.78, 67.81, 67.84, 67.87, 67.90, 67.101, 67.104, 67.107, 67.110, 67.113, 67.121, and 67.124, concerning state adoption and distribution of instructional materials. Sections 67.4, 67.27, 67.33, 67.36, 67.39, 67.48, 67.51, 67.54,

67.60, 67.63, 67.66, 67.72, 67.75, 67.78, 67.90, 67.104, and 67.107 are adopted with changes to the proposed text as published in the June 3, 1994, issue of the *Texas Register* (19 TexReg 4306). Sections 67.1, 67.7, 67.10, 67.21, 67.24, 67.30, 67.42, 67.45, 67.57, 67.69, 67.81, 67.84, 67.87, 67.101, 67.110, 67.113, 67.121, and 67.124 are adopted without changes and will not be republished.

The new rules are necessary to provide for a more cost-effective process of textbook adoption and purchase. Under the new rules, the legislature and the textbook publishing industry will receive advance notice of proposed expenditures for instructional materials by category and by year. A wider variety of instructional materials will be available to students at a lower cost, and more up-to-date information will be included in core curriculum areas.

In a separate submission, TEA is adopting the repeal of old Chapter 67.

The changes to §67.4(b) allow a publisher, with certain restrictions, to make ancillary items available to school districts at no charge.

The changes to §67.27(c) clarify that refusal to award future contracts would apply only in cases where a publisher refused to rebid materials at least one time.

The changes to §67.33(c) clarify that all members of a subject area committee must have expertise in appropriate areas.

The changes to §67.36(d) delete language exempting the commissioner of education from consulting with the State Board of Education (SBOE) regarding recommendations for appointments to subject area committees. New subsection (e) was added to allow SBOE, at its discretion, to remove a member of a subject area committee.

The changes to §67.39(a)(1) delete the requirement that a subject area committee consider bid prices when evaluating instructional materials.

The changes to §67.48 add language to ensure that a publisher and its representatives have sufficient time to present instructional materials and respond to questions.

The changes to §67.51(c) add language to allow subject area committee members to ask questions of subject area staff of TEA during official committee meetings.

The changes to §67.54(c) clarify requirements regarding provision of consumable items.

The changes to §67.60(a) increase to two the number of sample copies of each instructional materials submission that must be provided to each of the 20 regional education service centers (ESC). The changes to §67.60(c) prohibit a publisher from providing ancillary or supplementary materials or descriptions of these materials to subject area committee members. The changes also reserve the authority of SBOE to require in the proclamation that publishers submit ancillary or supplementary materials to subject area committee members.



The changes to §67.63(b)(1) allow one sample of instructional materials to be checked out of an ESC. The changes also add language requiring each ESC to establish rules for checking out samples that are based on demand.

The changes to §67.66(b)(1) reduce to five the number of citizens who, before a subject area committee is required to conduct a hearing, must file written requests to appear before the committee.

The changes to §67.72(b)(1) clarify provisions concerning a citizen's request to appear before a subject area committee.

The changes to §67.75(a) clarify contacts that must be registered by SBOE members.

The changes to §67.78(b) clarify language regarding preparation of contracts.

The changes to §67.90(e) clarify that the 50-error threshold applies to student textbooks, teacher editions, or components thereof.

The changes to §67.104(a) require a publisher to ship samples only upon request by a school district and approval by TEA. The changes also allow samples of electronic, visual, or auditory media to be provided in demonstration or representative formats. The changes to §67.104(b) are editorial.

New subsection (o) was added to §67.107 to clarify that selection and use of ancillary materials provided by publishers is at the discretion of local boards of trustees.

The following comments were received regarding adoption of the new rules.

**Comment.** Initially, proposed language in §67.4 would have incorporated ancillary materials into adopted student's or teacher's components. The Texas Association for Supervision and Curriculum Development expressed support for this language.

**Agency Response.** The SBOE agreed, expressing concern with the lack of review and correction of ancillary materials and with the increasing volume of "free" materials developed for marketing purposes.

**Comment.** Regarding §67.4, Garland ISD and Dallas ISD requested that publishers be required to maintain prices of non-adopted items available for sale to districts for a six-year period.

**Agency Response.** Staff does not agree that publishers could be required to maintain prices of non-adopted sale items for the lengths of corresponding contracts for adopted items. The majority of publishers who sell items directly to schools have never participated in the adoption process, and items sold to schools could be used, in some cases, with materials adopted in many categories. There is no feasible way, and it is not the state's role, to attempt to regulate publishers outside of the adoption process. No changes to the rules were made.

**Comment.** Regarding §67.4, the Association of American Publishers and Macmillan/McGraw-Hill expressed concern with incorporation of former ancillary materials into adopted student's or teacher's com-

ponents. The primary concerns were the need to file samples of all materials in April and the need to correct all materials adopted by SBOE.

**Agency Response.** Changes were made that no longer require all ancillary materials to be included in adopted student's and teacher's components. Titles of ancillary materials will be listed with TEA, but no samples may be provided by publishers to subject area committee members.

**Comment.** Regarding §67.4, Garland ISD and Dallas ISD requested that publishers be required to provide ancillary materials for the entire contract period.

**Agency Response.** Language was incorporated that requires publishers to provide ancillary materials to each school district at the same ratio and for the entire contract period.

**Comment.** Regarding §67.7, several individuals commented regarding lack of sensitivity to and balanced treatment of issues related to aging and the aged.

**Agency Response.** Language regarding balanced treatment of issues related to aging and the aged was incorporated.

**Comment.** Regarding §67.10, Garland, Dallas, and Pflugerville ISD's requested that publishers be required to put a unique identifying number into each textbook supplied to school districts.

**Agency Response.** The cost of individually numbering all pieces of instructional materials supplied to school districts would be prohibitive to publishers. No changes to the rules were made. However, a recommended revision to the Texas Education Code has been presented that would eliminate the requirement that school districts number books.

**Comment.** Regarding §67.21, the Association of American Publishers expressed concern with proclamations being issued 24 months before adoption, instead of 32 months before adoption.

**Agency Response.** Virtually all textbooks and teacher's editions submitted under current rules are labeled as Texas editions. The lack of specificity in proclamations regarding format and composition of materials submitted for review should reduce the amount of development time needed to meet the call for bids and eliminate the necessity for production of a single "Texas-specific" textbook or teacher's edition, since any combination of materials could be configured to meet essential elements. No changes to the rules were made.

**Comment.** Regarding §67.24, the Association of American Publishers expressed support for inclusion of maximum costs in proclamations and for the proposed six-year budget projection. The association requested that publishers be included in development of maximum costs and budget projections.

**Agency Response.** Representatives of the publishing industry will be included in the process for developing the six-year budget projection. No changes to the rules were made.

**Comment.** Regarding §67.27, the Association of American Publishers expressed concern that readoption prices deemed excessive by

the commissioner would result in a recommendation that the publisher not be awarded contracts in the future.

**Agency Response.** In the past, readoption prices bid by publishers have not been evaluated. In some cases, prices of textbooks have doubled under readoption contracts. The proposed rules would allow for evaluation and negotiation of readoption prices. Language was added to clarify that refusal to award future contracts would apply only in cases where a publisher refused to rebid materials at least one time.

**Comment.** Regarding §67.39, the Association of American Publishers expressed concern with evaluation of bid prices by State Textbook Committees. In addition, concern was expressed with the current requirement that a submission receive a supporting vote from two-thirds of the total membership of a committee in order to be recommended for adoption.

**Agency Response.** The provision that State Textbook Committee members consider bid prices when evaluating instructional materials was deleted. The requirement that a submission receive a supporting vote from two-thirds of the total membership of a committee should be retained in order to help ensure that recommended materials meet all essential elements.

**Comment.** Regarding §67.54, the Association of American Publishers questioned the requirement that consumable items be replaced each year of the contract.

**Agency Response.** Under the new rules, submissions of consumable materials would not be prohibited in any category. However, the cost to the state for the entire contract period could not exceed the maximum cost established in the proclamation. Having a publisher supply a consumable item to districts using the adopted student's or teacher's component is the most feasible way of handling replacement.

**Comment.** Regarding §67.54, the Association of American Publishers requested clarification of requirements regarding consumable items.

**Agency Response.** Language was added to clarify provision of consumable items under the new rules.

**Comment.** Regarding §67.57, Garland ISD and Dallas ISD expressed concern with substitution requests approved in the past and indicated that the current requirement for publishers to provide classroom sets of substituted material determined to be "substantially different" from materials under contract creates problems for school districts. The districts also questioned granting substitution requests two years after new materials are supplied to school districts.

**Agency Response.** Language regarding provision of classroom sets of substituted material determined to be "substantially different" from materials under contract was eliminated. In addition, a provision that substitutions no longer be approved during the first four years of a contract was added.

**Comment.** Regarding §67.60, the Association of American Publishers expressed concern

with the expense incurred in supplying hardware to each of the 20 regional education service centers.

**Agency Response.** Language was added that would require publishers to provide special hardware or equipment to regional education service centers only if such equipment is not available.

**Comment.** Regarding §67.60, several individuals expressed concern with reducing samples filed with service centers from two copies to one copy.

**Agency Response.** The section was amended to require that two sample copies of each instructional materials submission be provided to each of the 20 regional education service centers.

**Comment.** Regarding §67.63, several individuals expressed concern with unavailability of samples for check out.

**Agency Response.** The section was amended to allow one sample to be checked out of a regional education service center. Rules for checking out samples will be established by the regional education service center based on demand.

**Comment.** Regarding §67.66, several individuals expressed concern with the potential impact on the ability of the public to address State Textbook Committee members.

**Agency Response.** The section was amended to return to a requirement that five persons file written requests to testify in order for a hearing to be conducted before a committee.

**Comment.** Regarding §67.84, Garland ISD and Dallas ISD requested that the section be amended to require publishers to ship adopted materials purchased with local funds out of an approved depository.

**Agency Response.** Contracts awarded to publishers by SBCE contain a provision that publishers agree that their state depositories will sell to all persons adopted materials at the prices and upon the same conditions as they are furnished to the State of Texas. No changes to the rules were made.

**Comment.** Regarding §67.90, Garland ISD and Dallas ISD expressed support for the provision that errata sheets be placed in teacher's components.

**Agency Response.** The TEA agrees with language concerning errata sheets.

**Comment.** Regarding §67.90, the Association of American Publishers expressed concern with elimination of submissions due to the 50-error threshold.

**Agency Response.** The section was amended to apply the 50-error threshold to student textbooks, teacher editions, or components thereof.

**Comment.** Initially, proposed language in §67.104 would have prohibited shipment of samples without a request for samples from a school district. The Association of American Publishers, Garland ISD, and Dallas ISD expressed concern with this concept.

**Agency Response.** The provision that districts

must request samples from publishers was eliminated.

**Comment.** Regarding §67.104, the Association of American Publishers expressed concern with the cost of providing samples to districts, especially in low enrollment areas, specialized subjects, or when sampling electronic components of an adopted item.

**Agency Response.** Language was incorporated requiring publishers to ship samples only upon notification by TEA that an order from a school district for samples had been received and approved. In addition, language was added to allow samples of certain types of media to be provided in demonstration or representative format.

**Comment.** Regarding §67.107, Garland ISD and Dallas ISD suggested that the superintendent or his or her designee serve as chair of the district's local adoption committee. They also suggested that language be added to allow approval of requisitions based on the maximum number of students enrolled in the district during the previous school year and/or registered to attend the district during the next school year. The districts requested that language be added clarifying provision of high school materials to junior high or middle school students in high school classes.

**Agency Response.** The recommended changes were incorporated in the rules.

#### Subchapter A. General Provisions

##### • 19 TAC §§67.1, 67.4, 67.7, 67.10

The new rules are adopted under the Texas Education Code, §12.16, which authorizes SBOE to promulgate rules concerning the adoption and distribution of instructional materials.

#### §67.4. Instructional Materials Not Adopted by the State Board of Education.

(a) Materials in any medium that a publisher intends to make available for sale to schools are not considered part of the publisher's bid and shall not be adopted by the State Board of Education (SBOE). Non-adopted materials shall be sold at prices consistent with nationally established prices.

(b) The titles of ancillary items that a publisher intends to make available to school districts at no charge shall be filed with the Central Education Agency in accordance with the schedule contained in the proclamation. Ancillary materials listed by publishers and made available to school districts at no charge to the districts shall be provided to each school district that orders the adopted instructional material at the same ratio and for the duration of the contract period. Publishers are prohibited from providing school districts with ancillary materials not listed.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agen-

cy's legal authority.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448361

Crisis Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Technology Services  
Texas Education Agency

Effective date: October 12, 1994

Proposal publication date: June 3, 1994

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

### Subchapter A. State Textbook Program

#### General Provisions

##### • 19 TAC §67.11, §67.13

The Texas Education Agency (TEA) adopts the repeal of §§67.11, 67.13, 67.21, 67.23, 67.31, 67.33, 67.35-67.37, 67.41, 67.43, 67.45, 67.51-67.53, 67.55-67.57, 67.61, 67.63, 67.65-67.68, 67.71, 67.81, 67.83, 67.85-67.88, 67.91, 67.93, 67.95, 67.97, 67.100, 67.102, 67.103, 67.105, 67.106, 67.121, 67.131, and 67.133, concerning state adoption and distribution of instructional materials, without changes to the proposed text as published in the June 3, 1994, issue of the *Texas Register* (19 TexReg 4308). The repeals will allow TEA to adopt a new system for instructional materials in a separate submission.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Education Code, §12.16, which authorizes the State Board of Education to promulgate rules concerning the adoption and distribution of instructional materials.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448385

Crisis Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Technology Services  
Texas Education Agency

Effective date: October 12, 1994

Proposal publication date: June 3, 1994

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

### General Content Requirements and Manufacturing Standards

##### • 19 TAC §67.21, §67.23

The repeals are adopted under the Texas Education Code, §12.16, which authorizes

the State Board of Education to promulgate rules concerning the adoption and distribution of instructional materials.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 21, 1994.

TRD-8448386      Criss Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Technology Services  
Texas Education Agency

Effective date: October 12, 1994

Proposal publication date: June 3, 1994

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

◆      ◆      ◆  
**Subchapter B. State Adoption,  
Acquisition, and Custody of  
Instructional Materials**

- 19 TAC §§67.21, 67.24, 67.27, 67.30, 67.33, 67.36, 67.39, 67.42, 67.45, 67.48, 67.51, 67.54, 67.57, 67.60, 67.63, 67.66, 67.69, 67.72, 67.75, 67.78, 67.81, 67.84, 67.87, 67.90

The new rules are adopted under the Texas Education Code, §12.16, which authorizes the State Board of Education to promulgate rules concerning the adoption and distribution of instructional materials.

*§67.27. Review and Renewal of Contracts.*

(a) The commissioner of education shall review contracts for instructional materials and recommend which contracts should be renewed for terms not to exceed six years and which contracts should not be renewed.

(b) The State Board of Education (SBOE) shall decide to renew existing contracts upon determining that the renewal would be in the best interest of the state and after considering the following factors:

- (1) inclusion of subject areas in the six-year budget projection;
- (2) availability of new instructional materials; and
- (3) willingness of publishers to offer materials for readoption and renewal of contracts.

(c) Publishers awarded new contracts shall be prepared to make the adopted instructional materials available for at least one extended contract period of not more than six years at prices the commissioner of education approves. The SBOE may consider refusing to award future contracts to a publisher who, after receiving written notice

to do so, refuses to rebid instructional materials at least one time. Failure of a publisher to negotiate an acceptable price for an extended contract shall not be considered failure to rebid instructional materials.

*§67.33. Subject Area Committees: Qualifications.*

(a) A person is not eligible for appointment to a subject area committee if, during the two years immediately preceding the appointment, the person:

(1) was employed by or received funds from a publishing company or an agent representing an author or publishing company; or

(2) owns or controls, directly or indirectly, any interest in a publishing company or an entity receiving funds from a textbook publishing company.

(b) Before employing an educator to review or sell instructional materials or represent a publishing company, the publisher shall notify the person that employment or receipt of any remuneration would disqualify him or her from serving on a subject area committee for a two-year period following the employment or receipt of remuneration.

(c) A majority of the members of a subject area committee shall be classroom teachers of recognized ability in areas appropriate to instructional materials the committee will evaluate. All members of a subject area committee shall have expertise in areas appropriate to instructional materials being evaluated.

(d) Each appointee to a subject area committee shall reside and/or teach in the State Board of Education (SBOE) district to be represented.

*§67.36. Subject Area Committees: Appointment.*

(a) The commissioner of education shall determine the number of subject area committees needed to review new instructional materials under consideration and the number of appointees to each committee.

(b) The commissioner of education shall solicit recommendations for possible appointees to subject area committees from school districts and educational organizations in the state. Recommendations may be accepted from any Texas resident.

(c) Nominations shall not be made by or accepted from any publishers; authors; depositories; agents for publishers, authors, or depositories; or any person who holds any official position with a publisher, author, depository, or agent. Publishers, authors, depositories, agents, or other persons who have any relationships or hold any

positions with publishers, authors, depositories, or agents shall refrain from and shall avoid, either directly or indirectly, aiding, abetting, suggesting, recommending, or encouraging either that any other person seek to be nominated or appointed, or that any person nominate or appoint another person to a subject area committee.

(d) The commissioner of education shall ensure that all persons recommended for appointment to the subject area committees meet State Board of Education (SBOE) rule requirements concerning qualifications for membership.

(e) Members of a subject area committee may be removed at the discretion of SBOE.

*§67.39. Subject Area Committees: Duties and Conduct.*

(a) The duties of each subject area committee shall be to:

(1) evaluate all instructional materials submitted for adoption in each subject area assigned to that committee to ensure that the materials recommended for adoption meet the content requirements specified in the proclamation and in board rules;

(2) recommend to the State Board of Education (SBOE) a list of instructional materials the committee approves for each subject area, course, or grade level assigned to that committee; and

(3) submit to the commissioner of education a list of any errors of fact and/or corrections needed to ensure accuracy in instructional materials recommended for adoption.

(b) Subject area committee members shall not accept meals, entertainment, gifts, or gratuities in any form from: publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.

(c) Each subject area committee member shall make every effort to attend all scheduled meetings of the committee. A member who cannot attend a meeting may not send a substitute.

(d) Before scheduled voting by a subject area committee, members shall be given an opportunity to discuss instructional materials under consideration for adoption. Public testimony shall not be allowed during this meeting. In addition, subject area committee members may elect to discuss materials during other official meetings of the committee. Representatives of publishing companies with instructional materials

under consideration shall be present at the committee meetings to respond to questions from subject area committee members.

(e) A subject area committee member shall refrain from attempting to influence other committee members except during discussion at official meetings. Subject area committee members shall not endorse instructional materials under consideration to any party.

(f) In making recommendations, subject area committees shall consider written comments, oral testimony, and responses to written and/or oral testimony submitted under §67.66 of this title (relating to Public Comment on Instructional Materials).

(g) The list of instructional materials recommended by each subject area committee shall consist of not less than two or more than eight selections for each subject area, course, or grade level. If at least two suitable selections are not available in a subject area, course, or grade level, the subject area committee may recommend one selection.

(h) To be included on the list of recommendations, an instructional materials submission shall receive supporting votes from at least two-thirds of the total membership of the appropriate subject area committee.

(i) One or more members of each subject area committee shall be designated to be present at the hearing held by the SBOE and/or the SBOE meeting at which instructional materials are adopted.

**§67.48. Presentations by Publishers to Subject Area Committees.** The Central Education Agency shall schedule a meeting of each subject area committee to allow presentations by publishers to the appropriate subject area committee members. The Central Education Agency also shall schedule presentation dates and the time allocated to each publisher. The beginning date for publisher hearings shall be specified in the schedule for the adoption process. The Central Education Agency shall ensure that publishers, editors, and authors have sufficient time to adequately present instructional materials and respond to questions.

**§67.51. No-Contact Periods.**

(a) Subject area committee members shall observe a no-contact period between the dates specified in the schedule for the adoption process. During this no-contact period, which shall begin with the initial communication regarding possible appointment to a subject area committee and end at the close of the balloting meeting, members shall not have contact either directly or indirectly with any publisher or publishing

company, depository, or petitioner. This restriction is not intended to prohibit members of subject area committees, while in session, from requesting clarification from a petitioner or a representative of a publishing company.

(b) Subject area committee members shall report immediately to the commissioner of education any communication or attempted communication by any publisher or publishing company, depository, or petitioner or any representative or agent of a publisher or publishing company, depository, or petitioner.

(c) Subject area committee members shall not discuss content of instructional materials under consideration with any agency subject area staff member, except at the request of the subject area committee during official committee meetings. Additional requests for information or clarification shall be directed to the commissioner of education or his designee. Copies of all questions from individual committee members shall be distributed with responses to all members of the appropriate subject area committee. This restriction is not intended to prohibit members of the subject area committees from contacting designated staff of the Central Education Agency regarding adoption procedures.

**§67.54. Instructional Materials Offered for Purchase by the State.**

(a) The official bid price for the student or teacher component of a submission shall not exceed the maximum cost to the state for adopted student and/or teacher materials established in the proclamation or the price information submitted with the official samples. Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with official samples and in the official bid.

(b) The official bid filed by a publisher shall include separate prices for each item included in a student and/or teacher component of a submission. The publisher shall guarantee that all items included in the student and/or teacher component shall be available for state or local purchase at the prices listed for the entire contract period.

(c) Instructional materials submitted for adoption shall be self-sufficient for the period of adoption. Nonconsumable components shall be replaced by the publisher during the warranty period. Consumable materials included in a student or teacher component of a submission shall be clearly marked as consumable. The cost of such consumables to the state for the entire contract period shall not exceed the maximum cost established in the proclamation.

**§67.60. Samples.**

(a) Two sample copies of the student and/or teacher component of each instructional materials submission shall be filed with each of the 20 regional education service centers on or before the date specified in the schedule for the adoption process. These samples shall be available for public review. Price information required by the Texas Education Code and State Board of Education (SBOE) rules shall be included in each sample.

(b) Two official sample copies of each student and/or teacher component of an instructional materials submission shall be filed with the commissioner of education on or before the date specified in the schedule for the adoption process. Price information required by the Texas Education Code, SBOE rules, and the Central Education Agency shall be included in each sample. In addition, the publisher shall provide a complete description of all items included in a student and/or teacher component of an instructional materials submission, including prices for each item.

(c) One sample copy of each student and/or teacher component of an instructional materials submission shall be filed with each member of the appropriate subject area committee on or before the date specified in the schedule for the adoption process. Price information required by the Texas Education Code and SBOE rules shall be included in each sample. If instructional materials submitted for consideration have been field tested, written evidence from the testing may be provided to subject area committee members. In order to ensure that subject area committees' evaluation is limited to student and teacher components submitted for adoption, publishers shall not provide ancillary materials, supplementary materials, or descriptions of ancillary or supplementary materials to subject area committee members. The SBOE reserves the authority to require in the proclamation that ancillary or supplementary materials be submitted to and received by the subject area committee members.

(d) Hardware or special equipment necessary for review of any item included in a student and/or teacher component of an instructional materials submission shall be provided to the Central Education Agency and members of the appropriate subject area committees on or before the deadlines for submission of samples of instructional materials and remain available for the duration of the review process. If the appropriate hardware or special equipment is not available in a regional education service center, the publisher shall provide the hardware or equipment on or before the deadline for submission of samples of instructional materials and remain available for the duration of the review process. All such hardware or

special equipment shall be returned to the publisher after the SBOE has completed adopting instructional materials.

(e) All samples of instructional materials shall be submitted with finished-format content and binding.

(f) A publisher shall provide a list of all editorial corrections to be made by the publisher to each student and/or teacher component of an instructional materials submission. The list must be in a format designated by the commissioner of education and filed on or before the deadline specified in the schedule for the adoption process. If no editorial corrections are necessary, the publisher shall file a letter stating this on or before the deadline in the schedule for submission of the list of editorial corrections. On or before the deadline for submission of lists of editorial corrections, publishers shall submit certification that all instructional materials have been edited for accuracy, content, and compliance with requirements of the proclamation and SBOE rules.

(g) If it is determined that good cause exists, the commissioner of education may extend the deadline for filing samples with regional education service centers. The commissioner shall notify the SBOE of all such extensions. At its discretion, the SBOE may remove from consideration any materials proposed for adoption that were not properly deposited with the regional education service centers, the Central Education Agency, or members of the appropriate subject area committee.

(h) Two sample copies of each student and/or teacher component of adopted instructional materials that incorporate all negotiated corrections and corrections noted on the lists of editorial corrections filed in accordance with subsection (f) of this section shall be filed with the commissioner of education on or before the date specified in the schedule for the adoption process. In addition, each publisher shall file an affidavit signed by an official of the company verifying that all corrections noted in the list of editorial corrections and all corrections required by the commissioner of education and SBOE have been made. Corrected samples shall be identical to materials that will be provided to school districts after purchase.

(i) Publishers participating in the adoption process are responsible for all expenses incurred by their participation, including provision of sample materials and hardware necessary to review electronic materials. The state does not guarantee return of sample instructional materials.

*§67.63. Regional Education Service Centers: Procedures for Handling Samples; Public Access to Samples.*

(a) Handling procedures.

(1) Each regional education service center (ESC) executive director shall designate one person to supervise all shipments of instructional materials. The Central Education Agency shall provide to each designated person forms to be used in reporting receipt of sample shipments.

(2) On or before the date specified in the schedule for the adoption process, each ESC representative shall notify the commissioner of education of all irregularities in sample shipments. The appropriate publisher shall be notified of any sample shipment irregularities reported by the ESCs.

(b) Public access to samples.

(1) One sample of all instructional materials under consideration for adoption shall be retained in the ESCs for review by interested persons until notification is received from the Central Education Agency that school district adoptions have been completed. One sample shall be made available to be checked out according to rules established by each ESC based on demand.

(2) Regional education service centers shall ensure reasonable public access to sample instructional materials, including access outside of normal working hours that shall be scheduled by appointment.

(3) On or before the date specified in the schedule for the adoption process, each ESC shall issue a news release publicizing the date on which sample instructional materials will be available for review at the center and shall notify all school districts in the region of the schedule.

*§67.66. Public Comment on Instructional Materials.*

(a) Written comments.

(1) Any resident of Texas may submit written comments for, against, or about any instructional materials submitted for adoption.

(2) Written comments shall be submitted to the commissioner of education on or before the deadline specified in the schedule for the adoption process.

(3) Copies of written comments shall be provided to participating publishers, regional education service centers (ESCs), members of the appropriate subject area committees, and persons who have filed written requests

(b) Hearings before subject area committees and the commissioner of education.

(1) Each subject area committee shall hold hearings if at least five Texas residents have submitted written requests to appear before the committee under this section. The commissioner of education or the commissioner's designee shall chair the hearings. The purposes of the hearings are:

(A) to provide a public forum for discussion of instructional materials offered for adoption; and

(B) to help develop a full record for use by members of the subject area committees, the commissioner of education, and the State Board of Education (SBOE).

(2) Testimony at the hearing will be accepted only from residents of Texas. No written comments shall be accepted for inclusion in the official record after the deadline for written comments; however, copies of speeches made at the hearing may be distributed to subject area committee members. No other written material may be distributed during the hearings. Persons who wish to testify must notify the commissioner of education in writing on or before the date specified in the schedule for the adoption process. The written notice shall identify the subject area and titles of materials about which testimony will be presented. Oral responses to testimony at the hearings may be made by official representatives of publishing companies who have requested time to present responses on or before the date specified in the schedule for the adoption process.

(3) To contain the hearings within the designated dates, the commissioner of education may limit the time available for each person to testify. The commissioner of education shall establish procedures concerning the hearings at least two weeks before the hearings. The procedures may limit the number of persons who may speak on behalf of any organization

(4) The commissioner of education shall have a complete record of the hearings made and transcribed. Transcripts of hearings shall be provided to the appropriate subject area committees, ESCs, participating publishers, and persons who have filed written requests. The official record shall be held open for 21 calendar days after the close of the hearings. During this 21-day period any person who participated in a hearing before the commissioner and any official representative of a publishing company may submit a written response to written comments and/or oral testimony presented at the hearing

(5) Within ten days after the record is closed, the commissioner shall send copies of responses to written and/or oral testimony to members of the appropriate subject area committees, ESCs, participat

ing publishers, and persons who have filed written requests.

(c) Copies of written comments, a transcript of the oral testimony presented at public hearings, and responses to written and/or oral testimony shall be provided to members of the SBOE.

*§67.72. Consideration and Adoption of Instructional Materials by the State Board of Education.*

(a) Two weeks before the State Board of Education (SBOE) is scheduled to adopt instructional materials, each publisher participating in the adoption process shall file the following documents with the commissioner of education:

(1) three copies of the official bid;

(2) a receipt from the state treasurer for a \$2,500 deposit filed in cash, certified check, or cashier's check as earnest money to produce a valid contract if the publisher's recommended materials are adopted;

(3) a certificate of authority to do business in the State of Texas obtained from the Office of the Texas Secretary of State; and

(4) a publisher's affidavit of eligibility and anti-trust compliance.

(b) On a date specified in the schedule for the adoption process, the SBOE shall hold a hearing on recommended instructional materials that may, at the discretion of the SBOE chair, be designated an official meeting of the SBOE.

(1) Testimony at the hearing shall be accepted only from residents of Texas who submitted official written comments or presented oral testimony at the joint hearings conducted by the commissioner of education and the subject area committees. In the event no hearing is held before the commissioner of education and a subject area committee, residents who had requested to appear before the committee may register to appear before the SBOE at the hearing. Persons who wish to testify must notify the commissioner of education on or before the date specified in the schedule for the adoption process. The notice must identify the subject areas and titles about which testimony will be presented. The SBOE may limit the time available for each person to testify.

(2) Oral responses to testimony at the hearing may be made by official representatives of publishing companies who have requested time to present responses on or before the date specified in the schedule for the adoption process.

(3) The deadline for residents scheduled to speak at the hearing to file written materials for consideration by the

SBOE shall be 17 calendar days before the date specified for the public hearing in the schedule for the adoption process. Copies of written materials filed on or before the deadline shall be distributed 13 calendar days before the public hearing to the SBOE, members of subject area committees as appropriate, publishers participating in the adoption process, and residents scheduled to speak at the public hearing. Copies of speeches made at the public hearing may be distributed to SBOE members. No other written material may be distributed to SBOE members during the public hearing before the SBOE.

(4) Public comment on instructional materials not adopted by the SBOE on the date specified in the schedule for the adoption process shall be accepted according to the SBOE Operating Rules, §2.9 (relating to Public Testimony).

(c) At a meeting specified in the schedule for the adoption process the SBOE shall consider:

(1) complaints of violations of the statutes or the rules and procedural irregularities;

(2) written comments, transcripts of hearings before the subject area committees, and responses to written and/or oral testimony;

(3) the report of the subject area committees; and

(4) the report of the commissioner of education.

(d) A SBOE committee designated by the SBOE chair shall review the subject area committees' and the commissioner's reports concerning instructional materials recommended for state adoption. The commissioner of education or the commissioner's representative and representatives of the subject area committees shall be available to respond to inquiries from the SBOE committee. The committee shall report the results of its review to the SBOE.

(e) The SBOE shall specify which of the corrections of errors of fact and corrections necessary to ensure accuracy recommended by the commissioner of education shall be required as a condition for adoption of any instructional materials.

(f) The SBOE shall adopt a list of approved instructional materials under the Texas Education Code, §12.24.

(g) If a publisher requests to withdraw from the adoption process after the date specified in the proclamation due to price reductions, required corrections, or manufacturing specifications required as a condition of adoption by the SBOE that the publisher states cannot be met, and if the withdrawal would reduce the number of selections recommended by a subject area committee for a category to only one selec-

tion, the board may, after deliberation and consideration of the factors contributing to the request, grant the publisher's request to withdraw and adopt the remaining selection in the category. The request to withdraw must include a written statement signed by the publisher's authorized representative stating the withdrawal is voluntary and not made under duress.

*§67.75. Requirement for Registers.*

(a) A register shall be kept by each member of the State Board of Education (SBOE), the commissioner of education, and the Division of Curriculum Development and Textbooks of the Central Education Agency to record all personal contacts with publishers, their representatives, agents, authors, consultants, editors, depositories, or any other person who has received or expects to receive any money, thing of value, or financial benefit for the appearance or contact regarding any instructional materials submitted and being considered for SBOE approval.

(b) Publishers shall file with the commissioner of education, on or before a date specified in the schedule for the adoption process, a register indicating all visits, meetings, or contacts with SBOE members, including the date, time, location, and purpose of the communication.

*§67.78. Preparation and Completion of Contract and Bond.*

(a) The state contract form prepared by the Texas attorney general shall not be changed or modified.

(b) Contract forms shall be sent to the publishers for signature. Signed contracts returned by the publishers shall be signed by the chair of the State Board of Education (SBOE) and attested to by the commissioner of education. Properly signed and attested contracts approved by the attorney general shall be filed with the secretary of state.

(c) The bidder to whom a contract is issued must execute a bond under the Texas Education Code, §12.26, in the amount of \$2,500 for each selection adopted by the SBOE. The bond shall be prepared by the commissioner of education and sent to the publisher for execution and signature. Properly signed and executed bonds returned by the publishers shall be sent to the attorney general for approval and signature. The original bond shall be filed with the secretary of state.

*§67.90. Penalties.*

(a) The following words and terms, when used in this section, shall have the

following meanings, unless the context clearly indicates otherwise.

(1) Editorial change—A change, agreed to by the Central Education Agency, in the printing of instructional material from what was submitted to the state under §67.60(f) of this title (relating to Samples) that involves revisions such as design, color, placement of material, inclusion of references, style of print, size of print, type of print, or any similar non-essential enhancement or deletion to the printed page. Editorial changes meeting this definition are not subject to penalties.

(2) Substantial error—A verified error of fact that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered.

(3) Technical error—A verified error not determined to be substantial.

(b) An error repeated in a single item or contained in both the student and teacher edition of a textbook shall be counted once for the purpose of determining penalties.

(c) Penalties for errors shall be recommended in increments. An error identified under this subsection shall not be counted when determining penalties if the affected publisher has provided prior notice of the error to the commissioner of education.

(1) The following provisions shall apply for errors identified after the publisher has submitted a list of editorial corrections under §67.60(f) of this title and before the date established in the proclamation by which the State Board of Education (SBOE) shall adopt instructional materials.

(A) A \$300 penalty shall be assessed for each substantial error.

(B) A \$100 penalty shall be assessed for each technical error.

(C) Penalties shall be assessed only if the SBOE adopts the affected instructional material.

(2) The following provisions shall apply for errors identified after the SBOE adopts the instructional material but before the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.

(A) A \$1,000 penalty shall be assessed for each substantial error.

(B) A \$500 penalty shall be assessed for each technical error.

(3) The following provisions shall apply for errors identified after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.

(A) A \$3,000 penalty shall be assessed for each substantial error.

(B) A \$1,000 penalty shall be assessed for each technical error.

(d) The following provisions shall apply for errors identified in the list of editorial corrections submitted by a publisher under §67.60(f) of this title and errors identified under subsection (c)(1) of this section that are not corrected.

(1) A publisher shall be assessed a \$10,000 penalty for each substantial error. The publisher shall provide an errata sheet approved by the commissioner of education with each teacher component of an adopted title.

(2) A publisher shall be assessed a \$1,000 penalty for each technical error. The publisher may be required to provide an errata sheet approved by the commissioner of education with each teacher component of an adopted title.

(e) The commissioner of education may recommend that an instructional materials submission not be adopted when 50 or more substantial errors are identified in the student textbook, teacher edition, or components thereof. A substantial error shall not be counted if the affected publisher has provided prior notice of the error to the commissioner of education. This subsection applies to errors identified during the following time period:

(1) after the publisher has submitted a list of editorial corrections under §67.60(f) of this title; and

(2) before the deadline established in the proclamation by which additional written comments from persons scheduled to present testimony at the public hearing before the SBOE must be filed with the Central Education Agency.

(f) Each affected publisher shall issue credit to the Central Education Agency in the amount of any penalty imposed under the provisions of this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448382

Crisis Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Technology Services  
Texas Education Agency

Effective date: October 12, 1994

Proposal publication date: June 3, 1994

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

### Textbook Proclamation

• 19 TAC §§67.31, 67.33, 67.35-67.37

The repeals are adopted under the Texas Education Code, §12.16, which authorizes the State Board of Education to promulgate rules concerning the

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448387

Crisis Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Technology Services  
Texas Education Agency

Effective date: October 12, 1994

Proposal publication date: June 3, 1994

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

### State Adoption, Acquisition, and Custody of Textbooks

• 19 TAC §§67.41, 67.43, 67.45, 67.51-67.53, 67.55-67.57, 67. 61, 67.63, 67.65-67.68, 67.71, 67.81, 67.83, 67.85-67.88, 67.91, 67.93, 67.95, 67.97

The repeals are adopted under the Texas Education Code, §12.18, which authorizes the State Board of Education to promulgate rules concerning the adoption and distribution of instructional materials.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448388

Crisis Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Technology Services  
Texas Education Agency

Effective date: October 12, 1994

Proposal publication date: June 3, 1994

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

## Local Operations

- 19 TAC §§67.100, 67.102, 67.103, 67.105, 67.106, 67.121

The repeals are adopted under the Texas Education Code, §12.16, which authorizes the State Board of Education to promulgate rules concerning the adoption and distribution of instructional materials.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448389      Criss Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Technology Services  
Texas Education Agency

Effective date: October 12, 1994

Proposal publication date: June 3, 1994

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

## Subchapter C. Local Operations

- 19 TAC §§67.101, 67.104, 67.107, 67.110, 67.113

The new rules are adopted under the Texas Education Code, §12.16, which authorizes the State Board of Education to promulgate rules concerning the adoption and distribution of instructional materials.

### §67.104. Sample Copies of Instructional Materials for School Districts.

(a) Upon request by a school district and approval by the Central Education Agency, a publisher shall provide a school district textbook coordinator with one complete official sample of adopted instructional materials. Samples of electronic, visual, or auditory media may be provided in demonstration or representative format, provided that identical samples are provided to each school district. Official samples of instructional materials submitted for consideration shall not be provided to school districts before the State Board of Education (SBOE) adopts the materials.

(b) Publishers may provide additional samples to school districts. At the discretion of the publisher, additional samples may be demonstration or representative samples, provided that identical samples are provided to such school districts.

(c) All samples of instructional materials provided to school districts shall be labeled, "Sample Copy-Not for Classroom Use."

(d) Samples supplied to school districts shall be provided and distributed at

the expense of the publisher. No state or local funds shall be expended to purchase, distribute, or ship sample materials. The state does not guarantee return of sample instructional materials.

### §67.107. Adoption of Instructional Materials by School Districts.

(a) The jurisdiction for each independent school district rests with the board of trustees and the superintendent of schools of the district.

(b) After the State Board of Education (SBOE) adopts instructional materials, each district board of trustees shall appoint a local adoption committee composed of not fewer than five or more than 15 members. The official minutes of each board meeting at which the board appoints a local adoption committee must include a record of the names of persons appointed to serve on the committee.

(c) The board of trustees with the recommendation of the superintendent of schools shall make appointments to a local adoption committee. If the board of trustees rejects any recommendation, the superintendent shall present another recommendation in place of the one rejected.

(d) Each member of a local adoption committee must be a professional employee of the school district. The majority of the committee members must be classroom teachers. The superintendent of schools or the superintendent's designee shall serve as chair of the local adoption committee.

(e) The local adoption committee shall examine all instructional materials on the multiple lists adopted by the State Board of Education (SBOE), to select instructional materials from the lists for use in the school district, and to recommend its selections to the board of trustees for ratification.

(f) Each local adoption committee shall make its selections at a meeting of the committee held before the March meeting of the district board of trustees. If selections recommended by the committee are not ratified by the board of trustees, the committee shall make other selections at a meeting held as soon as possible following the meeting of the board of trustees at which any of the committee's selections were not ratified. A quorum of a local selection committee, consisting of at least a majority of the committee members, shall be present at any meeting at which selections are to be made.

(g) If the board of trustees, by majority vote, fails to ratify any of the selections made by the local adoption committee, the reasons must be placed in the official board minutes, and the board of trustees shall direct the local selection committee to recommend another selection or selections

from the multiple lists and to report its selection to the board for ratification. This procedure shall continue until the board of trustees ratifies all selections of the local adoption committee. Final selections must be recorded in the minutes of the board of trustees.

(h) After ratification by the board of trustees, one copy of the local adoption committee's report, signed by the members of the committee who participated in the selection, the president of the board of trustees, and the secretary of the board, shall be sent by the superintendent to the Central Education Agency no later than April 1.

(i) Only instructional materials recommended by the local adoption committee and ratified by the board of trustees shall be furnished by the state for use in any school. Selections certified to the Central Education Agency shall be final and, therefore, shall not be subject to reconsideration during the original contract period or readoption contract periods covering the instructional materials selected.

(j) Except as otherwise provided by statute, requisitions submitted before the first day of school shall be approved based on the maximum number of students enrolled in the district during the previous school year and/or registered to attend the district during the next school year. Requisitions submitted after the first day of school shall be approved based on the actual number of students enrolled in the district when the requisition is submitted. If two or more titles are selected from a multiple list, requisitions may be made for a combined total of the selected titles.

(k) Instructional materials requisitioned by and delivered to a school district shall be continued in use during the contract period or periods of the materials. A school district may not return copies of one title to secure copies of another title on the same multiple list.

(l) High school instructional materials may be distributed to middle school or junior high school pupils enrolled in high school classes.

(m) If a selection was not made from a multiple list in a prior adoption, the current local adoption committee may select such instructional materials if the subjects are to be taught in the school during the ensuing term.

(n) Adopted instructional materials shall be supplied to a pupil in special education classes as appropriate to the level of the pupil's ability and without regard to the grade for which the instructional material is adopted or the grade in which the pupil is enrolled.

(o) School districts shall not be reimbursed from state funds for expenses incurred in local handling of textbooks.



(p) Selection and use of ancillary materials provided by publishers in accordance with §67.4(b) of this title (relating to Instructional Materials Not Adopted by the State Board of Education) is at the discretion of local boards of trustees.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448383

Crisis Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Technology Services  
Texas Education Agency

Effective date: October 12, 1994

Proposal publication date: June 3, 1994

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

## Subchapter D. Special Instructional Materials

### • 19 TAC §67.121, §67.124

The new rules are adopted under the Texas Education Code, §12.16, which authorizes the State Board of Education to promulgate rules concerning the adoption and distribution of instructional materials.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448384

Crisis Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Technology Services  
Texas Education Agency

Effective date: October 12, 1994

Proposal publication date: June 3, 1994

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

## Special Textbooks

### • 19 TAC §67.131, §67.133

The repeals are adopted under the Texas Education Code, §12.16, which authorizes the State Board of Education to promulgate rules concerning the adoption and distribution of instructional materials.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448390

Crisis Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Technology Services  
Texas Education Agency

Effective date: October 12, 1994

Proposal publication date: June 3, 1994

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

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 56. Family Planning

On behalf of the State Medicaid Director and the Texas Department of Health (the department), the department adopts the repeal of §§56.503-56.511, 56.515, 56.518, 56.519, 56.522, and 56.523; new §§56.503-56.511, 56.515, 56.518, 56.519, 56.522, 56.523, and 56.525; and amendments to §§56.512-56.514, 56.516, 56.517, 56.520, and 56.521, concerning family planning standards (Titles V, X, XIX, and XX). Sections 56.504, 56.505, 56.509, 56.516, and 56.522 are adopted with changes to the proposed text as published in the April 1, 1994, issue of the *Texas Register* (19 TexReg 2261). The changes are the result of comments received. Sections 56.503, 56.506-56.508, 56.510-56.515, 56.517-56.521, and 56.523 are adopted without changes and will not be republished.

The repeals, amendments, and new sections are revisions to the standards of care and include more medically current standards of client care and clarify some of the original program requirements. The following topics are addressed: client assessment; criteria, such as health history, physical examination, and laboratory tests; education and counseling requirements; written informed consent; client scheduling; management of abnormal findings; the provision of contraceptive methods; specialty services, such as those for adolescents and pregnancy testing; required documentation; confidentiality; privacy; timeliness of services; protection from discrimination; voluntary client participation; client understanding; staff qualifications; staff development; emergency care; community participation/outreach/education; provider protocols; and quality assurance activities.

The following comments were received concerning the proposed repeals, amendments, and new sections.

COMMENT: Concerning §56.503(b)(1)(G), a commenter requested that the department delete the question under the social history required for female clients concerning her involvement in domestic violence. The commenter stated that such information is not a medical issue directly related to the provision of family planning services, seems to place an additional and unnecessary burden on health care workers, and is an invasion of the client's privacy.

RESPONSE: The department disagrees. Whether a client has a history or involvement in domestic violence may be relevant to the client's choice of contraceptive methods. Family planning services include a comprehensive assessment of both physical and social conditions. If the client describes such a history, the provider can discuss the situation with the client and offer the client a referral for supportive counseling or medical services, as the situation warrants. No changes were made as a result of the comment.

COMMENT: Concerning §56.503(b)(2)(A), a commenter requested that the department delete the requirement of measuring the client's height or to change the frequency to "initially only" for minors.

RESPONSE: The department disagrees. The height of an individual may suggest nutritional or hormonal abnormalities. It is medically appropriate to measure female height until five years post-menarche.

COMMENT: Concerning §56.503(b)(3)(D), a commenter requested that the department change the frequency of the requirement of performing a urinalysis for sugar and protein from "initially for all clients and as indicated thereafter" to "only as indicated."

RESPONSE: The department disagrees. Family planning services are quite frequently the only source of health screening or primary care clients receive. It is medically appropriate to screen this high-risk population with an initial urinalysis for sugar and protein and annually thereafter as indicated by history or physical exam.

COMMENT: Concerning §56.504(b)(3), a commenter requested that the department retain the current rule requiring that, in method-specific education and counseling, the client must be given verbal and written instructions about obtaining medical care in a medical emergency involving the contraceptive, including a 24-hour telephone number of a facility providing emergency services.

RESPONSE: The department agrees and has revised the language in §56.504(a) (5), to include appropriate instructions.

COMMENTS: Concerning §56.505(1), several commenters stated that only parents should be allowed to consent for a minor to receive family planning services. Commenters objected to the proposed new wording that states "Neither spousal nor parental consent may be requested or required". Some of the same commenters further stated that the proposed new rule conflicts with the Texas Family Code, which they contend prohibits a minor from receiving family planning services without parental consent.

RESPONSE: The department disagrees. Although current Texas law does not permit minors to receive some medical treatment without parental consent, enforcement of a total prohibition on the receipt of family planning services would be an unconstitutional infringement of a minor's right to privacy under decisions by several federal courts. However, the department did not intend to preclude providers from encouraging minors to discuss their family planning needs with a parent. Section 56.505(1) has been revised to

state that "Only the client (not a parent, spouse, or any other individual) may consent."

**COMMENTS:** Concerning §56.509(b)(3), several commenters stated that adolescents should be encouraged to discuss their family planning needs with a parent instead of discussing them with someone outside the family. The commenters requested that the current rule be retained, which states that "counseling also prepares them (adolescents) to discuss their family planning needs with family members if they choose to do so."

**RESPONSE:** The department agrees. The department did not intend to exclude either family members or parents from the sphere of those with whom an adolescent may wish to discuss such matters. The proposed rule substitutes the words "trusted or significant adult" for "family members" in the current rule. Studies have shown that about half of teens who receive family planning from a clinic, have already discussed their family planning needs with a parent. The department believes that parents should be the primary person to advise the adolescent, when possible. When the adolescent cannot or will not discuss these matters with a parent, the adolescent still should be encouraged to seek advice from a trusted or significant adult. Therefore, the department adopts the following revised wording for §56.509(b)(3): "counseling for adolescents encourages them to discuss their family planning needs with a parent, an adult family member, or other trusted adult."

**COMMENTS:** Concerning §56.510(d)(2)(C), several commenters stated that, when a minor is pregnant, the option of abortion should not be discussed with her without parental consent. Some commenters stated that the option of abortion should not be discussed with pregnant adolescents at all and that they should be directed to discuss the matter with a parent. The commenters further stated that such counseling for an unintended pregnancy by family planning staff may not be non-directive, because the family planning agencies that provide such counseling are the same ones that perform abortions. The commenters stated that they believe it is a conflict of interest for a family planning agency which provides abortion services to provide non-directive counseling that includes abortion as an option. Some commenters further stated that their tax dollars should not be used to fund abortions or abortion counseling.

**RESPONSE:** The department disagrees. The department believes it would be medically unethical, when counseling an individual for an unintended pregnancy, to exclude information on any of the legal medical options available. Furthermore, Title X Family Planning Program Guidelines require that pregnant women requesting information on options for the management of an unintended pregnancy must be given non-directive counseling on all the options (including abortion), and referral upon request. No abortion procedures are provided with the department's family planning funds. Furthermore, the department has never been made aware of nor found any evidence during its periodic monitoring visits and activities that any family planning provider has engaged in a conflict of

interest with regard to abortion services. No change was made as a result of the comments.

**COMMENT:** Concerning §56.516(b), a commenter requested that the department delete "sexual orientation and medical condition" from the proposed rule because sexual orientation is not covered under the federal or state statutes as a basis for protection from discrimination, and that "medical condition" is already covered by the Americans with Disabilities Act (ADA) of 1990.

**RESPONSE:** The department agrees that sexual orientation is not covered under federal or state statutes as a basis for protection from discrimination. Therefore, the department adopts §56.516(b) with removal of this language. However, the department will not allow discrimination based upon sexual orientation in any of the agencies which it funds. The department also agrees that the ADA adequately covers nondiscrimination for medical conditions and adopts revised §56.516(b) by deleting that language.

**COMMENT:** Concerning §56.522, a commenter requested that the department retain the current rule regarding Community Participation, because it ensures that the family planning agency will involve the community in the development, implementation, and promotion of the agency's services.

**RESPONSE:** The department agrees and has revised §56.522.

The following submitted comments in support of the proposed rules: Honorable Sherri Greenberg, Texas House of Representatives; American Civil Liberties Union, Texas; Women's Issues Network; Greater Dallas Coalition for Reproductive Freedom; Texas Family Planning Association; Community Council of South Central Texas; Planned Parenthood Association of Lubbock, Inc.; Hill Country Community Action Association, Inc.; Family Planning of San Angelo, Inc.; Life Planning Health Services; Reproductive Services; Community Action, Inc. of Hayes, Caldwell, and Blanco Counties; Bexar County Hospital District; Planned Parenthood Assoc. of Cameron & Willacy; Planned Parenthood of San Antonio and South Central Texas; Panhandle Planned Parenthood; Planned Parenthood of Houston and Southeast Texas, Inc.; Planned Parenthood of Central Texas; Planned Parenthood of Austin; Planned Parenthood of North Texas, Inc.; Planned Parenthood of Dallas and Northeast Texas.

The following submitted comments in opposition to certain sections of the proposed rules: Honorable Steve Ogden; Texas Conservative Coalition; Texas Right To Life Committee, Inc.; Greater Austin Right To Life.

#### Subchapter E. Joint TDH/DHS Family Planning Agency Provider Standards (Titles V, X, XIX, and XX)

- 25 TAC §§56.503-56.511, 56.515, 56.518, 56.519, 56.522, 56.523

The repeals are adopted under §12.001(b) of the Health and Safety Code, §32.021 of the Human Resources Code, and Texas Civil

Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the Title XIX Family Planning Program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448270

Susan K. Steeg  
General Counsel, Office of  
General Counsel  
Texas Department of  
Health

Effective date: October 10, 1994

Proposal publication date: April 1, 1994

For further information, please call: (512) 458-7736

#### Subchapter E. Family Planning Agency Standards (Titles V, X, XIX, and XX)

- 25 TAC §§56.503-56.511, 56.515, 56.518, 56.519, 56.522, 56.523, 56.525

The new sections are adopted under §12.001(b) of the Health and Safety Code, §32.021 of the Human Resources Code, and Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the Title XIX Family Planning Program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

#### §56.504. Education and Counseling.

(a) Initial client education. Every new client requesting contraceptive services or family planning medical services must be provided initial client education either verbally, in writing, or by audio/visual materials. Over-the-counter contraceptive methods may be provided before the client receives the initial client education but must be accompanied by written instructions on correct use. The following initial client education content may vary according to the educator's assessment of the client's current knowledge:

(1) general benefits of family planning services and contraception;

(2) information on male and female basic reproductive anatomy and physiology;

(3) information regarding particular benefits and potential side effects and complications of all available contraceptive methods;

(4) information concerning all of the clinic's available services, the purpose and sequence of clinic procedures, and routine schedule of return visits;

(5) information regarding medical emergencies and where to obtain emergency services on a 24-hour basis;

(6) breast self-examination rationale and instruction unless provided during physical exam (for females); and

(7) information on HIV/STD infection and prevention and safer sex discussion.

(b) Post-assessment counseling. There must be a discussion of the findings from the client's history, physical exam and lab tests. Information regarding the recommended schedule of return visits must be discussed. If a new contraceptive method is initiated, method-specific counseling must be provided and include at least:

(1) verbal and written instructions for correct use of the method and self-monitoring;

(2) information regarding the method's mode of action, safety, benefits and effectiveness;

(3) information regarding risks, potential side effects and complications of the method and what to do if they occur;

(4) a back up method review when appropriate and instructions on the correct use; and

(5) a demonstration of appropriate insertion and removal of diaphragms or cervical caps by the client at the time of the fitting.

(c) Preconceptional counseling. Clients who may become pregnant and whose assessment indicates the potential for a high-risk pregnancy must receive counseling regarding the modification/reduction of the risk(s).

(d) Education counseling. Other client education and/or referral must be provided as indicated, based on the client assessment.

**§56.505. Written Informed Consent.** The client's general consent must be obtained for receipt of medical services and an informed consent must be obtained for receipt of a prescriptive or surgical contraceptive method. A consent form must be obtained whenever a client undergoes a reinsertion

procedure or begins a new form of prescriptive contraception. The following standards apply.

(1) Only the client (not a parent, spouse, or any other individual) may consent to her/his contraceptive care.

(2) The client's consent must be voluntary.

(3) The client's consent must be in writing.

(4) The client's consent for a prescriptive or surgical method must be obtained before provision of the method.

(5) If the client does not understand the language of the consent form, it must be interpreted. Consent information must be effectively communicated to every client including those who are blind, deaf, or who have other disabilities.

(6) The consent form for contraception must contain a statement that the client has been counseled, and has received appropriate information about the chosen method.

(7) If sterilization services using federal funds are provided or arranged, the federal sterilization consent guidelines must be followed.

**§56.509. Family Planning Services for Adolescents.**

(a) Adolescents age 17 and younger must be provided counseling and medical services that meet their special needs.

(b) The provider must ensure that:

(1) appointment schedules are flexible enough to accommodate immediate access for adolescents requesting services;

(2) counseling for adolescents includes information on use of all medically approved birth control methods including abstinence;

(3) counseling for adolescents encourages them to discuss their family planning needs with a parent, an adult family member, or other trusted adult;

(4) for the adolescent electing a non-prescriptive method, full participation in medical procedures is encouraged but may be deferred by the client; and

(5) the adolescent is assured that all services are confidential and that any necessary follow-up contact will also protect the client's privacy.

**§56.522. Community Participation/Outreach/Education.** The provider must provide community education to inform the public of its purpose, to disseminate basic family planning knowledge, to enlist community support, and to attract potential cli-

ents. The provider must provide, to the maximum extent feasible, an opportunity for participation in the development, implementation, and evaluation of the family planning program by persons broadly representative of all significant elements of the population to be served, and by others in the community knowledgeable about the community's needs for family planning services.

**§56.525. Quality Assurance.** The provider must have a written quality assurance plan which outlines a systematic approach to assess and monitor services provided and to correct problems identified in the assessment. The plan must include at least the following activities to occur at least annually:

(1) formalized patient record review/audit;

(2) staff performance review;

(3) facility review;

(4) formalized patient complaint process; and

(5) systematic review and follow-up for adverse patient outcomes.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448268

Susan K. Steeg  
General Counsel, Office of  
General Counsel  
Texas Department of  
Health

Effective date: October 10, 1994

Proposal publication date: April 1, 1994

For further information, please call: (512) 458-7236

◆ ◆ ◆  
• 25 TAC §§56.512-56.514, 56.516, 56.517, 56.520, 56.521

The amendments are adopted under §12.001(b) of the Health and Safety Code, §32.021 of the Human Resources Code, and Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the Title XIX Family Planning Program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

**§56.516. Protection Against Discrimination.**

(a) (No change.)

# 1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 5	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6
68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
74 Tuesday, October 4	Wednesday, September 28	Thursday, September 29