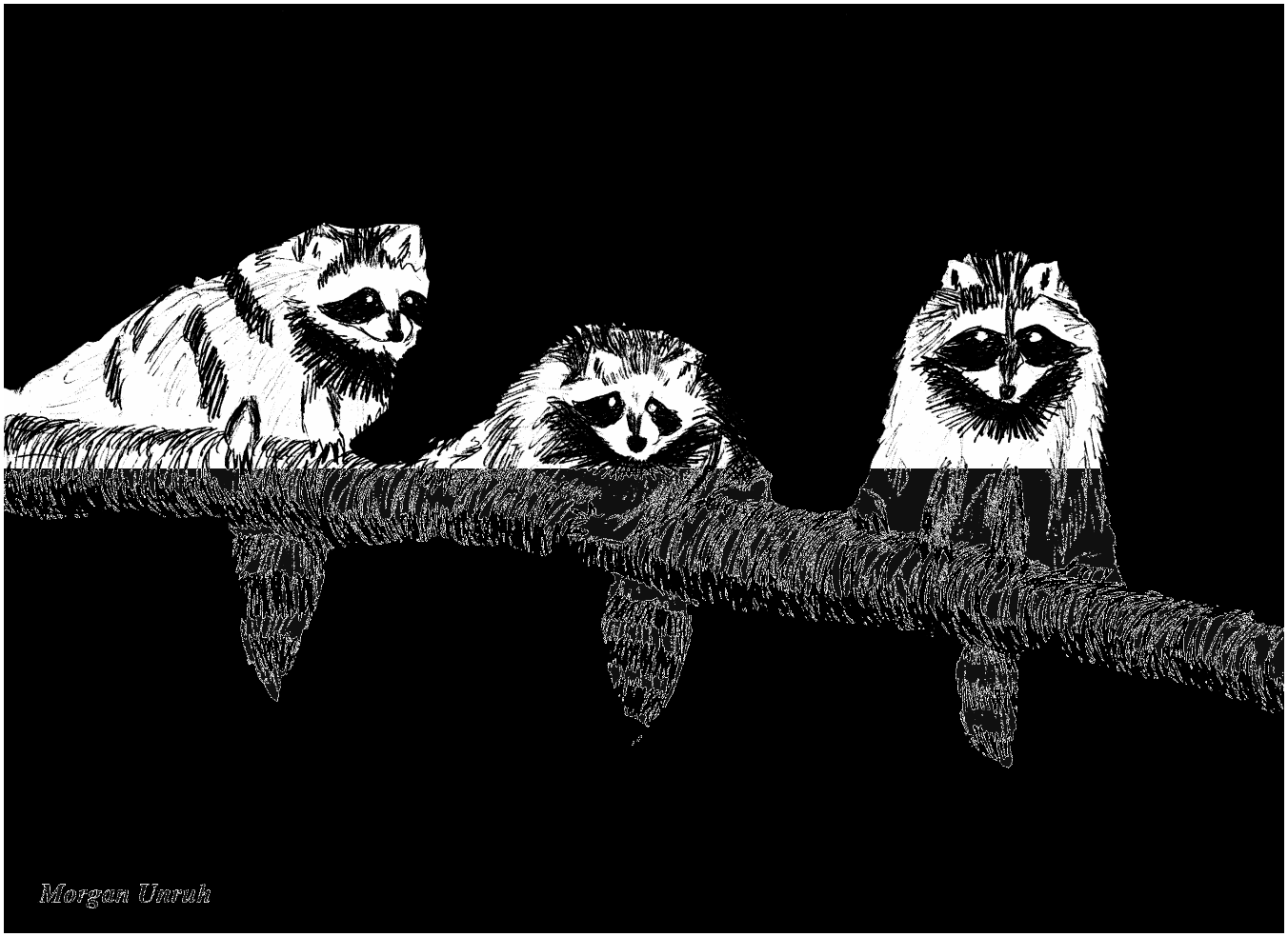
TEXAS REGISTER

Volume 31 Number 45 *November 10, 2006* *Pages 9089 - 9422*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
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IN THIS ISSUE

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

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

Appointments

Appointments for October 23, 2006

Appointed as Chief Justice of the 8th Court of Appeals for a term until the next General Election and until his successor shall be duly elected and qualified, David Wellington Chew of El Paso. Justice Chew is replacing Chief Justice Richard Barajas who resigned.

Rick Perry, Governor

TRD-200605904

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THE ATTORNEY GENERAL

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

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

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

Request for Opinions

RQ-0541-GA

Requestor:

The Honorable Al Edwards

Chair, Committee on Rules and Resolutions

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Tax status of Juneteenth USA, a 501(c)(3) charitable organization (Request No. 0541-GA)

Briefs requested by November 27, 2006

RQ-0542-GA

Requestor:

The Honorable Dennis Bonnen

Chair, Committee on Environmental Regulation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a hospital district to have a private imaging company in a district hospital facility and to manage the imaging business (Request No. 0542-GA)

Briefs requested by November 27, 2006

RQ-0543-GA

Requestor:

The Honorable James L. Keffer

Chair, Committee on Ways and Means

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a board member of a metropolitan transit authority may simultaneously serve as the acting city manager of a municipality located within the transit service area (Request No. 0543-GA)

Briefs requested by November 27, 2006

RQ-0544-GA

Requestor:

The Honorable Dan W. Heard

Calhoun County Criminal District Attorney

Post Office Box 1001

Port Lavaca, Texas 77979

Re: Whether a navigation district may enact a tax freeze resolution to limit taxes imposed on the homestead of persons with disabilities or persons at least 65 years of age (Request No. 0544-GA)

Briefs requested by November 27, 2006

RQ-0545-GA

Requestor:

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether a county medical examiner may recover costs from a tissue procurement organization that uses the medical examiner's facility and resources (Request No. 0545-GA)

Briefs requested by November 30, 2006

RQ-0546-GA

Requestor:

Sandra Jensen, D.C., President

Texas Board of Chiropractic Examiners

333 Guadalupe, Suite 3-825

Austin, Texas 78701-3942

Re: Constitutionality of the definition of "surgical procedure" under section 201.002(1)(4), Occupations Code, as applied to chiropractors (Request No. 0546-GA)

Briefs requested by December 1, 2006

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

TRD-200606026

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 31, 2006

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Opinions

Opinion No. GA-0469

The Honorable Carole Keeton Strayhorn

Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Whether Federal Reserve notes are eligible as collateral for repurchase agreements under chapters 404 and 2256 of the Government Code-Clarification of Attorney General Opinion GA-0324 (2005) (RQ-0438-GA)

S U M M A R Y

Federal Reserve notes are eligible collateral for direct security repurchase agreements under sections 404.001, 404.024(b), 2256.009, and 2256.011 of the Government Code. Attorney General Opinion GA-0324 (2005) is modified to the extent that it provides that cash in the form of a government obligation is not eligible as collateral for direct security repurchase agreements.

Opinion No. GA-0470

Mr. Carlos A. Pereda, Jr.

Maverick County Auditor

Post Office Box 1246

Eagle Pass, Texas 78853-1246

Re: Whether a county participating in Operation Linebacker may use Justice Assistance Grant funds to pay its sheriff or a constable compensation, such as overtime, in addition to the salary appropriated in the existing county budget (RQ-0444-GA)

S U M M A R Y

In accordance with title 1, section 3.75(a)(3) of the Texas Administrative Code, a county may not use Justice Assistance Grant funds to compensate its sheriff or constable for overtime.

A constable may be paid an additional amount, including overtime, for serving as a deputy sheriff if the county budget provides overtime compensation for deputy sheriffs.

Opinion No. GA-0471

The Honorable Tim Curry

Tarrant County Criminal District Attorney

Justice Center

401 West Belknap

Fort Worth, Texas 76196-0201

Re: Whether a county that wishes to abandon a drainage easement or right-of-way should comply with Transportation Code section 251.058(b), Local Government Code section 263.002, or Local Government Code section 272.001 (RQ-0462-GA)

S U M M A R Y

For purposes of Transportation Code section 251.058(b), which automatically vests title to an abandoned public road in the abutting landowner, the phrase "public road" encompasses the roadway as well as (1) right-of-way that serves attendant public purposes of transportation of persons and property, communication, and travel, and (2) a drainage easement created to carry off water, the natural flow of which the roadway changed or diverted. Whether in a particular case a property interest is part of a public road for purposes of section 251.058(b) is a question of fact that must be resolved by the commissioners court in the first instance. Abandoned public road that is subject to Transportation Code section 251.058(b) may not be disposed of in accordance with section 263.002 or 272.001 of the Local Government Code.

Easements or rights-of-way that are not part of a public road under section 251.058(b) are likewise not highway rights-of-way that are subject to disposition under Local Government Code section 263.002. Such property interests must be disposed of under section 272.001 unless the county determines that a statute not considered here applies.

To the extent Letter Opinion 94-053 suggests that Local Government Code section 263.002 applies only to roads labeled as highways, not to county public roads generally, it is incorrect. See Tex. Att'y Gen. LO-94-053, at 4 n.4.

Opinion No. GA-0472

The Honorable Robert G. Neal, Jr.

Sabine County Attorney

Post Office Box 1783

Hemphill, Texas 75948

Re: Sabine County Hospital District's authority and duties (RQ-0466-GA)

S U M M A R Y

The Sabine County Hospital District, which intends to maintain an ambulance only for transporting patients between hospitals, is not required by law to dispatch its ambulances for emergency calls, even if there are no other ambulances operating within the District.

The District may provide financial incentives in a contract to induce a doctor to move to the District so long as the District finds that such an incentive is necessary for the direct accomplishment of a legitimate public purpose, that the District receives adequate consideration for its expenditure, and that appropriate controls are in place to assure that the public purpose will be carried out. Furthermore, the Professional Services Procurement Act, Government Code chapter 2254, which governs a hospital district's contract for professional services, requires that payment for services rendered under the contract be fair and reasonable, that they be consistent with and not higher than the recommended practices and fees published by the applicable professional associations, and that they not exceed any maximum provided by law. The act does not permit the contract to be competitively bid.

The District may meet under Government Code section 551.071 in a closed meeting to discuss legal issues raised in connection with the contract for the doctor's professional services. The District may not meet under Government Code section 551.087 in a closed meeting to deliberate economic development negotiations.

Opinion No. GA-0473

The Honorable Mike Fetter

Upshur County Criminal District Attorney

405 North Titus Street

Gilmer, Texas 75644

Re: Authority of a county commissioners court to appoint a county road administrator who is not a road engineer (RQ-0472-GA)

S U M M A R Y

Under section 252.304 of the Transportation Code, a commissioners court may employ a road administrator when it is in fact unable to hire a licensed engineer as county road engineer. A commissioners court has discretion, subject to judicial review, to determine in the first instance whether it is unable to employ a licensed engineer. The determination of whether a county commissioners court violates section 252.304 involves a consideration of facts and, therefore, is a question we must leave to the courts.

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

TRD-200606018
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 31, 2006

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 95. SHARE AND DEPOSITOR INSURANCE PROTECTION

SUBCHAPTER B. LIQUIDATING AGENTS

7 TAC §95.200

The Credit Union Commission proposes amendments to §95.200, concerning notice of taking possession. The amendments add a requirement that the Department notify the NCUA or the insuring organization when it takes possession of the property and assets of a credit union. The amendments also provide that the NCUA or the insuring organization is subrogated to all rights of the member up to the amount paid by the NCUA or the insuring organization to the member.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 19, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires a credit union to maintain share and deposit insurance protection for its members and depositors.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.410.

§95.200. Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights.

(a) The department shall give prompt notice to the NCUA or the applicable insuring organization whenever the commissioner takes possession of the property and assets of a respective federally-insured or participating credit union. The Department shall give further prompt notice whenever the commissioner determines to liquidate the property and assets of such federally-insured or participating credit union.

(b) If the commissioner finds that the closing of a credit union and the liquidation of the credit union's assets are in the public interest and the best interest of the credit union members, depositors, and creditors, the NCUA [~~National Credit Union Administration~~] or, alternatively, the insuring organization shall be appointed liquidating agent for the purpose of liquidation or the winding up of the affairs of the credit union.

(c) When any member's share or deposit account is paid, the NCUA or, alternatively, the insuring organization shall be subrogated to all rights of the member, up to the amount paid by the NCUA or the insuring organization to such member.

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

Filed with the Office of the Secretary of State on October 23, 2006.

TRD-200605767
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 837-9236

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7 TAC §95.205

The Credit Union Commission proposes new §95.205, concerning the liability of the state for a deficiency. The new rule clarifies that the state is not liable for the payment of any funds to a credit union by reason of any acts or omissions of the NCUA or an insuring organization. The rule further provides that the state is not liable for any deficiency of any credit union in the event the NCUA or insuring organization is unable to pay such deficiency.

The new rule is proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the new rule. There is no economic cost anticipated to credit unions or individuals for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 19, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The new rule is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires a credit union to maintain share and deposit insurance protection for its members and depositors.

The specific section affected by the proposed rule is Texas Finance Code, §15.410.

§95.205. State Not Liable for Any Deficiency.

Nothing in this chapter creates any liability upon this state for the payment of any funds to any credit union by reason of the acts or omissions of the NCUA or insuring organization, nor shall the state pay any deficiency of any credit union in the event the NCUA or insuring organization is unable to pay such deficiency.

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

Filed with the Office of the Secretary of State on October 23, 2006.

TRD-200605768
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 837-9236

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SUBCHAPTER C. GUARANTY CREDIT UNION

7 TAC §§95.300 - 95.302, 95.304, 95.305

The Credit Union Commission proposes amendments to §§95.300 - 95.302, 95.304, and 95.305 of Subchapter C, concerning Guaranty Credit Union. The Department is making minor changes to clarify the rules governing a guaranty credit union chartered by the state.

The amendments to §95.300, concerning the establishment of a share and deposit guaranty credit union, make it clear that prior to commencing business in this state a guaranty credit union must file a written application with the commissioner. The amendments also change the term chartering to incorporation.

Section 95.301, concerning the authority of a guaranty credit union, is also amended to change the language from charter to certificate of incorporation.

Section 95.302, concerning powers of a guaranty credit union, is amended to change the language from member credit union to participating credit union to avoid confusion with a natural person credit union.

Section 95.304, concerning capital contributions, membership investment shares and termination, is amended to add requirements for a guarantee fund maintained by a guaranty credit union and to further require each participating credit union to maintain a membership investment share with a guaranty credit union. The amendment defines what may be included in the guaranty fund. In addition the term member credit union is changed to participating credit union for consistency and clarification.

The amendment to §95.305, concerning the financial statements, accounting procedures, and reports for a guaranty credit union, changes the requirement for an actuarial study of the capital adequacy of the credit union from annually to at least once every three years and aligns it with the equivalent requirement for insuring organizations in Subchapter A.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Loar has also determined that for each year of the first five years the amended rules are in effect, the public benefits anticipated as a result of enforcing the amendments will be greater clarity and ease of use of the rules. There is no anticipated effect on small businesses as a result of adopting the amendments. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 19, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires a credit union to maintain share and deposit insurance protection for its members and depositors.

The specific section affected by the proposed amendments is Texas Finance Code, §15.410.

§95.300. Share and Deposit Guaranty Credit Union.

(a) The commissioner may authorize, with the advice and consent of the commission, the establishment of a share and deposit guaranty credit union. The charter shall be granted only on proof satisfactory to the commissioner that member credit union convenience and advantage will be promoted by the establishment of the guaranty credit union. In determining whether the convenience and advantage will be promoted, the commissioner shall consider:

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

(4) Whether the long-term financial condition of the entity would prejudice the interest of participating [member] credit unions;

(5) Whether the proposed officers, directors, and managers have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the guaranty credit union will operate in compliance with the law and that the long term success of entity is probable; and

(6) (No change.)

(b) Prior to commencing business in this state, a guaranty credit union is required to file a written application supported by such information and data as the commissioner may require to make the findings necessary to issue a certification of incorporation. The organizers bear the burden of proof to establish that the incorporation [chartering] of the guaranty credit union will promote credit union member convenience and advantage. The failure of an applicant to furnish required information, data, professional opinions, and other material is considered an abandonment of the application.

(c) The commissioner may require, for submission to the department of public safety, the name and fingerprints of any organizer, director or officer of any guaranty credit union.

(d) The commissioner may, in approving a guaranty credit union, impose such conditions as the commissioner [he] deems reasonable, necessary, or advisable in the public interest.

§95.301. Authority for a Guaranty Credit Union.

If a guaranty credit union is authorized, the commissioner shall issue a certificate of incorporation [charter] which shall provide that said guaranty credit union shall operate as a central credit union including share and deposit guaranty insurance protection for members subject to supervision, regulation, and examination by the department.

§95.302. Powers.

The guaranty credit union, pursuant to Texas Finance Code §15.410(b) and to the powers contained in Subtitle D, Title 3, Texas Finance Code, may:

(1) Purchase, hold, lease, receive, use, encumber, sell, exchange, transfer, lend, advance, convey, assign, give, grant, transmit, hypothecate, or dispose of property or funds of any description, nature, or kind or of any interest, rights, title, or privileges therein from or to any participating [member] credit union or any corporation, association, or person, provided that any gift, grant, or transfer of a similar nature shall be made only with the approval of the commissioner;

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

(4) Act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, custodian, or as depository for any money paid into the court for participating [member] credit unions;

(5) Accept funds or money for deposit by fiduciaries, trustees, or receivers if managing or holding funds on behalf of a participating [member] credit union;

(6) Accept funds or money for deposit by financial institutions, trust companies, or insurance companies, if membership or primary ownership of the institutions, associations, or companies is confined or restricted to or for the benefit of participating [member] credit unions or organizations of participating [member] credit unions, or if the institutions, associations, or companies are designed to serve or otherwise assist operations of participating [member] credit unions;

(7) Act as custodian of individual retirement accounts or of pension funds of participating [member] credit unions, or as trustee under pension and profit sharing plans of participating [member] credit unions;

(8) (No change.)

(9) Impress a lien or exercise its right of setoff on the deposits, dividends, and interest of any participating [member] credit union to the extent of any loans or other obligations due by the participating [member] credit union;

(10) Make or issue, with the approval of the commissioner, a guarantee or other form of written assurance to the appropriate person, association, corporation, or other entity which is reasonably necessary to facilitate the sale, conveyance, assignment, transfer, or other disposition of all or any part of the property or assets of a participating [member] credit union, and otherwise assist in the merger, consolidation, conservation, suspension, or liquidation of a participating [member] credit union upon the request and under the instruction of the commissioner;

(11) Advance funds, with or without interest, in accordance with agreed terms and conditions, to aid participating [member] credit unions to continue to operate and to maintain solvency or to maintain account balances with any financial institution in connection with the assumption of receivables from a participating [member] credit union, or to meet liquidity requirements;

(12) Purchase from a participating [member] credit union any equitable or other interest in its assets at book value or at some other value mutually agreed upon by such credit union [member] and the board of directors of the guaranty credit union, notwithstanding that either of such values may exceed the market value of the assets so purchased, and upon such terms and conditions as the board of directors of the guaranty credit union may determine, provided, however, that all such terms, conditions, agreements and values are approved in writing by the commissioner;

(13) Exercise any setoff or lien rights that a participating [member] credit union may have when the guaranty credit union is acting as conservator or liquidating agent for such credit union;

(14) Exercise rights of subrogation to the extent of all rights the depositors or shareholders may have against a participating [member] credit union to the extent of any payments made by the guaranty credit union to the depositors or shareholders of such credit union, including the right to receive the same dividends, as would have been payable to the depositor or shareholder;

(15) Raise any defense to the payment of a claim or an insured account which a participating [member] credit union could have raised, and when made, the actual payment of an insured account to any person by the guaranty credit union shall discharge the guaranty credit union to the same extent that payment to such person by the participating [member] credit union would have discharged it from liability for the insured account;

(16) Acquire a promissory note or other asset upon which a nonmember is liable, provided such acquisition is made, in the discretion of the guaranty credit union, to protect an inferior lien held by the guaranty credit union, a participating [member of the guaranty] credit union, or a member of a participating [member of the guaranty] credit union. Such acquisitions shall not be subject to the restrictions of §91.701 et. seq. of this title (relating to Loans);

(17) Enter into contracts of insurance or reinsurance, insuring in whole or in part its contractual guarantees to participating [member] credit unions and any other insurance or bonding company

contracts necessary or advisable in the conduct of its business, provided a guaranty credit union shall not assume any risks from another insurer; and

(18) (No change.)

§95.304. Capital Contributions; [~~Accounting for~~] Membership Investment Shares; Termination.

(a) A guaranty credit union shall establish and maintain a guarantee fund. The fund shall be maintained at a normal operating level as defined by the board of directors of the guaranty credit union and approved by the commissioner, however, the normal operating level shall at all times not be less than one percent of the aggregate share capital of participating credit unions. The fund of the guaranty credit union shall be comprised of the following:

(1) The membership investment shares of each participating credit union;

(2) Retained and undivided earnings; and

(3) Any reserves required by the commissioner.

(b) Each participating credit union shall contribute to and maintain with a guaranty credit union a membership investment share, in an amount equal to at least one percent of its insured shares and deposits. Each participating credit union's account shall be adjusted at least annually to reflect changes in the participating credit union's aggregate insured shares and deposits in accordance with procedures adopted by the guaranty corporation's board of directors.

(c) Membership investment shares of participating [~~member~~] credit unions shall be established as pledged assets with appropriate explanatory footnotes on the books and records and in the financial statements of the participating [~~member~~] credit unions. The guaranty credit union may utilize all of the assets of the guaranty credit union and accordingly reduce the membership investment shares of all participating [~~member~~] credit unions, as required, at [~~in~~] the discretion of its board of directors, and utilize such assets in accordance with the powers of the guaranty credit union as set out in these rules.

§95.305. Audited Financial Statements; Accounting Procedures; Reports.

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

(c) At a minimum, once every three years the [~~The~~] annual audit of the guaranty credit union shall include an actuarial study of the capital adequacy of the credit union.

(d) (No change.)

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

Filed with the Office of the Secretary of State on October 23, 2006.

TRD-200605769
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 837-9236

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7 TAC §95.306

(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 Credit Union Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Credit Union Commission proposes to repeal §95.306, concerning requirements of a member credit union. This rule is being moved to a new Subchapter D, Disclosure for Non-Federally Insured Credit Unions and rewritten to give credit unions guidance as to the contents and locations of the notices of the insurance status of their accounts.

The repeal of the rule is proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the rule is repealed there will be no fiscal implications for state or local government as a result of repealing the rule.

Ms. Loar has also determined that for each year of the first five years the rule is repealed, the public benefits anticipated as a result of repealing the rule will be ease of use by credit unions and the public with the new rule replacing the repealed rule. There is no anticipated effect on small businesses as a result of repealing the rule. There is no economic cost anticipated to credit unions or individuals for repealing the rule.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 19, 2007, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The repeal is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires credit unions to maintain share and deposit insurance protection for credit union members and depositors.

The specific section affected by the proposed repeal is Texas Finance Code, §15.410.

§95.306. Requirements of Member Credit Unions.

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

Filed with the Office of the Secretary of State on October 23, 2006.

TRD-200605770
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 837-9236

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7 TAC §95.310

The Credit Union Commission proposes new §95.310, concerning fees and charges. The new rule clarifies that a guaranty credit union pays the same fees as a natural person credit union. The new rule also provides that the Department may engage

professionals to perform the examination or investigation of the guaranty credit union at the expense of the credit union.

The new rule is proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the new rule. There is no economic cost anticipated to credit unions or individuals for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 19, 2007, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The new rule is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires credit unions to maintain share and deposit insurance.

The specific section affected by the proposed new rule is Texas Finance Code, §15.410.

§95.310. Fees and Charges.

(a) A guaranty credit union shall pay the fees prescribed in §97.113 of this title (relating to Operating Fees) in the same manner as any other credit union chartered under the Act.

(b) At the sole discretion of the commissioner, the department may engage professionals to perform and complete any aspect of an examination or investigation. The reasonable expenses and compensation of such professionals shall be paid by the guaranty credit union.

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

Filed with the Office of the Secretary of State on October 23, 2006.

TRD-200605773
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 837-9236

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SUBCHAPTER D. DISCLOSURE FOR NON-FEDERALLY INSURED CREDIT UNIONS

7 TAC §95.400

The Credit Union Commission proposes new §95.400, concerning the notice requirements for non-federally insured credit unions. The rule specifies that non-federally insured credit unions shall give appropriate notice of the insurance status of its share and deposit accounts. The new rule also prescribes the contents and locations of the notice and provides that notice of the insurance status must be given to members at the time a share or deposit account is established.

The new rule is proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the new rule. There is no economic cost anticipated to credit unions or individuals for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 19, 2007, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The new rule is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires credit unions to maintain share and deposit insurance.

The specific section affected by the proposed new rule is Texas Finance Code, §15.410.

§95.400. Requirements of Participating Credit Unions.

(a) Every participating credit union shall give appropriate notice of the insurance status of its accounts printed in a manner acceptable to the commissioner. This notice shall be posted at all public entrances at each office and service facility (excluding shared branching facilities) and continuously displayed at each station or window (excluding automatic teller machines and point of sale terminals) where funds or deposits are normally received. At a minimum, the notice shall clearly and conspicuously disclose the following:

(1) That members' accounts are insured by an insuring organization;

(2) The name of the insuring organization;

(3) The extent of the insuring organization's share and deposit insurance protection; and

(4) That accounts are not insured or guaranteed by any government or government-sponsored agency.

(b) At the time an account is established, a participating credit union shall provide written notice to its members that the share or deposit account will be cooperatively insured or guaranteed by an insuring organization. The notice shall include a conspicuous statement that discloses that member accounts are not insured or guaranteed by any government or government-sponsored agency.

(c) The noticed required by subsection (a) of this section shall also be displayed on a participating credit union's web site home page and any other page where it accepts deposits or opens accounts. The dimensions and font size of the notice required by this paragraph must be of a reasonable size and clearly legible.

(d) Every participating credit union shall also include, in any literature, advertising, or other marketing materials related to joining the credit union, or soliciting funds for a share or deposit account, a conspicuous statement that discloses that member accounts are not insured or guaranteed by any government or government-sponsored agency.

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

Filed with the Office of the Secretary of State on October 23, 2006.

TRD-200605774
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 837-9236

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

The Office of Rural Community Affairs (Office) proposes amendments to 10 Texas Administrative Code §§255.1 - 255.16, and §255.41 for the Community Development Block Grant (CDBG) non-entitlement area funds.

The amendments are being proposed to change Texas Community Development Program (TCDP) to Texas Community Development Block Grant Program (TxCDBG). Furthermore, the amendments are being proposed to specify criteria contained within the 2007 Action Plan.

Charles S. (Charlie) Stone, Executive Director of the Office, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Mr. Stone also has determined that for each year of the first five-year period the amendments are in effect, the public benefit as a result of enforcing the amended sections will be the equitable allocation of CDBG non-entitlement are funds to eligible units of general local government in Texas. There will be no cost to small business or individuals as a result of the proposed amendments.

Comments on the proposal may be submitted to Mark Wyatt, Program Manager, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §§255.1 - 255.16

The amendments are proposed under the §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

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

§255.1. General Provisions.

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

(1) Applicant--A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the Office or to the Texas Department of Agriculture (TDA).

(2) Application--A written request for Texas Community Development Block Grant Program TxCDBG [~~TCDP~~] funds in the format required by the Office or by the TDA for Texas Capital Fund TCF applications

(3) Community Development Block Grant nonentitlement area funds--The funds awarded to the State of Texas pursuant to the Housing and Community Development Act of l974, Title I, as amended, (42 United States Code §§5301 et seq.) and the regulations promulgated thereunder in 24 Code of Federal Regulations Part 570.

(4) Community--A unit of general local government.

(5) Contract--A written agreement, including all amendments thereto, executed by the Office, or by the TDA, and contractor which is funded with community development block grant nonentitlement area funds.

(6) Contractor--A unit of general local government with which the Office or the TDA has executed a contract.

(7) Office--The Office of Rural Community Affairs.

(8) Local government--A unit of general local government.

(9) Low-and moderate-income person--A member of a family which earns less than 80% of the area median family income, as defined under the United States Department of Housing and Urban Development §8 Assisted Housing Program.

(10) Nonentitlement area--An area which is not a metropolitan city or part of an urban county as defined in 42 United States Code, §5302.

(11) Poverty--The current official poverty line established by the Director of the Federal Office of Management and Budget.

(12) Primary beneficiary--A low or moderate income person.

(13) Regional review committee--A regional community development review committee, one of which is established in each of the 24 state planning regions established by the governor pursuant to Texas Local Government Code, §391.003.

(14) Slum or blighted area--An area which has been designated a state enterprise zone, or an area within a municipality or county that is detrimental to the public health, safety, morals, and welfare of the municipality or county because the area:

(A) has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons;

(B) is prone to high population densities and overcrowding due to inadequate provision for open space;

(C) is composed of open land that, because of its location within municipal or county limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or

(D) has conditions that exist due to any of the causes enumerated in subparagraphs (A) - (C) of this paragraph or any combination of those causes that:

(i) endanger life or property by fire or other causes; or

(ii) are conducive to:

(I) the ill health of the residents;

(II) disease transmission;

(III) abnormally high rates of infant mortality;

(IV) abnormally high rates of juvenile delinquency and crime; or

(V) disorderly development because of inadequate or improper platting for adequate residential development of lots, streets, and public utilities.

(15) Slum or blight, spot basis--A building which has been declared as a slum or blight and has multiple and unattended building code violations, and qualifies as slum or blighted on a spot basis under local law.

(16) State review committee--The State Community Development Review Committee established pursuant to Texas Government Code, §487.353.

(17) Unemployed person--A person between the ages of 16 and 64, inclusive, who is not presently working but is seeking employment.

(18) Unit of general local government--An entity defined as a unit of general local government in 42 United States Code §5302(a)(1), as amended.

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TxCDBG [~~TCDP~~] to eligible units of general local government in the following program areas:

(1) community development fund and community development supplemental fund;

(2) Texas Capital fund. The Texas Capital Fund TCF is administered by the TDA under an interagency agreement with the Office. Applications for the TCF shall be submitted to the TDA.

(3) planning/capacity building fund;

(4) disaster relief fund;

(5) urgent need fund;

(6) colonia fund;

(7) Young v. Martinez fund (discontinued after 2003 program year);

(8) housing fund (discontinued after 2004 program year);

(9) small towns environment program fund;

(10) microenterprise fund (program income);

(11) small business fund (program income);

(12) section 108 loan guarantee pilot program;

(13) community development supplemental fund;

(14) non-border colonia fund.

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per TxCDBG [~~TCDP~~] fund, as outlined in subsection (b) of this section, on its own behalf, or as a participant in a multi-jurisdictional application, per funding cycle (except as specified for the TCF, community development fund, housing fund, colonia fund, and small towns environment program fund).

(A) A city may submit a single jurisdiction application that includes beneficiaries located within the extraterritorial jurisdiction of the city. However, the applicant must document that each activity benefiting persons located in its extraterritorial jurisdiction is meeting its community and housing development needs, including the needs of low and moderate income persons. A city cannot submit a single jurisdiction application that includes beneficiaries located inside the corporate city limits and outside of the city's extraterritorial jurisdiction. In this instance, the city and county in which the beneficiaries outside of the city's extraterritorial jurisdiction are located must submit the project as a multi-jurisdiction application.

(B) A county may submit an application on behalf of an incorporated city when the proposed application activities provide improvements to a public facility or service that is not owned or operated by the incorporated city and the persons benefiting from the application activities are located within the city's corporate city limits or the city's extraterritorial jurisdiction. If a county submits an application on behalf of an incorporated city, then the county and that city cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TxCDBG [~~TCDP~~] fund category.

(C) A county may submit a single jurisdiction application for a housing rehabilitation program that includes the rehabilitation of housing units in unincorporated areas and incorporated cities located in the county. The housing units that are rehabilitated under the county program must be located in unincorporated areas and in each incorporated city that is included as a participant in the county housing rehabilitation program. If a county submits a housing rehabilitation program application that includes the rehabilitation of housing units in incorporated cities, then the county cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TxCDBG [~~TCDP~~] fund category.

(D) An application from an eligible city or county for a project that would primarily benefit another city or county that was not meeting the TxCDBG [~~TCDP~~] application threshold requirements would be considered ineligible.

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the TxCDBG [~~TCDP~~] fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating com-

munities must be primarily accountable to the Office and the TDA, in instances where the TCF is accessed, for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TxCDBG [~~TCDP~~] requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified for the TCF and single jurisdiction applications described in paragraph (1)(A) - (D) of this subsection).

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the TxCDBG [~~TCDP~~]. An exception to this requirement is Hidalgo County, an entitlement county, which is eligible for the colonia fund. Another exception to this requirement is that entitlement areas located in disaster recovery initiative eligible counties are eligible locations for disaster recovery initiative funds.

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §5301 et seq.) is ineligible for funding under the TxCDBG [~~TCDP~~].

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current TxCDBG [~~TCDP~~] application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses(including smoke testing to determine the overall scope and location of the project work activities); pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a TxCDBG [~~TCDP~~] contract; prisons/detention centers; government supported facilities; and racetracks.

(2) The following activities and/or uses are specifically ineligible under the TCF: monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefiting business or its owners and related parties for expenditures. Educational institutions, including but not limited to colleges and/or universities, and governmental entities may not qualify as the benefiting business. Ineligible infrastructure activities/improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements designed and/or built for a single, special or limited use or purpose are an ineligible use of funds. Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business.

(f) Citizen Participation.

(1) Public hearing requirements. For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Office and, in the case of TCF hearings, by the TDA, in lieu of publication of notices. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.

(B) Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries, with accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing.

(C) When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, an applicant or contractor shall provide an interpreter to accommodate the needs of the non-English speaking residents.

(2) Application requirements. Prior to submitting a formal application, an applicant for TxCDBG [~~TCDP~~] funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to the preparation of its application and a public notice shall be published in a newspaper having general circulation in the city or county notifying the public of the availability of the application for public review prior to submitting its completed application to the Office and, in the case of TCF applications, to the TDA. The requirements described in this subparagraph are not applicable to applications submitted under the housing infrastructure fund.

(B) For an application submitted for housing infrastructure fund assistance, an applicant must hold two public hearings. At least one public hearing shall be held prior to the preparation of the application and a second public hearing shall be held prior to submission of the application.

(C) An applicant shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the proposed use of funds for a period of three years or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearing must include a discussion with citizens on the development of housing and community development needs, the amount of funding available, all eligible activities under the TxCDBG [~~TCDP~~], the plans of the applicant to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TxCDBG [~~TCDP~~] funds, and the use of past TxCDBG [~~TCDP~~] contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local or area Public Housing Authority, the local or area Health and Human Services office, and the local or area Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location, and topics to be covered at the first public hearing. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing. For submission of a housing infrastructure fund application, these requirements must be followed for the first public hearing.

(E) The notice announcing the availability of the application for public review must be published five days prior to the submission of the application and the published notice must include the fund category for which the application is submitted, the amount of funds requested, a description of the application activities, the location or locations of the application activities, and the location and hours when the application is available for review.

(F) The second public hearing for a housing infrastructure fund application must include a discussion with citizens on the proposed project, including the locations and the project activities, the amount of funds being requested, and the estimated amount of funds proposed for activities that will benefit low and moderate income persons. The published notice for this public hearing must include the location and hours when the application is available for review.

(G) Any public hearing held prior to submission of the application must be held after 5 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(3) Contractor requirements.

(A) A contractor must hold a public hearing concerning any substantial change, as determined by the Office and, in the case of TCF program changes, by the TDA, proposed to be made in the use of TxCDBG [~~TCDP~~] funds from one eligible activity to another.

(B) Upon completion of its contract, the contractor shall hold a public hearing to review its program performance, including the actual use of the funds provided under the contract.

(C) A contractor shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the actual use of funds for a period of three years after the contract is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearings must be held after 5 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(4) Complaint procedures. Applicants and contractors must maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Citizens must be made aware of the location and hours at which they may obtain a copy of the written procedures.

(5) Technical assistance. An applicant shall provide technical assistance to groups representative of persons of low-and moderate-income that request such assistance in developing proposals for the use of TxCDBG [~~TCDP~~] funds. The level and type of assistance shall be determined by the applicant based upon the specific needs of its residents.

(g) Appeals. An applicant for funding under the TxCDBG [~~TCDP~~] may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by Office staff and, in the case of TCF applications, by TDA staff, resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the Office and, in the case of TCF applications, by the TDA due to human or computer error.

(C) Other procedural error. The application is not processed by the Office and, in the case of TCF applications, by the TDA, in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §255.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the TxCDBG [~~TCDP~~] of the Office no later than 30 days after the date the announcement of community development fund, community development supplemental fund and planning/capacity building fund contract awards is published in the Texas Register. In addition, timely appeals not submitted in writing at least five working days prior to the next regularly scheduled meeting of the state review committee will be heard at the subsequent meeting of the state review committee. The Office staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the state review committee at its next regularly scheduled meeting. The state review committee will make a final recommendation to the executive director of the Office. The decision of the executive director of the Office is final. If the appeal concerns a TCF application, the appeal must be submitted in writing to the TDA no later than 30 days following the date of the notification letter of the denial. If the appeal concerns a disaster relief fund or urgent need fund application, the appeal must be submitted in writing to the Office no later than 30 days following the date of the notification letter of the denial. If the appeal concerns a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, housing fund, colonia fund or Young v. Martinez fund application, the appeal must be submitted in writing to the Office no later than 30 days after the date the announcement of contract awards is published in the Texas Register. The staff of either the Office or the TDA, when appropriate, evaluates the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the appropriate executive director. The executive director, of the agency with which the appeal was filed, then considers the appeal within 30 days and makes the final decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning a community development fund or planning/capacity building fund application is rejected, the office notifies the applicant of its decision, including the basis for rejection after the meeting of the state review committee at which the appeal was considered. If the appeal concerns a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, Young v. Martinez fund, TCF, housing fund, colonia fund, disaster relief fund, small towns environment program fund, or urgent need fund application, the applicant will be notified of the decision made by the appropriate executive director within ten days after the final determination by the executive director.

(4) Appeals not submitted in accordance with this subsection are dismissed and may not be refiled.

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TxCDBG [~~TCDP~~]:

(1) Demonstrate the ability to manage and administer the proposed project, including meeting all proposed benefits outlined in its application. The applicant can meet this threshold by:

(A) Providing the roles and responsibilities of local staff designated to administer or work on the proposed project and a plan for project implementation;

(B) Indicating the intention to use a third-party administrator, if applicable; or

(C) If local staff along with a third-party administrator, will jointly administer the proposed project, by providing the roles and responsibilities of the designated local staff.

(2) Demonstrate the financial management capacity to operate and maintain any improvement made in conjunction with the proposed project. The applicant can meet this threshold by:

(A) Providing the name of the financial person on the applicant's staff, or evidence that the applicant intends to contract services for financial oversight; and

(B) Providing a statement certifying that financial records for the proposed project will be kept at an officially designated city/county site, accessible by the public, and will be adequately managed on a timely basis using generally accepted accounting principles.

(3) Levy a local property tax or local sales tax option.

(4) Demonstrate satisfactory performance on previously awarded TxCDBG [~~TCDP~~] contracts. The applicant can meet this threshold by:

(A) Showing past responses, if applicable, to audit and monitoring issues (over the most recent 48 months before the application due date) within prescribed times as indicated in the Office's resolution letter(s);

(B) The presence of documentation related to past contracts (over the most recent 48 months before the application due date), through close-out monitoring and reporting, that the activity or service was made available to all intended beneficiaries, that low and moderate income persons were provided access to the service, or there has been adequate resolution of issues regarding beneficiaries served;

(C) The non-presence of any outstanding delinquent response to a written request from the Office regarding a request for repayment of funds to TxCDBG [~~TCDP~~]; or

(D) By not having at least one outstanding delinquent response to a written request from the Office regarding compliance issues such as a request for closeout documents or any other required information.

(5) Resolve all outstanding compliance and audit findings related to previously awarded TxCDBG [~~TCDP~~] contracts and any other Office contracts. The applicant can meet this threshold if the applicant is actively participating in the resolution of any outstanding audit and/or monitoring issues by responding with substantial progress on outstanding issues within the time specified in the resolution process.

(6) Submit any past due audit to the Office.

(A) A community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date the state review committee meets to review funding recommendations for applications from fund categories scheduled for state review committee review. For applications from fund categories that are not reviewed by the state review committee, a community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date that the executive director approves funding recommendations, or in the case of funding recommendations over $300,000, on the date that the Executive Committee reviews the funding recommendations. Applications for the colonia self-help center fund and the disaster relief/urgent need fund are exempt from this threshold.

(B) A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation. This applies to all funding categories under the Texas Community Development Program. The colonia self-help centers fund may be exempt from this threshold, since funds for the self-help centers fund is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Legislative Budget Board for review and recommendation. The disaster relief fund may be exempt from this threshold, but failure to meet this threshold will be forwarded to the Executive Committee for review and consideration.

(7) TxCDBG [~~TCDP~~] funds cannot be expended in any county that is designated as eligible for the Texas Water Development Board Economically Distressed Areas Program unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to §16.343 of the Water Code. An incorporated city that is located in a Texas Water Development Board Economically Distressed Areas Program eligible county that has not adopted, or is not enforcing, the Model Subdivision Rules, may submit an application for TxCDBG [~~TCDP~~] funds. However, in lieu of county adoption of the Model Subdivision Rules, the incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TxCDBG [~~TCDP~~] funds by the incorporated city.

(8) Based on a pattern of unsatisfactory performance on previous TxCDBG [~~TCDP~~] contracts, unsatisfactory management and administration of previous TxCDBG [~~TCDP~~] contracts, or the presence of evidence that an applicant lacks financial management capacity based on a review of official financial records and audits related to previous TxCDBG [~~TCDP~~] contracts, the Office or TDA, in the case of the Texas Capital Fund application may determine that an applicant is ineligible to apply for TxCDBG [~~TCDP~~] funding even though at the application deadline date it meets the threshold and past performance requirements. The Office or TDA, in the case of the Texas Capital Fund applications will consider an applicant's performance during the most recent 48 months before an application due date to make the eligibility determination. An applicant would still remain eligible for funding under the disaster relief fund.

(i) Unmet benefits. Actions that may be taken against a contractor by the Office where the Office finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) holding the contractor ineligible to apply for TxCDBG [~~TCDP~~] funds for a period of two program years or until any issue of restitution is resolved, whichever is longer;

(2) requiring the contractor to reimburse the Office for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) rescoring the contractor's application, and if the level of benefits actually provided by the contractor would have changed the funding recommendation, terminating the local government's contract.

(j) False information. If an applicant provides false information in its community development fund or planning/capacity building fund application which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the Office refers the matter to the state review committee for disciplinary action. If the applicant provides

false information in a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, Young v. Martinez fund, colonia fund, disaster relief fund, housing fund, small towns environment program fund, or urgent need fund application, the Office staff shall make a recommendation for action to the executive director of the Office. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate executive director. The state review committee makes a recommendation for action to the executive director of the Office at its next regularly scheduled meeting. Documentation of false information must be submitted at least ten business days prior to the next regularly scheduled meeting of the state review committee to be considered at that meeting. Recommendations that the state review committee or executive director may make include, but are not limited to:

(1) Disqualification of the application and holding the locality ineligible to apply for TxCDBG [~~TCDP~~] funding for a period of at least one year not to exceed two program years;

(2) holding the applicant or contractor ineligible to apply for TxCDBG [~~TCDP~~] funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(3) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding.

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Office and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF.

(1) Only door-to-door surveys are allowed, unless an alternate method is approved in writing by the Office.

(2) Surveys, including signed tabulation sheets, signed surveys location sheets, all responses, and all non-responses must be submitted to the Office by the application deadline, for verification and spot-checking.

(3) A survey instrument that lacks information prescribed in the instructions to the survey instrument or which includes conflicting information may be considered as a non-response for that family.

(4) The applicant must demonstrate a 100% effort in contacting households to be surveyed and obtain at least an 80% response rate for surveys which include 150 or fewer beneficiary households or obtain at least a 70% response rate for surveys which include 151 or more beneficiary households.

(5) A survey that was completed on or after January 1, 1993, or January 1, 1994, or January 1, 1995, for a previous TxCDBG [~~TCDP~~] application may be accepted by the Office for a new application to the extent specified in the most recent application guide for the proposed project.

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income generated by TCF projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from TCF projects will be used by the Office for eligible TxCDBG [~~TCDP~~] activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated funds, program income, and unused funds from the current year's allocation or from previous years' allocations derived from any TxCDBG [~~TCDP~~] Fund, including program income recovered from TCF local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Office Executive Director, or when applicable, approved by the Office Executive Committee or by the TDA on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; followed by, any awards necessary to resolve appeals under fund categories requiring publication of contract awards in the Texas Register, TCF projects, special needs projects, projects in colonias, housing activities, and other projects as determined by the Office Executive Director. Other purposes or initiatives may be established as a priority use of such funds within existing fund categories by the Office Executive Committee. Should the TxCDBG [~~TCDP~~] be required to make payments to HUD to cover any loan payments not made by any recipient of a TxCDBG [~~TCDP~~] Section 108 loan guarantee, it would first use any available deobligated funds.

(m) Waivers. The Office may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's written request for such a waiver if the Office finds that compelling circumstances exist outside the control of the applicant or contractor which justifies the approval of such a waiver. The Office shall not waive any provision hereof concerning the TCF program unless written request to do so is received from the Executive Director of the TDA. The provisions of the foregoing sentence shall not apply to contracts other than those awarded and/or administered by the TDA for the Office. Issues related to audit requirements will be handled by the appropriate agency.

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) Obligate at least 50% of the total TxCDBG [~~TCDP~~] funds awarded under an open TxCDBG [~~TCDP~~] contract within 12 months from the start date of the contract or prior to the application deadlines. This threshold is applicable to TxCDBG [~~TCDP~~] contracts with an original 24-month contract period. To meet this threshold, 50% of the TxCDBG [~~TCDP~~] funds must be obligated through executed contracts for administrative services, engineering services, acquisition, construction, materials purchase, etc. The TxCDBG [~~TCDP~~] contract activities do not have to be 50% completed, nor do 50% of the TxCDBG [~~TCDP~~] contract funds have to be expended to meet this threshold. This threshold is applicable to previously awarded TxCDBG [~~TCDP~~] contracts under the community development fund, community development supplemental fund,the colonia construction fund, the colonia planning fund, the non-border colonia fund the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG [~~TCDP~~] contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG [~~TCDP~~] disaster relief fund.

(2) Submit to the Office the certificate of expenditures (COE) report showing the expended TxCDBG [~~TCDP~~] funds and a final drawdown for any remaining TxCDBG [~~TCDP~~] funds as required by the most recent edition of the TxCDBG [~~TCDP~~] Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG [~~TCDP~~] staff. To meet this threshold "expended" means that the construction and services covered by

the TxCDBG [~~TCDP~~] funds are complete and a drawdown for the TxCDBG [~~TCDP~~] funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG [~~TCDP~~] contract with an original 24-month contract period and to TxCDBG [~~TCDP~~] contractors that have reached the end of the 24-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG [~~TCDP~~] contracts under the community development fund, community development supplemental fund,the colonia construction fund, the colonia planning fund, the non-border colonia fund, the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG [~~TCDP~~] contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microentreprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund (original 24-month contract extended to 36-months). This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG [~~TCDP~~] disaster relief fund.

(3) TCF applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted. If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TCF Implementation Manual).

(4) Submit to the Office the certificate of expenditures (COE) report showing the expended TxCDBG [~~TCDP~~] funds and a final drawdown for any remaining TxCDBG [~~TCDP~~] funds as required by the most recent edition of the TxCDBG [~~TCDP~~] Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG [~~TCDP~~] staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG [~~TCDP~~] funds are complete and a drawdown for the TxCDBG [~~TCDP~~] funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG [~~TCDP~~] contract with an original 36-month contract period or a small towns environment program 24-month contract, extended to 26 months, and to TxCDBG [~~TCDP~~] contractors that have reached the end of the 36-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG [~~TCDP~~] contracts under the housing infrastructure fund (when the applicant is applying for the housing infrastructure fund competition) and the small towns environment program fund original 36-month contract or original 24-month contract, extended to 365 months. This threshold is not applicable to previously awarded TxCDBG [~~TCDP~~] contracts under the TCF, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program the microenterprise [~~microentreprise~~] loan fund, the small business loan fund, and the section 108 loan guarantee pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG [~~TCDP~~] disaster relief fund.

(o) State review committee. The committee shall consult with and advise the Office's executive director on the administration and enforcement policies of the TxCDBG [~~TCDP~~]; review funding recommendations for applicants under the community development fund, community development supplemental fund, and planning/capacity building fund and assist the Office's executive director in the allocation of program funds to the applicants; review appeals and submit recommendations for the disposition of such appeals to the Office's executive director in accordance with the procedures described in subsection (g) of this section; and report committee actions concerning these tasks to the Office's executive director through the minutes of committee meetings and written reports prepared by Office staff on behalf of the committee.

(p) Minority hiring/participation. It is the policy of the Office to encourage minority employment and participation among all applicants under the TxCDBG [~~TCDP~~]. All applicants to the TxCDBG [~~TCDP~~] are required to submit information documenting the level of minority participation as part of the application for funding.

(q) Revolving loan funds. A Revolving Loan Fund established through program income recovered from a TxCDBG [~~TCDP~~] contract must meet the requirements for Revolving Loan Funds described in the TxCDBG [~~TCDP~~] Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, TxCDBG [~~TCDP~~] contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Office. The requirement in this section applies to all local Revolving Loan Funds (RLF) established from program income from Texas Capital Fund projects, housing projects and the Small Business Loan Fund. Funds retained in the local RLF must be committed within three years of the original TxCDBG contract programmatic close date. Every award from the RLF must be used to fund the same type of activity, for the same business, from which such income is derived. A local Revolving Loan Fund may retain a cash balance not greater than 33 percent of its total cash and outstanding loan balance. If the local government does not comply with the local RLF requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the State.

(r) Withdrawal of award.

(1) Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based including failure to maintain compliance with application thresholds in subsection (h)(1) - (4) of this section, within a period ending 90 days after the date of the TxCDBG's [~~TCDP's~~] award letter to the applicant, the award will be immediately withdrawn by the TxCDBG [~~TCDP~~] (excluding the colonia self-help center awards).

(2) Should the applicant fail to execute the Office's award contract (excluding Texas Capital Fund and colonia self-help center contracts) within 60 days from the date of the letter transmitting the award contract to the applicant, the award will be withdrawn by the Office.

(s) Funds recaptured from withdrawn awards. For an award that is withdrawn from an application, the Office follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.

(1) Funds recaptured under the community development fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second

year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG [~~TCDP~~] fund categories and, if unallocated to another fund, are then subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(2) Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition may be used for other TxCDBG [~~TCDP~~] fund categories and, if unallocated to another fund, are then subject to the procedures described in §255.1(l) of this title.

(3) Funds recaptured under the housing rehabilitation fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the housing rehabilitation fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition are then subject to the procedures described in §255.1(l) of this title.

(4) Funds recaptured under the colonia construction fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG [~~TCDP~~] fund categories. Remaining unallocated funds are then subject to the procedures in §255.1(l) of this title.

(5) Funds recaptured under the colonia planning fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG [~~TCDP~~] fund categories. Remaining unallocated funds are then subject to the procedures in §255.1(l) of this title.

(6) Funds recaptured under the program year allocation for the colonia economically distressed areas program fund from the withdrawal of an award remain available to potential colonia economically distressed areas program fund applicants during that program year. Any funds remaining from the program year allocation that are not used to fund colonia economically distressed areas program fund applications within twelve months after the Office receives the federal letter of credit would remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG [~~TCDP~~] fund categories. Remaining unallocated funds are then subject to the procedures in §255.1(l) of this title.

(7) Funds recaptured under the housing infrastructure fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title.

(8) Funds recaptured under the program year allocation for the disaster relief/urgent need fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title.

(9) Funds recaptured under the small towns environment program fund (STEP) from the withdrawal of an award will be made available in the next round of STEP competition following the withdraw date in the same program year. If the withdrawn award had been made in the last of the two competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the recaptured funds would be available for other TxCDBG [~~TCDP~~] fund categories. Any unallocated STEP funds are subject to the procedures described in §255.1(l) of this title.

(10) Funds recaptured under the microenterprise loan fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title.

(11) Funds recaptured under the small business loan fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title.

(12) Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title.

(13) Funds recaptured under the community development supplemental fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development supplemental fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development supplemental fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG [~~TCDP~~] fund categories and, if unallocated to another fund, are then subject to the procedures described in §255.1(l) of this title. This process would also apply to an application under the community development supplemental fund that received a portion of its funds from community development marginal funds. The community development marginal funds would be provided to the replacement application.

(14) For both the community development fund and community development supplemental fund (including applications funded with a portion from each of the two funds), if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds are considered as deobligated funds, subject to the procedures described in §255.1(l) of this title.

(15) Funds recaptured under the Non-border Colonia Fund from the withdrawal of an award remain available to potential Non-Border Colonia Fund applicants during that program year and, if unallocated within the non-border colonia fund, may be used for other TxCDBG [~~TCDP~~] fund categories. Remaining unallocated funds are then subject to the procedures described in §255.1(l) of this title.

(t) Readiness to proceed requirements: In order to determine that the project is ready to proceed, the applicant must provide in its application information that:

(1) Identifies the source of matching funds and provides evidence that the applicant has applied for any non-local matching funds, and for local matching funds, evidence that local matching funds would be available.

(2) Provides written evidence of a ratified, legally binding agreement, contingent upon award, between the applicant and the utility that will operate the project for the continual operation of the utility system as proposed in the application. For utility projects that require the applicant or service provider to obtain a certificate of convenience and necessity for the target area proposed in the application, provides written evidence that the Texas Commission on Environmental Quality has received the applicant or service provider's application.

(3) Where applicable, provide a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed.

(u) Performance measures. Each applicant for TxCDBG [~~TCDP~~] funds and each city or county receiving a contract award shall provide applicable information requested in application guides, the grant contract, or the most recent edition of the TxCDBG [~~TCDP~~] project implementation manual that is required by the Office to report on Community Development Block Grant program performance measures promulgated by the Executive Committee, the Texas Legislature, and the U.S. Department of Housing and Urban Development.

(v) Street paving activities. Area benefit can be used to qualify street paving activities. However, for street paving activities with multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least 51% of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an application for TxCDBG [~~TCDP~~] funds. The only exception to this requirement is street paving eligible under the disaster relief fund.

(w) For any award made on or after September 1, 2005, any political subdivision that receives community development block grant program money targeted toward street improvement projects in eligible colonia areas must allocated not less than five percent but not more than 15 percent of the total amount of street improvement money to providing financial assistance to colonias within the political subdivision to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

(x) The TxCDBG is under no obligation to approve any changes in a performance statement of a TxCDBG contract that would result in a program year score lower than originally used to make the award if the lower score would have initially caused that project to be denied funding. This does not apply to colonia self-help centers or the Texas Capital Fund.

(y) Any applicant's cash match included in the TxCDBG contract budget may not be obtained from any person or entity that provides contracted professional or construction-related services (other than utility providers) to the applicant to accomplish the purpose described in the TxCDBG contract, in accordance with 24 CFR Part 570.

§255.2. Community Development Fund.

(a) General provisions. This fund covers housing, public facilities, and public service projects. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities. An application submitted for the community development fund can receive a grant from the community development fund regional allocation and/or from the community development supplemental fund regional allocation.

(1) An applicant may not submit a single jurisdiction application or be a participant in a multi-jurisdiction application under this fund and also submit a single jurisdiction application or be a participant in a multi-jurisdiction application submitted under any other TxCDBG [~~TCDP~~] fund category at the same time if the proposed activity under each application is the same or substantially similar. However, an application submitted for the community development fund is also considered for the regional allocation for the community development supplemental fund.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title, in order to be eligible to apply for community development funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Applicants must demonstrate they are adequately addressing water supply and water conservation issues (in particular contingency plans to address drought-related water supply issues), as described in the application guidance. Applications requesting funds for projects other than water and sewer must include a description of how the applicant's water and sewer needs would be met and the source of funding that would be used to meet these needs.

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2007 [~~2005~~] and 2008 [~~2006~~] program years pursuant to regional competitions held for the 2007 [~~2005~~] program year applicants. Applications for funding must be received by the TxCDBG [~~TCDP~~] by the dates and times specified in the most recent application guide for this fund.

(c) Allocation plan.

(1) This fund is allocated among the 24 state planning regions established pursuant to Texas Local Government Code, §391.003, by a formula based on the following factors and weights:

(A) number of persons living in poverty--25%

(B) percentage of persons living in poverty--25%

(C) population--30%

(D) number of unemployed persons--10%

(E) unemployment rate--10%

(2) Each state planning region is provided with a 2007 [~~2005~~] program year community development fund target allocation and an additional 2007 [~~2005~~] program year community development

supplemental fund target allocation and a 2008 [~~2006~~] program year community development fund target allocation and an additional 2008 [~~2006~~] program year community development supplemental fund target allocation for applications in the region that are ranked through the 2007 [~~2005~~] program year regional competitions in accordance with a shared scoring system involving the Office and the regional review committees. The regional allocation formula for the community development supplemental fund is described in §255.15(c) of this title (related to the Community Development Supplemental Fund).

(A) The community development fund regional allocations for the first and second years of the biennial process are awarded first in each region based on the community development fund selection criteria that includes the 700 available points that are awarded by the Office (350 points) and each regional review committee (350 points). Where the remainder of the 2007 [~~2005~~] program year community development fund target allocation is insufficient to completely fund the next highest ranked applicant, the applicant receives complete funding of the original grant request through either 2007 [~~2005~~] and 2008 [~~2006~~] program year funds. Where the remainder of the 2006 program year community development fund target allocation is insufficient to completely fund the next ranked application, the Office works with the affected applicant to determine whether partial funding is feasible. If partial funding is not feasible, the remaining funds from all the target allocations are pooled to fund projects from among the highest ranked, unfunded applications from each of the 24 state planning regions. Selection criteria for such applications will consist of the selection criteria scored by the Office under this fund. Marginal applicants' community distress scores are recomputed based on the applicants competing in the marginal pool competition only.

(B) The remaining applicants in the region that are not recommended to receive awards from the community development fund 2007 [~~2005~~] and 2008 [~~2006~~] regional allocations are then ranked to receive the community development supplemental fund regional allocations for the first and second years of the biennial process based on the community development supplemental fund selection criteria that includes the 360 available points that are awarded by the Office (10 points based on the applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts) and each regional review committee (350 points).

(C) The community development fund marginal funds available from the 2008 [~~2006~~] regional allocation may be used to fund an application that is recommended to receive only a portion of the original grant request from the community development supplemental fund regional allocation.

(D) If there are insufficient funds available from the first year's community development supplemental fund regional allocation to fully fund an application, then the applicant may accept the amount available or wait for full funding in the second year by combining the regional allocations available for the two years.

(E) If there are insufficient funds available from the 2005 and 2006 community development supplemental fund regional allocations, then any funds available from the 2006 community development fund regional allocation marginal funds may be used to fully fund the application. If marginal funds are not available to fully fund the application, the applicant may accept the amount of the funds available or, if declined, the funds will be part of the marginal competition.

(3) Each regional review committee may allocate approximately 8%, or a greater or lesser percentage, of its community development fund allocation to housing projects proposed in and for that region. Under a housing allocation, the highest ranked applications for housing activities, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing allocation level. If the regional review committee allocates a percentage the region's funds to housing and applications conforming to the maximum and minimum amounts are not received to use the entire housing allocation, the remaining funds may be used for other eligible activities.

(d) Selection procedures.

(1) Prior to the submission deadline specified in the most recent application guide for this fund, each eligible unit of general local government may submit one application to the Office for funding under the combined community development fund and community development supplemental fund regional allocations. Two copies of the application must be submitted. Each applicant must also provide at least one copy of its application to the applicant's regional review committee within three weeks after the Office submission deadline.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding, if ranked. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee shall hold a scoring meeting in accordance with the procedures specified in the Office's regional review committee guidebook and in accordance with the procedures and priorities previously established by each regional review committee. Each regional review committee must provide every applicant within its region with an opportunity to make a presentation before the regional review committee. The regional review committee will then score the regional review committee scoring factors.

(4) Following the resolution of any appeals from actions of the regional review committees as specified in §255.8 of this title (relating to Regional Review Committees) the Office adds scores relating to community distress, benefits to low-and moderate-income persons, project impact, other considerations, and match to the regional review committees' scores to determine regional rankings. Scores on the factors in these categories are derived from standardized data from the U.S. Census Bureau, Texas Workforce Commission, and from information provided by the applicant.

(5) Following a final technical review, the Office staff presents the funding recommendations for the 2007 [~~2005~~] and 2008 [~~2006~~] community development fund and community development supplemental fund regional allocations to the state review committee. Office staff make a site visit to each of the applicants recommended for funding prior to the completion of contract agreements.

(6) The funding recommendations of the state review committee are then provided to the executive director of the Office. If the state review committee recommendations differ from the funding recommendations of a regional review committee, the state review committee must provide the affected regional review committee with a written explanation of its determination. The regional review committee may then provide a response to the executive director of the Office. If there is not a consensus between a regional review committee and the state review committee, all review comments by all of the parties involved in the selection process will be forwarded to the executive director of the Office.

(7) The executive director of the Office reviews the 2007 [~~2005~~] final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(8) Upon announcement of the 2007 [~~2005~~] program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(9) When the 2008 [~~2006~~] program year TxCDBG [~~TCDP~~] allocation becomes available, the executive director of the Office reviews the 2008 [~~2006~~] program year final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(10) Upon announcement of the 2006 program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(e) Selection criteria. The following is an outline of the selection criteria used by the Office and the regional review committees for scoring applications under the community development fund. Seven hundred points are available.

(1) Community distress (total--55 points). All community distress factor scores are based on the population of the applicant. An applicant that has 125% or more of the average of all applicants in its region of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in its region on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in its region on the per capita income factor will receive the maximum number of points available for that factor:

(A) percentage of persons living in poverty--25

(B) per capita income--20

(C) unemployment rate--10

(2) Benefit to low- and moderate-income persons (total--40 points). An application in which at least 60% of the Texas Community Development Block GrantProgram funds requested benefit low and moderate income persons receives 40 points.

(3) Project impact (total--175 points).

(A) Each application is scored within a point range based on the application activities. Multi-activity projects which include activities in different scoring ranges will receive a combination score within the possible range. Information submitted in the application or presented to the regional review committees is used by a committee composed of staff of the Office to generate scores on this factor. The point ranges used for project impact scoring are as follows:

(i) water activities, sewer activities, and housing activities (145 to 175 points);

(ii) eligible public facilities in a defense economic readjustment zone (145 to 175 points);

(iii) street paving, drainage, flood control and handicapped accessibility activities (130 to 160 points);

(iv) fire protection, health clinic activities, and facilities providing shelter for persons with special needs (125 to 145 points);

(v) community center, senior citizens center, social services center, demolition/clearance, and code enforcement activities (115 to 135 points);

(vi) gas facilities, electrical facilities, and solid waste disposal activities (110 to 130 points);

(vii) access to basic telecommunications, jail facilities and detention facilities (105 to 125 points);

(viii) all other eligible activities (85 to 115 points).

(B) Other factors that will be evaluated by Office staff in the assignment of project impact scores within the point ranges for activities include, but are not limited to, the following:

(i) each application is scored based on how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction;

(ii) projects that address basic human needs such as water, sewer, and housing generally are scored higher than projects addressing other eligible activities;

(iii) projects that provide a first-time public facility or service generally receive a higher score than projects providing an expansion or replacement of existing public facilities or services;

(iv) public water and sewer projects that provide a first-time public facility or service generally receive a higher score than other eligible first-time public facility or service projects;

(v) projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are given additional consideration;

(vi) For water and sewer projects addressing state regulatory compliance issues, the extent to which the issue was unforeseen [~~projects which include self-help methods (volunteer labor, donated materials, donated equipment, etc.) to significantly reduce the project cost or to significantly increase the proposed improvements are given additional consideration~~];

(vii) projects designed to address drought-related water supply problems are generally given additional consideration;

(viii) water and sewer projects that provide first-time water or sewer service through a privately-owned for-profit utility or an expansion/improvement of the existing water or sewer service provided through a privately-owned for-profit utility may, on a case-by-case basis, receive less consideration than the consideration given to projects providing these services through a public nonprofit organization.

(ix) Projects designed to conserve water usage may be given additional consideration.

(x) Water and sewer projects from applicants that demonstrate a long term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and TCEQ system requirements).

(xi) Consideration will be given to those water and sewer systems that have agreed to undertake improvements to their systems that TCEQ's recommendation but are not under an enforcement order because of this agreement.

(xii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed.

(xiii) Projects that use renewable energy technology for not less than 10% of the total energy requirements, (excluding the purchase of energy from the electric grid that was produced with renewable energy).

(4) Matching Funds (total--60 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored depends on the project type and the beneficiary population served. If the project benefits residents of the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the residents of the entire unincorporated area of the county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the participating applicants according to the 2000 census. Applications for housing rehabilitation and for affordable new permanent housing for low- and moderate-income persons receive the 60 points without including any matching funds. This exception is for housing activities only. Sewer or water service line/connections are not counted as housing rehabilitation. Demolition/clearance and code enforcement, when done in the same target area are counted as part of the housing rehabilitation activity. When demolition/clearance and code enforcement are proposed without housing rehabilitation activities, then the match score is still based on actual matching funds committed by the applicant. Applications which include additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities. Program funds cannot be used to install street/road improvements in areas that are not currently receiving water or sewer service from a public or private service provider unless the applicant provides matching funds equal to at least 50% of the total construction cost budgeted for the street/road improvements. This requirement will not apply when the applicant provides assurance that the street/road improvements proposed in the application will not be impacted by the possible installation of water or sewer lines in the future because sufficient easements and rights-of-way are available for the installation of such water or sewer lines. The terms used in this paragraph are further defined in the current application guide for this fund.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(i) match equal to or greater than 5.0% of grant request--60;

(ii) match at least 4.0% but less than 5.0% of grant request--40;

(iii) match at least 3.0% but less than 4.0% of grant request--20;

(iv) match at least 2.0% but less than 3.0% of grant request--10;

(v) match less than 2.0% of grant request--0.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(i) match equal to or greater than 10% of grant request--60;

(ii) match at least 7.5% but less than 10% of grant request--40;

(iii) match at least 5.0% but less than 7.5% of grant request--20;

(iv) match at least 2.5% but less than 5.0% of grant request--10;

(v) match less than 2.5% of grant request--0.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--60;

(ii) match at least 11.5% but less than 15% of grant request--40;

(iii) match at least 7.5% but less than 11.5% of grant request--20;

(iv) match at least 3.5% but less than 7.5% of grant request--10;

(v) match less than 3.5% of grant request--0.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--60;

(ii) match at least 15% but less than 20% of grant request--40;

(iii) match at least 10% but less than 15% of grant request--20;

(iv) match at least 5.0% but less than 10% of grant request--10;

(v) match less than 5.0% of grant request--0.

(5) Other considerations (total--20 points). An applicant receives up to 20 points on the following three factors.

(A) Ten of the 20 points available are awarded to applicants that did not receive a community development fund or a housing rehabilitation fund contract award during the 2005 [~~2003~~] and 2006 [~~2004~~] program years.

(B) An applicant receives from zero to ten points based on the applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two most recent TxCDBG [~~TCDP~~] contracts that have reached the end of the original contract period stipulated in the contract. TxCDBG [~~TCDP~~] staff may also assess the applicant's performance on existing TxCDBG [~~TCDP~~] contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG [~~TCDP~~] grant award will automatically receive these points. TxCDBG [~~TCDP~~] staff will assess the applicant's performance on TxCDBG [~~TCDP~~] contracts up to the application deadline date. The applicant's performance on TxCDBG [~~TCDP~~] contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past

performance will include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period.

(ii) The applicant's submission of the required close-out documents within the period prescribed for such submission.

(iii) The applicant's timely response to monitoring findings on previous TxCDBG [~~TCDP~~] contracts especially any instances when the monitoring findings included disallowed costs.

(iv) The applicant's timely response to audit findings on previous TxCDBG [~~TCDP~~] contracts.

(v) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports.

(6) Regional scoring factors (total--350 points). Each regional review committee shall use the following three factors to score applications in its region:

(A) Project priorities. Each regional review committee shall rank and assign points to categories of eligible activities based on the priority of such projects in the region. The first priority shall receive at least 100 points.

(B) Local effort. A minimum of 75 points shall be made available based on definitions and criteria adopted by each regional review committee. The regional review committee must establish the methods its members will use to score this factor, consistent with HUD regulations as determined by TxCDBG [~~TCDP~~].

(C) Merits of the project. A maximum of 175 points shall be awarded based on definitions and criteria adopted by each regional review committee. The regional review committee must establish the methods its members will use to score this factor, consistent with HUD regulations as determined by TxCDBG [~~TCDP~~].

(f) Project impact scoring. Formation [~~formation~~] submitted in the application and information presented to each Regional Review Committee and the TxCDBG [~~TCDP~~] will be used by ORCA staff to generate scores on the Project Impact factor. The maximum Project Impact score is 175 points and an applicant can receive a score as low as 85 points. Scoring ranges have been established for eligible activities. A weighted average is used to assign scores to applications that include activities in the different Project Impact scoring levels. Using as a base figure the TxCDBG [~~TCDP~~] funds requested minus the TxCDBG [~~TCDP~~] funds requested for engineering and administration, a percentage of the total TxCDBG [~~TCDP~~] construction and acquisition dollars for each activity will be calculated. The percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity will then be multiplied by the appropriate Project Impact point level. The sum of these calculations determines the composite Project Impact score.

(1) Supplemental information may be presented orally to the RRC during the RRC scoring meeting. But any additional information that an applicant wishes to submit for Project Impact scoring consideration, must be submitted in a written/printed format. Additional written/printed information presented to the RRC or the TxCDBG [~~TCDP~~] will be accepted up to the date of each RRC scoring meeting. The additional information must be presented to the TxCDBG [~~TCDP~~] representative attending the RRC scoring meeting or received in the TxCDBG [~~TCDP~~] office by the date of the RRC scoring meeting. Information received by the RRC or the TxCDBG [~~TCDP~~] after the date of the RRC scoring meeting will not be considered by the TxCDBG [~~TCDP~~] in the scoring of this factor.

~~[(2) Additional consideration for activities that will be completed through self-help methods. An applicant can receive one, two or three additional points, as long as the additional points added to the established score do not exceed 175 points, for the completion of activities through self-help methods that included volunteer labor, donated materials or donated equipment. The number additional points awarded to the applicant will depend on the significance of the reduction of the project cost or the significance of the increase of the proposed improvements that can be completed. Three points are awarded if the applicant achieves a 50% or greater reduction of the project cost or a 50% or greater increase to the proposed improvements that can be completed. Two points are awarded if the applicant achieves less than 50% but greater than 25% reduction of the project cost or less than 50% but greater than 25% increase to the proposed improvements that can be completed. One points is awarded if the applicant achieves a less than or equal to a 25% reduction of the project cost or a less than or equal to 25% increase to the proposed improvements that can be completed. To receive any additional points the applicant must:]~~

~~[(A) document the project cost savings that will be achieved through the use of self-help methods (a comparison of the project costs utilizing self-help methods to the project costs if the activities are completed at retail through conventional construction methods); or]~~

~~[(B) document the increased materials that can be installed (a comparison of the improvements that can be accomplished utilizing self-help methods to the improvements that could be accomplished if the activities are completed at retail through conventional construction methods).]~~

(2) [~~(3)~~] The score for water and sewer activities that benefit privately-owned for-profit water and sewer systems will be reduced by five points, except for instances when a Project Impact score is specifically assigned to a water or sewer activity that is provided through a privately-owned for-profit utility.

(3) [~~(4)~~] Water, sewer and housing activities--145 to 175 points.

(A) Water activities.

(i) First-time public water service to an area that includes more than 25 new residential connections--169 [~~175~~] points

(ii) Project addressing situation that meets TxCDBG [~~TCDP~~] urgent need criteria with back-up letter from the Texas Department of StateHealth Servicesor other applicable state agency citing the conditions creating the threat to public health and safety--169 [~~175~~] points

(iii) First-time public water service to an area that includes 11 to 25 new residential connections--167 [~~173~~] points

(iv) Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order with fines included (application must indicate whether cited violation has been resolved)--164 [~~173~~] points

(v) Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order without fines included (application must indicate whether cited violation has been resolved)--164 [~~170~~] points

(vi) First-time public water service to an area that includes 10 or fewer new residential connections--164 [~~170~~] points

(vii) Addressing drought conditions through additional water supply or water storage and water system is on the Texas

Commission on Environmental Quality (TCEQ) drought watch list within the last 4 months prior to the application due date), and the supply problems are not related to substantial water loss from deteriorated lines (must include with the application the notice to citizens and the criteria used to be on the drought list)--161 [~~168~~] points

(viii) First-time water service to an area through a privately-owned for-profit--161 [~~166~~] points

(ix) Water supply/treatment improvements that are still needed to meet state minimum standards cited in the most recent TCEQ water system inspection letter--165 points

(x) Water storage improvements that are still needed to meet state minimum standards cited in the most current TCEQ water system inspection letter--158 [~~164~~] points

(xi) Replacing undersized water lines and removing the presence of lead, or [~~fixtures/~~]contamination that has a regulatory standard to meet state minimum water pressure standards cited in the most recent TCEQ water system inspection letter and the conditions cited still exist--158 [~~164~~] points

(xii) Addressing drought conditions by replacing water lines that contribute to a significant loss of water supply; provided the water supply loss is documented by the applicant and the water system is on the current Texas Commission on Environmental Quality (TCEQ) drought watch list (within the last 4 months prior to the application due date. Must include with the application the notice to citizens and criteria used to be on the drought list)--157 [~~164~~] points

(xiii) Water storage improvements to meet state minimum standards, documented through independent quantifiable information, and the conditions still exist--155 [~~163~~] points

(xiv) Water supply/treatment improvements to meet state minimum standards [~~(including federal standards as implemented by the state)~~], documented through independent quantifiable information, and the conditions still exist--155 [~~163~~] points

(xv) Replacement of water lines with larger diameter water lines to meet minimum state standards for water pressure [~~and/or number of connections~~] cited in the most recent TCEQ water system inspection letter, and the conditions cited still exist--155 [~~163~~] points

~~*[(xvi)* Replacing undersized water lines and removing the presence of lead fixtures/contamination to meet state minimum water pressure standards and documented through independent quantifiable information, and the conditions still exist--162 points]~~

(xvi) [~~(xvii)~~] Replacement of water lines with larger diameter water lines to meet minimum state standards for water pressure and/or number of connections and documented through independent quantifiable information, and the conditions still exist--153 [~~161~~] points

~~*[(xviii)* Installation of water lines in order to loop the water system--158 points]~~

(xvii) [~~(xix)~~] Water supply, storage or treatment improvements without independent quantifiable information or a TCEQ water system inspection letter documenting that the activity is addressing state minimum standards--149 [~~154~~] points

(xviii) [~~(xx)~~] Replacement of water lines with larger diameter water lines to improve service without independent quantifiable information or a TCEQ water system inspection letter documenting that the replacement activity is addressing state minimum standards--148 [~~152~~] points

(xix) [~~(xxi)~~] Replacement of water lines with the same diameter size water lines--147 [~~150~~] points

(xx) [~~(xxii)~~] Water service problems associated with written complaints not addressed elsewhere in this section--146 [~~149~~] points

(xxi) [~~(xxiii)~~] Other eligible water activities--145 points

(xxii) Water supply is defined as reservoirs (lakes (surface water), aquifers) or ground storage reservoirs, wells, or an independent wholesale supplier that feeds into treatment facilities (conveyance to plant).

(B) Additional subjective considerations for water activities.

(i) Consideration will be given to those water systems that have agreed to undertake improvements to their systems at TCEQ's recommendation but are not under an enforcement order because of this agreements -- 1 to five points

(ii) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction. First-time service would score high in the range -- 1 to 5 points

(iii) Water projects from applicants that demonstrate a long-term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and TCEQ system requirements). Installation of water lines to loop the water system would be considered, however it would not receive points if also scored based on TCEQ enforcement or citations. For water projects addressing state regulatory compliance issues, the extent to which the issue was unforeseen (based on information included in state regulatory documentation or notifications to the applicant) will be considered -- 1 to 3 points

(iv) Projects designed to conserve water usage may be given additional consideration -- 2 points if addressing drought conditions and on the TCEQ drought watch list (within the last 3 months prior to the application due date) -- 1 to 2 points

(v) Projects that use renewable energy technology for not less than 10% of the total energy requirements, (excluding the purchase of energy from the electric grid that was produced with renewable energy) -- 2 points

(vi) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point) -- 1 point

(D) [~~(B)~~] Sewer activities.

(i) First-time public sewer service to an area that includes more than 25 new residential connections--169 [~~175~~] points

(ii) Project addressing situation that meets TxCDBG [~~TCDP~~] urgent need criteria with back-up letter from the Texas Department of State Health Servicesor other applicable state agency citing the conditions creating the threat to public health and safety--169 [~~175~~] points

(iii) Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order with fines included--167 [~~173~~] points

(iv) First-time public sewer service to an area that includes 11 to 25 new residential connections--167 [~~173~~] points

(v) First-time public sewer service to an area that includes 10 or fewer new residential connections--164 [~~170~~] points

(vi) Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order without fines included--164 [~~170~~] points

(vii) Installation of septic tanks or on-site sewer facilities to provide first-time sewer service--162 [~~168~~] points

(viii) Applicant is addressing deficiencies cited in the most recent Texas Commission on Environmental Quality (TCEQ) sewer system notice of violations letter and the conditions cited still exist--156 [~~167~~] points

(ix) First-time sewer service to an area through a privately-owned for-profit utility--161 [~~166~~] points

(x) Applicant is expanding the sewer treatment plant in response to the most recent TCEQ letter stating that sewer system has reached 90% of treatment capacity and the conditions cited still exist--161 [~~166~~] points

(xi) Applicant is expanding the sewer treatment plant in response to the most recent TCEQ letter stating that sewer system has reached 75% of treatment capacity and the conditions cited still exist--158 [~~164~~] points

(xii) Replacing [~~sewer lines and/or~~] lift stations to address inflow and infiltration problems in response to the most recent TCEQ notice of violations letter citing the problem or documented through independent quantifiable information and the conditions cited still exist--157 [~~164~~] points

(xiii) Replacement of sewer lines with new sewer lines to address sewer system overflows, blocked sewer lines, replacement of lift stations with new lift stations to address sewer system [~~or inflow and infiltration problems causing~~] unauthorized discharges rather than inflow and infiltration problemsor septic tank replacement to address problems based on independent quantifiable information--154 [~~160~~] points

(xiv) New sewer treatment plant or expansion of existing sewer treatment plant with independent quantifiable information to provide capacity for first-time sewer services in the same application [~~Replacement of lift stations with new lift stations to address sewer system unauthorized discharges~~]--164 [~~160~~] points

(xv) Replacement of sewer lines with new sewer lines to address sewer system overflows, blocked sewer lines, or inflow and infiltration problems or septic tank replacement to address problems without independent quantifiable information or without a TCEQ letter documenting the problems still exist--150 [~~156~~] points

(xvi) Replacement of lift stations with new lift stations without independent quantifiable information or without a TCEQ letter documenting the problems still exist--148 [~~156~~] points

(xvii) New sewer treatment plant or expansion of the existing sewer treatment plant without independent quantifiable information or without a TCEQ letter documenting need for the new plant (one point extra if permit has been obtained) [~~the problems still exist~~]--149 [~~154~~] points

(xviii) Sewer service problems associated with written complaints not covered elsewhere in this section--146 [~~149~~] points

(xix) Other eligible sewer activities--145 points

(xx) New treatment facilities needed to replace failing treatment structure -- 162 points

(xxi) Installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues -- 157 points

(xxii) New sewer treatment plant or expansion of the existing sewer treatment plant with independent quantifiable information or with a TCEQ letter documenting the need for the new plant (one point extra if permit is obtained) -- 157 points

(E) Additional subjective considerations for sewer/wastewater activities.

(i) Consideration will be given to those sewer systems that have agreed to undertake improvements to their systems at TCEQ's recommendation but are not under an enforcement order because of this agreement -- 1 to 5 points

(ii) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction may be given additional consideration. First-time service would score high in the range -- 1 to 7 points

(iii) Sewer projects from applicants that demonstrate long-term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and TCEQ system requirements). The applicant would not receive points of this criterion is scored under a category for TCEQ enforcement or citations. For sewer projects addressing state regulatory compliance issues, the extent to which the issue was unforeseen (based on information included in state and regulatory documentation or notifications to the applicant) may also be considered -- 2 points

(iv) Projects that use renewable energy technology for not less than 10% of the total energy requirements, (excluding the purchase of energy from the electric grid that was produced with renewable energy) -- 2 points

(v) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdiction application can receive a total of one point) -- 1 point

(F) [~~(C)~~] Housing activities.

(i) Housing rehabilitation addressing all housing code violations and housing guidelines will include preference to making housing units accessible for persons with disabilities--166 [~~175~~] points

(ii) Housing rehabilitation addressing all housing code violations that do not include a preference to making housing units accessible for persons with disabilities--164 [~~172~~] points

(iii) Construction of new housing, when eligible, for low and moderate income persons--146 [~~170~~] points

(iv) Provision of direct assistance (such as down-payment assistance) to facilitate and expand homeownership among persons of low and moderate income--162 [~~170~~] points

(v) Acquisition of existing housing units that will be renovated and then made available to low and moderate income persons--161 [~~168~~] points

(vi) Housing rehabilitation addressing all housing code violations that include code enforcement and/or demolition clearance activitiesand housing guidelines will include a preference to making housing units accessible for persons with disabilities [~~that include code enforcement and/or demolition clearance activities~~]--169 [~~165~~] points

(vii) Housing rehabilitation that is not addressing all housing code violations and housing guidelines will include preference to making housing units accessible for persons with disabilities--153 [160] points

(viii) Housing rehabilitation that is not addressing all housing code violations--149 [153] points

~~*(ix)* Housing rehabilitation that is not addressing all housing code violations that include code enforcement and/or demolition clearance activities--150 points~~]

(ix) [~~(x)~~] Other eligible housing activities--145 points

(F) Additional subjective considerations for housing activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction -- 1 to 5 points

(ii) Projects that use renewable energy technology for not less than 10% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy) -- 1 point

(iii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdiction application can receive a total of one point) -- 1 point

(4) [~~(5)~~] Eligible public facilities located in a Defense Economic Readjustment Zone--145 to 175 points. [~~Public facilities projects located in a Defense Economic Readjustment Zone receive the maximum 175 points.~~]

(A) Public facilities projects located in a Defense Economic Readjustment Zone -- 169 points

(B) Additional subjective consideration for eligible facilities located in a Defense Economic Readjustment Zone.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction -- 1 to 5 points

(ii) Projects that use renewable energy technology for not less than 10% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy) -- 2 points

(iii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point) -- 1 point

(5) [~~(6)~~] Street paving, drainage, flood control and handicapped accessibility--130 to 160 points.

(A) Street paving activities.

(i) Installation of road base, asphalt or concrete surface pavement, [~~and~~] concrete curb and gutter and storm drainageon existing unpaved streets--155 [160] points

(ii) Installation of road base, asphalt or concrete surface pavement, and drainage structures on existing unpaved streets--153 [158] points

~~*(iii)* Installation of road base and asphalt or concrete surface pavement on existing unpaved streets--156 points~~]

(iii) [~~(iv)~~] Construction of new streets that include installation of road base, asphalt or concrete surface pavement, and concrete curb and gutter--155 points

~~*(v)* Construction of new streets that include installation of road base, asphalt or concrete surface pavement, and drainage structures--153 points~~]

(iv) [~~(vi)~~] Installation of road base, asphalt or concrete surface pavement, and roadside ditch improvements on existing unpaved streets--151 [153] points

(v) [~~(vii)~~] Construction of new streets that include installation of road base and asphalt or concrete surface pavement--146 [151] points

(vi) [~~(viii)~~] Installation of asphalt or concrete surface pavement on existing unpaved streets--144 [149] points

~~*(ix)* Installation of new pavement or street overlay on existing paved streets--144 points~~]

(vii) [~~(x)~~] Reconstruction of existing paved streets--135 [140] points

(viii) [~~(xi)~~] Other eligible street paving activities--130 points

(B) Drainage activities.

(i) Installation of designed drainage structures for an area currently using natural terrain for drainage--155 [160] points

(ii) Construction including changes to terrain such as unlined ditches to improve drainage for an area currently using natural terrain for drainage--150 [155] points

(iii) Installation of designed drainage structures to replace existing drainage structures to improve the drainage for an area--145 [150] points

(iv) Reconstruction of unlined ditches to improve drainage for an area--142 [147] points

(v) Clearance of obstructions to unlined ditches or other drainage structures to improve drainage for an area--135 points

(vi) Other eligible drainage activities--130 points

(C) Flood control activities.

(i) Installation of designed flood control structures such as dams or retention ponds--155 [160] points

(ii) Installation of retention walls, creek bed walls, storm sewers, or ditches needed to control flood water--150 [155] points

(iii) Reconstruction of existing flood control structures--145 [150] points

(iv) Clearance of obstructions to flood control structures--135 [140] points

(v) Other eligible flood control activities--130 points

(D) Handicapped accessibility activities.

(i) Addressing all needed improvements to provide complete accessibility to a public building (complete accessibility includes handicapped parking, ramps, handrails, doorway widening, restroom modifications, water fountain modifications, access to upper and lower floors (elevator or lift) and other related improvements)--155 [160] points

(ii) Addressing some of the needed improvements to provide complete accessibility to a public building (complete accessibility includes handicapped parking, ramps, handrails, doorway widening, restroom modifications, water fountain modifications, access to upper and lower floors (elevator or lift) and other related improvements)--145 [~~150~~] points

(iii) Other eligible handicapped accessibility activities--130 points

(E) Additional subjective considerations for street paving, drainage, flood control and handicapped accessibility.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction -- 1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point) - 1 point

(6) [~~(7)~~] Fire protection, health clinics, and facilities providing shelter for persons with special needs (hospitals, nursing homes, convalescent homes)--125 to 145 points.

(A) Fire protection activities.

(i) Purchasing fire fighting vehicles, ambulance or EMS vehicle for fire department use--140 [~~145~~] points

(ii) Construction of a new fire station and fire fighting vehicles and equipment--135 [~~140~~] points

(iii) Purchasing fire fighting equipment for fire department staff--132 [~~137~~] points

(iv) Construction of a new fire station only--130 [~~135~~] points

(v) Other eligible fire protection activities--125 points

(B) Health clinic activities.

(i) Construction of a new health clinic building--140 [~~145~~] points

(ii) Rehabilitation or expansion of an existing health clinic building--135 [~~140~~] points

(iii) Purchase of equipment related to existing health clinic structures such as heating and cooling equipment--130 [~~135~~] points

(iv) Other eligible health clinic activities--125 points

(C) Facilities [~~facilities~~] providing shelter for persons with special needs (hospitals, nursing homes, convalescent homes).

(i) Construction of a new publicly owned and operated facility--140 [~~145~~] points

(ii) Rehabilitation or expansion of an existing facility--135 [~~140~~] points

(iii) Purchase of equipment related to the existing facility such as heating and cooling equipment--130 [~~135~~] points

(iv) Other eligible facility activities--125 points

(D) Additional subjective considerations for fire protection, health clinics, and facilities providing shelter for persons with special needs.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction -- 1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point) - 1 point

(7) [~~(8)~~] Community centers, senior citizen centers, and social services centers--115 to 135 points.

(A) Community center activities.

(i) Construction of a new community center building that will provide services and recreation activities--130 [~~135~~] points

(ii) Construction of a new community center building that will provide only recreation activities--125 [~~130~~] points

(iii) Rehabilitation or expansion of an existing community center to increase services or the number of people served--123 [~~128~~] points

(iv) Rehabilitation or expansion of an existing community center without any additional services or increase to the number of people served--121 [~~126~~] points

(v) Other eligible community center activities--115 points

(B) Senior citizen center activities.

(i) Construction of a new senior center building that will provide services and recreation activities--130 [~~135~~] points

(ii) Construction of a new senior center building that will provide only recreation activities--125 [~~130~~] points

(iii) Rehabilitation or expansion of an existing senior center building to increase services or the number of people served--123 [~~128~~] points

(iv) Rehabilitation or expansion of an existing senior center building without any additional services or increase to the number of people served--121 [~~126~~] points

(v) Other eligible senior citizens center activities--115 points

(C) Social service center activities.

(i) Construction of a new building to provide first-time services to an area--130 [~~135~~] points

(ii) Rehabilitation or expansion of an existing center building to increase services or the number of people served--125 [~~130~~] points

(iii) Rehabilitation or expansion of an center building without any additional services or increase to the number of people served--121 [~~126~~] points

(iv) Other eligible social services center activities--115 points

(D) Additional subjective considerations for community centers, senior citizen centers, and social services centers.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction -- 1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or

multi-jurisdictional application can receive a total of one point) - 1 point

(8) [~~(9)~~] Demolition/clearance and code enforcement activities--115 to 135 points.

(A) Demolition/clearance activities.

(i) Addressing condemnation activities, eliminating vacant hazardous structures, or eliminating vacant structures used for illegal activities--130 [~~135~~] points

(ii) Addressing neighborhood beautification activities--125 [~~130~~] points

(iii) Addressing clearance of vacant lots only--117 [~~120~~] points

(iv) Other eligible demolition/clearance activities--115 points

(B) Code enforcement activities.

(i) Addressing condemnation activities, eliminating vacant hazardous structures, or eliminating vacant structures used for illegal activities--130 [~~135~~] points

(ii) Addressing neighborhood beautification activities--125 [~~130~~] points

(iii) Addressing clearance of vacant lots only--117 [~~120~~] points

(iv) Other eligible code enforcement activities--115 points

(C) Additional subjective considerations for demolition/clearance and code enforcement activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction -- 1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point) - 1 point

(9) [~~(10)~~] Gas facilities, electrical facilities and solid waste disposal activities--110 to 130 points.

(A) Gas facility activities.

(i) Provide first-time gas service to area through a publicly owned and operated utility--125 [~~130~~] points

(ii) Provide first-time gas service to area through a privately-owned for-profit utility--120 [~~125~~] points

(iii) Replace existing gas lines for a publicly owned and operated utility to improve service--115 [~~120~~] points

(iv) Replace existing gas lines for a privately-owned for-profit utility to improve service--112 [~~115~~] points

(v) Other eligible gas facility activities--110 points

(B) Electrical facility activities.

(i) Provide first-time electric service to area through a publicly owned and operated utility--125 [~~130~~] points

(ii) Provide first-time electric service to area through a privately-owned for-profit utility--120 [~~125~~] points

(iii) Replace existing electric lines for a publicly owned and operated utility to improve service--115 [~~120~~] points

(iv) Replace existing electric lines for a privately-owned for-profit utility to improve service--112 [~~115~~] points

(v) Other eligible electric facility activities--110 points

(C) Solid waste disposal activities.

(i) Activities that include landfill equipment, or transfer station equipment, or site improvements and first-time recycling service--125 [~~130~~] points

(ii) Construction of a transfer station with necessary eligible equipment and recycling service--122 [~~127~~] points

(iii) Activities that include landfill equipment, or transfer station equipment, or site improvements--119 [~~124~~] points

(iv) Acquisition of property for a landfill site or transfer station site and minimal site improvements--115 [~~120~~] points

(v) Other eligible solid waste disposal activities--110 points

(D) Additional subjective considerations for gas facilities, electrical facilities and solid waste disposal activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction -- 1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point) - 1 point

(10) [~~(11)~~] Access to basic telecommunication activities--105 to 125 points. [~~Provide first-time access to telecommunications and the internet to an area--125 points~~]

(A) Provide first-time access to telecommunications and the internet to an area -- 120 points

(B) Additional subjective considerations for access to basic telecommunication activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction -- 1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point) - 1 point

(11) [~~(12)~~] Jails and detention facility activities--105 to 125 points.

(A) Jail facility activities.

(i) Construction of a new jail--120 [~~125~~] points

(ii) Construction of a new police substation in a documented high-crime area--120 [~~125~~] points

(iii) Rehabilitation of an existing jail or police substation--110 [~~115~~] points

(iv) Other eligible jail facility activities--105 points

(B) Detention facility activities.

(i) Construction of a new juvenile detention facility--120 [~~125~~] points

(ii) Construction of a new adult detention facility--118 [~~123~~] points

(iii) Rehabilitation of an existing detention facility--110 [~~115~~] points

(iv) Other eligible detention facility activities--105 points

(C) Additional subjective considerations for jails and detention facility activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction -- 1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point) - 1 point

(12) [~~(13)~~] All other eligible activities--85 to 115 points.

(A) Park activities.

(i) Construction of a first-time park area or expansion of an existing park to include a recreational activity that is not available at any existing park serving the area--110 [~~115~~] points

(ii) Improvement to an existing park--100 [~~105~~] points

~~*[(iii)* Rehabilitation of an existing jail or police substation--115 points]~~

~~*[(iv)* Other eligible jail facility activities--105 points]~~

(B) Public service activities. Providing public service that has not been provide by the unit of general local government in the preceding 12 months--110 [~~115~~] points

(C) All other eligible activities. All other eligible activities--85 points

(D) Additional subjective considerations for jails and detention facility activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction -- 1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point) - 1 point

(13) If the documentation type or terminology differs from what is stated in a particular category but the intent or purpose is the same, the Office may in its discretion use the score for that category rather than assign it to a lower purpose as the document stated in a particular category, the Office may decide to use that category rather than a lower scoring category. The applicant should provide evidence to support such a determination.

(14) The total points awarded may not exceed the maximum point range fro any activity category.

§255.3. Young v. Martinez Fund.

(a) General provisions. Assistance under this fund is limited to the eligible cities selected by the U.S. Department of Housing and Urban Development (HUD) to complete the Court-ordered activities under the Final Order and Decree in the Young v. Martinez litigation. The only eligible activities are the activities described in revised Memoranda of Understanding (MOUs) and any 1990 Desegregation Plan activities cited in the revised MOUs.

(1) A local government with Young v. Martinez required activities must submit an application under this fund which addresses the required activities and which includes local matching funds.

(2) In addition to the threshold requirements of §255.1(h) of this title (relating to General Provisions) and the requirements of §255.1(n), in order to be eligible to apply for Young v. Martinez funding, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(b) Funding cycle. Recaptured and deobligated funds from prior program years are available to the eligible cities. Applications for funding must be received by the date specified by the TxCDBG [~~TCDP~~].

(c) Selection procedures.

(1) Each eligible local government may submit one application for funding under the Young v. Martinez fund. Two copies of the application must be submitted to the Office and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on an application from a local government within its state planning region. These comments become part of the application file, provided such comments are received by the Office prior to final review of the applications.

(4) HUD reviews the activities included in each application, selects the applications that receive funding, and the order in which the applications receive funding recommendations. HUD then notifies the Office when a funding decision is made.

(5) Following a final technical review, the Office staff makes funding recommendations for the applications selected by HUD to the executive director of the Office.

(6) The executive director of the Office reviews the recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(7) Upon announcement of the contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

§255.4. Planning/Capacity Building Fund.

(a) General provisions. This fund is intended to provide an opportunity for units of general local government to prepare comprehensive community development plans, develop strategies, assess needs, and build or improve local capacity to undertake future community development projects or to prepare other needed planning elements (including telecommunications and broadband needs). All planning projects awarded under this fund must include a section in the final

planning document that addresses drought-related water supply contingency plans and water conservations plans. Eligible units of general local government are to be the direct recipients of planning contracts. Units of general local government may submit one application for planning funds annually if all previous planning/capacity building contracts with the Office have been totally reimbursed by the Office.

(1) A cash match equal to or greater than 20% of the total TxCDBG [~~TCDP~~] funds requested is required of all applicants having a population over 5,000, a cash match equal to or greater than 15% of the total TxCDBG [~~TCDP~~] funds requested is required of all applicants having a population over 3,000 but equal to or less than 5,000, a cash match equal to or greater than 10% of the total TxCDBG [~~TCDP~~] funds requested is required of all applicants having a population over 1,500 but equal to or less than 3,000, and a cash match equal to or greater than 5% of the total TxCDBG [~~TCDP~~] funds requested is required of all applicants having a population of less than 1,501. The population of an applicant is based on the 2000 census unless an applicant submits a survey conducted in accordance with §255.1(k) of this title (relating to General Provisions). [~~The percentage of match required from a county applicant is based on the actual target area population benefiting from the proposed planning project.~~] In lieu of providing the cash match specified in this paragraph, and as further described in the most recent application guide for this fund, an applicant may agree to pay out of its own resources for other eligible planning activities described on the matrix included in such application guide.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for planning/capacity building funding, an applicant under this section must document that at least 51% of the persons in the area who would benefit from the implementation of the proposed planning activity are of low and moderate income.

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2007 [~~2005~~] and 2008 [~~2006~~] program years pursuant to a statewide competition held during the 2007 [~~2005~~] program year. Applications for funding from the 2007 [~~2005~~] and 2008 [~~2006~~] program year allocations must be received by the TxCDBG [~~TCDP~~] by the dates and times specified in the most recent application guide for this fund.

(c) Selection procedures. Scoring and the recommended ranking of projects are done by Office staff with input from the regional review committees. The application and selection procedures consist of the following steps.

(1) Prior to the application deadline, each eligible jurisdiction may submit one application for funding under the planning/capacity building fund. An applicant may not submit an application under this fund and also under the colonia fund if the proposed activity under each application is the same or substantially similar. One copy of the application should be provided to the applicant's regional review committee and two copies must be submitted to the Office.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether the activities proposed are eligible for funding. Results of this initial staff review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a planning/capacity building proposal from a jurisdiction within its state planning region. These comments become part of the application file, provided such comments are received by the Office prior to scoring of the applications.

(4) The Office staff generate scores on factors related to planning strategy and products. Each application is scored on how the proposed planning activities resolve the identified community development needs of the local government. This information, as well as any comments made by the regional review committee, are used by the Office staff to generate scores on the planning strategy and products factors.

(5) The Office generates scores on selection criteria relating to community distress, project design, and planning strategy and products. Scores on the factors in these categories are derived from standardized data from the Census Bureau, Texas Workforce Commission, or from information provided by the applicant.

(6) Scores on all factors are totaled to obtain project rankings.

(7) The Office staff submits the 2007 [~~2005~~] program year and 2008 [~~2006~~] program year funding recommendations to the state review committee. The state review committee reviews the project rankings and provides funding recommendations to the executive director of the Office.

(8) The executive director of the Office reviews the 2007 [~~2005~~] program year funding recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(9) Upon the announcement of the 2007 [~~2005~~] program year contract awards, the Office staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(10) When the 2008 [~~2006~~] program year TxCDBG [~~TCDP~~] allocation becomes available, the executive director of the Office reviews the 2008 [~~2006~~] program year funding recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(11) Upon the announcement of the 2006 program year contract awards, the Office staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(d) Selection criteria. The following is an outline of the selection criteria used by the Office for selection of the projects under the planning/capacity building fund. Four hundred thirty points are available.

(1) Community distress (total--55 points). All community distress factor scores are based on the total population of the applicant.

(A) Percentage of persons living in poverty--up to 25 points

(B) Per capita income--up to 20 points

(C) Unemployment rate--up to 10 points

(2) Project scope (total--100 points).

(A) Program priority (up to 50 points). An applicant chooses its own priorities under this scoring factor. All activities are weighted at ten points apiece. An applicant receives 50 points for its first five priorities. Base studies (base mapping, housing, land use, population components) are recommended for those who lack these up-

dated studies. An applicant is not limited to requesting only its first five priorities. It may also request funds for activities viewed as necessary, but no additional points would be available for these activities. Applicants with fewer than five priorities or wishing to accomplish fewer than five activities receive point consideration for efficient use of grant funds under "Planning Strategy and Products" described in the most recent application guide for this fund.

(B) Areawide proposals (up to 50 points). An applicant must propose to conduct all activities described in its application throughout the entire jurisdiction of the applicant to receive the maximum 50 points. An applicant proposing target area planning receives zero points. County applicants with identifiable, unincorporated communities qualify for these points provided that incorporation or other organization of the unincorporated communities is being considered as an option.

(3) Planning strategy and products (total 275 points).

(A) Previous planning (up to 50 points).

(i) An applicant which has not previously received a planning/capacity building contract or an applicant which has received a planning/capacity building fund contract prior to the 1995 program year and has not received any subsequent planning/capacity building fund contracts--up to50 points.

(ii) An applicant which has received previous planning/capacity building funding and demonstrates that at least three previous planning recommendations have been implemented, i.e., funds from any source have been spent to implement recommendations included in the plans--up to40 points.

(iii) An applicant which has participated in the program established under this section and demonstrates implementation of some of the planning recommendations, regardless of the source of funding, or an applicant which has received previous planning/capacity building funding but demonstrates that conditions have changed to warrant new planning for the same activities--up to20 points.

(iv) Previous recipients of Planning and Capacity Building Funds since program year 1995 scored under clauses (ii) and (iii) of this subparagraph that have not implemented the previously funded activities, and there are no special or extenuating circumstances prohibiting implementation, will not receive points under the Previous planning category. Implementation must be completely documented in the original submission of the application and its questionnaire. Further documentation will not be requested prior to scoring consideration.

(B) Proposed planning effort (225 points). The factors considered by staff of the Office in determining this score are as follows:

(i) Community Needs Assessment (up to 10 points) Application must have the following for points:

(I) Needs clearly identified by priority; and

(II) Evidence of strong citizen input or known citizen involvement;

(ii) Evidence of effort to notify special groups included with the originally submitted application (up to 5 points);

(iii) Good hearings' notices, timeliness and/or participation. Hearing notices and publication happened as described in the application guide (Up to 10 points);

(iv) How clearly the proposed planning effort results in a strategy to resolve the identified needs (up to 15 points);

(v) Whether the proposed activities will result in development of a viable strategy that can be implemented and would be an efficient use of grant funds (up to 15 points);

(vi) Anticipated actions are clear, concise and reasonable (i.e., applicant has responded properly) and anticipated actions match needs (up to 10 points) (Must have both items to receive these points);

(vii) Community is organized and would ensure a planning process or plan implementation, (as evidenced by advisory committee, main street designation, previous good performance, etc.) (up to 5 points);

(viii) Applicant's resolution specifically names activities for which it is applying (up to5 points);

(ix) Applicant is applying for planning only; no construction activities proposed for the 2007 [~~2005~~] - 2008 [~~2006~~] Tx-CDBG [~~TCDP~~] (up to3 points);

(x) Table 1, Description of Planning Activity, in application (up to 15 points) (Must have all items to receive points):

(I) Originally submitted application describes eligible activities;

(II) Originally submitted application describes understanding of plan process;

(III) Originally submitted application addresses identified needs;

(IV) Originally submitted application appears to result in solution to problems; and

(V) Originally submitted application describes or indicates an implementable strategy;

(xi) Table 1, Description of Planning Activity, in application: (total 10 points):

(I) Original application requests recommended base planning activities (up to 5 points); and

(II) Original application documents independent effort in base planning (up to 5 points);

(xii) Table 2, Benefit to low/moderate income persons (up to 10 points) (Must have all items, if applicable, for points):

(I) Amount requested in original submission is less than or equal to matrix prescribed amount;

(II) If special activity funding is requested, the amount appears to be reasonable; and

(III) All proposed activities in original application relate to described needs and resolution.

(xiii) Community based questionnaire (up to 5 points) (Must have both for points):

(I) Original was complete; no pages missing; no more than one to three blanks; no disparities, and

(II) Considering the applicant's size, the form indicates an attempt to control problems;

(xiv) Staff Capacity--Applicant has demonstrated staff capacity (up to 3 points);

(xv) Organization for Planning (to 5 points total)--One of the following exist within the applicant's jurisdiction: Planning and Zoning Commission, Planning Commission, Zoning Commission,

Zoning Board of Adjustment, Citizens Advisory Committee, or other local group involved;

(xvi) One organization for planning meets six or more times per year (5 points);

(xvii) Applicant has at least three of the following codes or ordinances passed since 1983, according to the original application (3 points): Zoning, Building, Subdivision, Gas-Natural, Electrical, Fire, Plumbing;

(xviii) Adjustments (Subtract up to 6 points): Applicant has zoning and no land use and future land use maps and requests no base studies. (subtract 3 points); and zoning passed before land use plan accomplished and no indication to do land use and/or no zoning requested (subtract 3 points);

(xix) Applicant has at least two of the following codes or ordinances passed since 1980, according to the original application Mobile Home, Minimum Standards-Housing, Flood Plain, Dangerous Structures, and Fair Housing (up to5 points);

(xx) Applicant has at least 3 of the following element(s) that are less than 10 years old according to the application or will have in place the following element(s) prior to awards (up to 5 points maximum; but no points if reapplying for TxCDBG [~~TCDP~~] funding for same activities accomplished since 1995): Land Use, Water System, Housing, Wastewater, Street Plan, Drainage, Economic Development Plan, Solid Waste, Central Business District Plan, Capital Improvement Program, or Recreation/Parks;

(xxi) Applicant has both a property and sales tax (up to5 points);

(xxii) Applicant has been successful in collecting an average of 95% or more of its property taxes for the two years--2002 and 2003 (per application) (up to3 points);

(xxiii) Applicant reports it has an active code enforcement program (up to 2 points);

(xxiv) The population change (up to a total of 10 points). The population change either positive or negative from 1990 to present is between 5% and 10% (up to2 points); greater than 10% but less or equal to 15% (up to4 points); greater than 15% but less or equal to 20% (up to6 points); greater than 20% but less or equal to 25% (up to8 points); or greater than 25% (up to10 points);

(xxv) Applicant reports it has passed a one-half cent sales tax to fund economic development activities (3 points);

(xxvi) Applicant has performed activities to attract or retain business and industry (other than passing the 1/2 cent sales tax) (up to 3 points);

(xxvii) Applicant has applied for federal or state funds (other than TxCDBG [~~TCDP~~]) in the last three years or is currently applying. (up to3 points);

(xxviii) Applicant is specifically requesting funding for a Capital Improvement Program in proper implementation sequence or has indicated in the application that a capital improvement programming process is routinely accomplished (up to3 points);

(xxix) Applicant's responses to questions on the Community Base Questionnaire and/or other portions of the application appear to indicate that the applicant will produce a valid Capital Improvement Program that would draw on local resources and grant/loan programs other than TxCDBG [~~TCDP~~] (3 points);

(xxx) Applicant is in a Council of Government region which had no recipients of any kind of TxCDBG [~~TCDP~~] planning funds during the previous biennial program years (up to8 points);

(xxxi) Applicant is requesting fewer than five priority activities and is requesting no more than the dollar amount prescribed in the matrix and no Special Activities requested or applicant is requesting only Special Activities and it is apparent that they are urgently needed from the application (up to10 points);

(xxxii) Applicant is again requesting planning funds according to the matrix after competing unsuccessfully last competition, according to the Summary Form; or Applicant has a population shown on Table 2 of the application of at least 200 but less than or equal to 500 (up to5 points);

(xxxiii) Commitment, as exhibited by match, based on 2000 Census (up to 5 points). Applicant is contributing the following percentage more than required over the base match amount for its population level:

(I) less than 5% (0 points);

(II) 5% but less than 10% more than required (2 points);

(III) 10% but less than 15% more than required (3 points);

(IV) 15% but less than 20 more than required (4 points); or

(V) At least 20% more than required (5 points);

(xxxiv) Applicant includes at least three sound indications of the locality's likelihood to stay directly involved in the planning process and to implement the proposed planning (up to 3 points);

(xxxv) Special Impact. Whether some significant event will occur in the region that may impact ability to provide services, such as a factory locating in the area that will increase jobs by 10 percent, the announced closure of an employer that will reduce jobs by 10 percent, declared natural disaster, or announcement of construction of a major interstate highway in the area (up to 5 points);

(xxxvi) Applicant's past performance. Past performance on previous TxCDBG [~~TCDP~~] contracts (up to 5 points); and

(xxxvii) Applicant has never received a TxCDBG [~~TCDP~~] grant and the application would lead one to believe that the project will be completed successfully and the plans implemented (up to5 points).

§255.5. Disaster Relief Fund.

(a) General provisions. Assistance under this fund is available to units of general local government for eligible activities under the Housing and Community Development Act of 1974, Title I, as amended, for the alleviation of a disaster situation. To receive assistance under this program category, the situation to be addressed with TxCDBG [~~TCDP~~] funds must be both unanticipated and beyond the control of the local government. For example, the collapse of a municipal water distribution system due to lack of regular maintenance does not qualify. If the same situation was caused by a tornado or flood, the community could apply for disaster relief funds. An applicant may not apply for funding to construct public facilities that did not exist prior to the occurrence of the disaster. Starting with the 2004 TxCDBG [~~TCDP~~] program year, TxCDBG [~~TCDP~~] disaster relief funds will not be provided under the Federal Emergency Management Agency's Hazard Mitigation Grant Program unless the Office receives satisfactory evidence that any property to be purchased was not constructed or purchased by the current owner after the property site location was of-

ficially mapped and included in a designated flood plain area. Additionally, in disaster relief situations, the TxCDBG [~~TCDP~~] dollars are to be viewed as gap financing or funds of last resort. In other words, the community may only apply to the Office for funding of those activities for which local funds are not available, i.e., the entity has less than six months of unencumbered general operations funds available in its balance as evidenced by the last available audit as required by state statute, or assistance from other sources is not available. TxCDBG will consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation. TxCDBG may prioritize throughout the program year the use of Disaster Relief assistance funds based on the type of assistance or activity under considerations and may allocate funding throughout the program year based on assistance categories.Assistance under the disaster relief fund is provided only if one of the following has occurred:

(1) The governor has requested a presidential declaration of a major disaster; or

(2) The governor has declared a state of disaster or emergency.

(b) Funding cycle. Funds for disaster relief projects will be awarded throughout the program year in response to disaster situations. The application for assistance must be submitted no later than 12 months from the date of the presidential declaration of a major disaster or governor's declaration of a state of disaster or emergency.

(c) Selection procedures. As soon as an area qualifies for disaster relief assistance, the Office works with the local government, the governor's office, and the Emergency Management Division of the Texas Department of Public Safety to determine where TxCDBG [~~TCDP~~] funds can best be utilized. The Office then works with the unit of local government selected for funding to negotiate a contract. A unit of general local government cannot receive a disaster relief grant and an urgent need grant to address problems caused by the same natural disaster situation. In no instance will a unit of general local government receive more than one disaster relief grant to address a single occurrence of a natural disaster.

(d) Disaster recovery initiative funds. Disaster recovery initiative funds are available to eligible counties, cities, and Indian tribes to address damages from severe rain storms and flooding. Any damages sustained in the eligible county areas that were sustained from storm or flood conditions that occurred before or after the dates designated in disaster recovery initiative notices for funding are not eligible for assistance. Disaster recovery initiative funds may supplement, but not replace, resources received from other Federal or State agencies to address the damages from the storm and flood conditions. These funds cannot be used for activities that were reimbursable by or for which funds were made available from the Federal Emergency Management Agency, the Small Business Administration, the National Resource Conservation Service, or the U.S. Army Corps of Engineers.

(e) Eligible applicants for disaster recovery initiative funds. Eligible applicants for these funds are nonentitlement and entitlement counties, incorporated cities, or eligible Indian tribes located in one of the counties named in disaster recovery initiative notices for funding that are preceded by Presidential Disaster Declarations for counties in Texas that sustained damages from severe storms and flooding.

(f) Eligible disaster recovery initiative activities. Since the eligible activities may vary in each disaster recovery initiative notice for funding, eligible applicants are informed of the eligible activities in each application guide for disaster recovery initiative assistance.

(g) Disaster recovery initiative funding cycle. An application for these funds can be submitted on an as-needed basis. An eligible applicant can only submit one application for these funds. Based on the disaster recovery initiative selection criteria, applications selected to receive funding may not necessarily be selected on a first-come, first-served basis.

(h) Disaster recovery initiative selection criteria. The following describes the evaluation criteria used by the Office to select disaster recovery initiative grantees.

(1) Priority for the use of these funds will be given to applications where all or some of the application activities meet the national program objective of principally benefitting low and moderate income persons. To meet this national program objective at least 51% of the beneficiaries for an application activity must be low and moderate income persons.

(2) Priority for these funds will be given to eligible applicants that have not already received a TxCDBG [~~TCDP~~] disaster relief grant for activities associated with the occurrence of this disaster.

(3) For any application that includes construction or acquisition activities, the Office will consider the applicant's status as a nonparticipating, noncompliant community under the National Flood Insurance Program when prioritizing the selection of the applicants that will receive disaster recovery initiative funds.

§255.6. Urgent Need Fund.

(a) General provisions. Urgent need assistance is contingent upon the availability of funds for activities that will restore water or sewer infrastructure whose sudden failure has resulted in either death, illness, injury, or pose an imminent threat to life or health within the affected applicant's jurisdiction. The infrastructure failure must not be the result of a lack of maintenance and must be unforeseeable. As an initial step, TxCDBG undertakes an assessment of whether the situation is reasonably considered unforeseeable. An application for urgent need assistance will not be accepted by the TxCDBG [~~TCDP~~] until discussions between the potential applicant and representatives of theTxCDBG [~~TCDP~~], the Texas Commission on Environmental Quality (TCEQ), and the Texas Water Development Board (TWDB) have taken place. Through these discussions, a determination shall be made whether the situation meets TxCDBG [~~TCDP~~] urgent need threshold criteria; whether shared financing is possible; whether financing for the necessary improvements is, or is not, available from the TWDB; or that the potential applicant does, or does not, qualify for TWDB assistance. [~~Based on the availability of such funds, deobligated funds and/or program income not to exceed $1,000,000 may be made available for urgent need assistance during the 2004 TCDP program year. If TCDP funds are made available, a potential applicant that meets these requirements will be invited to submit an application for urgent need funds.~~]

(b) Threshold requirements. In addition to the threshold requirements set forth in §255.1(h) and §255.1(n) of this title (relating to General Provisions), each of the following requirements must be satisfied in order to be eligible for funding under this fund:

(1) The situation addressed by the applicant must not be related to a proclaimed state disaster declaration or a federal disaster declaration.

(2) The situation addressed by the applicant must be both unanticipated and beyond the control of the local government.

(3) The problem being addressed must be of recent origin. For urgent need assistance, this means that the situation first occurred or was first discovered no more than 30 days prior to the date that the potential applicant provides a written request to the TxCDBG [~~TCDP~~] for urgent need assistance. The urgent need fund will not fund projects to address a situation that has been known for more than 30 days or

should have been known would occur based on the applicants existing system facilities.

(4) Each applicant for these funds must demonstrate that local funds or funds from other state or federal sources are not available to completely address the problem.

(5) The distribution of these funds will be coordinated with other state agencies.

(6) The infrastructure failure cannot have resulted from a lack of maintenance.

(7) Urgent need funds cannot be used to restore infrastructure that has been cited previously for failure to meet minimum state standards.

(8) The infrastructure failure cannot have been caused by operator error.

(9) The infrastructure requested by the applicant cannot include back-up or redundant systems.

(10) TxCDBG will consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation.

(11) The urgent need fund will not finance temporary solutions to the problem or circumstance.

(c) Start of construction. Construction on an urgent need fund project must begin within ninety (90) days from the start date of the TxCDBG [~~TCDP~~] contract. The TxCDBG [~~TCDP~~] reserves the right to deobligate the funds under an urgent need fund contract if the grantee fails to meet this requirement.

(d) Matching funds. Each applicant for urgent need funds must provide matching funds. If the applicant's 2000 census population is equal to or fewer than 1,500 persons, the applicant must provide matching funds equal to 10 percent of the TxCDBG [~~TCDP~~] funds requested. If the applicant's 2000 census population is over 1,500 persons, the applicant must provide matching funds equal to 20 percent of the TxCDBG [~~TCDP~~] funds requested. For county applications where the beneficiaries of the water or sewer improvements are located in unincorporated areas, the population category for matching funds is based on the number of project beneficiaries.

§255.7. Texas Capital Fund.

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements and downtown revitalization programs, projects must qualify to meet the national program objective of aiding in the prevention or elimination of slum or blighted areas.

(1) For an activity that creates/retains jobs, the city/county and business must document that at least 51% of the jobs are or will be held by low and moderate income persons. For purposes of determining whether a job is or will be held by a low or moderate income person or not, the following options are available.

(A) The business must survey all persons filling a created/retained job. Persons filling a created job should be surveyed at the time of employment. Persons holding a retained job should be surveyed prior to application submission. This determination is based on the family's size and previous 12 month income and is normally documented on the Family Income/Size Certification form, which is filled out, dated and signed by employees; or

(B) The person(s) employed by the business for created/retained jobs may be presumed to be a low or moderate income person if the person resides within a census tract or block numbering area that either is part of a Federally-designated Empowerment Zone or Enterprise Community or the person(s) reside in a census tract or block numbering area that meets the following criteria:

(i) The census tract or block numbering area has a poverty rate of at least 20% as determined by the most recently available decennial census information;

(ii) The census tract or block numbering area does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30% as determined by the most recently available decennial census information; and

(iii) The census tract or block numbering area shows evidence of pervasive poverty and general distress by meeting at least one of the following standards:

(I) All block groups in the census tract have poverty rates of at least 20%; or

(II) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20%; or

(III) Has at least 70% of its residents who are low- and moderate-income persons; or

(IV) The assisted business is located within a census tract or block numbering area that meets the requirements of this subparagraph, and the job under consideration is to be located within that census tract or block numbering area.

(2) If the project is designed to aid in the prevention or elimination of slum or blighted areas, then it must meet the area slum or blight or spot slum or blight criteria and threshold requirements outlined in the separate main street or downtown revitalization program applications.

(3) A firm financial commitment from all funding sources.

(4) The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of $750,000 or less; and 4:1 for awards of $750,000 to $1,000,000. The main street and downtown revitalization programs require a minimum 0.1:1 match.

(5) In order for an applicant to be eligible, the cost per job calculation must not exceed $25,000 for awards of $750,000 or less; and $10,000 for awards of $750,001 to $1,000,000. These requirements do not apply to the main street program or the downtown revitalization program.

(6) No financial assistance will be provided to projects involved in the relocation of any industrial or commercial plant, facility or operation, from one state to another state, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. No assistance will be provided for projects intended to facilitate the relocation of any industrial or commercial plant, facility or operation from one unit of general local government within Texas to another unit of general local government within Texas unless a 10% net gain of jobs will occur and one of the following requirements has been met prior to submitting an application for consideration under this section:

(A) Business to relocate with approval of current locality. Local government must provide written documentation within the application, verifying the chief elected official (mayor or judge) of the unit of local government from which the business is relocating supports and approves the relocation proposal. A written agreement between the two local governments involved in the business relocation is preferred.

(B) Local government notification with no response. Local government must provide written documentation that a letter has been mailed (by registered mail) to the local government from which the business is relocating, notifying it of the relocation. The local government, upon receipt of the notification, then has 30 days to object to the relocation, in writing, to the TDA before the TCF application can be considered. A written objection to a relocation from a local government will prevent the application from being considered.

(7) The TDA will not consider any application for funding which will result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(8) The TDA will not consider any application for funding in which the business or principals to be assisted thereunder, or a business that shares common principals has filed under the Federal Bankruptcy Code, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt. On a case by case basis, extenuating circumstances will be evaluated.

(9) The TDA may consider applications in the real estate and infrastructure improvement programs that provide funding to benefit a maximum of three (3) businesses.

(10) The TDA will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. TDA may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county or contiguous counties (not to exceed five (5) miles beyond the city's extra-territorial jurisdiction that the city is located in and will consider a project proposed by a county that is within an incorporated city, if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least fifty-one percent (51%) of the principal beneficiaries reside within the applicant's jurisdiction.

(11) A TCF contractor must satisfactorily close out a contract in support of a specific business, downtown revitalization project, or main street project in order to be eligible to receive additional funds under the TCF for the same business, downtown project, or main street city. The contractor is eligible for an additional TCF award in support of a specific business, provided that the prerequisite program income choice has been selected, if the assisted business is not in the designated main street or downtown business district geographic area and the assisted business will create or retain jobs to meet the national program objective.

(12) The TDA will not consider or accept an application for funding from a community, in support of a business project that is currently receiving TCF assistance through that same community.

(13) The minimum and maximum award amount that may be requested/awarded for a project funded under the TCF infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, jumbo awards may not exceed $2 million in total awards during the program year. Additionally, no more than $1 million in jumbo awards will be approved in any round. The maximum amount for a jumbo award is $1 million and the minimum award amount is $750,100. The maximum amount for a normal award is $750,000 and the minimum award amount is $50,000. These amounts are the maximum funding levels. The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final negotiation between TDA and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application.

(14) TDA will allocate the available funds for the year, less $600,000 for the main street program, and $1,200,000 for the downtown revitalization program, as follows:

(A) First round. 30% of the annual allocation plus any deobligated and program income funds available, as of the application due date.

(B) Second round. 40% of the remaining allocation plus any deobligated and program income funds available, as of the application due date.

(C) Third round. 50% of the remaining allocation plus any deobligated and program income funds available, as of the application due date. If only three application rounds are scheduled, all remaining funds will be allocated to the final round.

(D) Fourth round. Any remaining allocation plus any deobligated and program income funds available, as of the application due date.

(b) Overview. This fund is distributed to eligible units of general local government for eligible activities in the following program areas:

(1) The infrastructure program. The infrastructure program provides funds for eligible activities such as the construction or improvement of water/wastewater facilities, public roads, natural gas-line main, electric-power services, and railroad spurs.

(2) The real estate program. The real estate program provides funds to purchase, construct, or rehabilitate real estate that is wholly or partially owned by the community and leased to a specific benefiting business (either a for-profit entity or a non-profit entity).

(3) The main street program. The main street improvements program provides public improvements in support of Texas main street program designated municipalities.

(4) The downtown revitalization program. The downtown revitalization program provides public improvements to a city's historic main business district.

(c) Application Dates. The TCF (except for the main street program and the downtown revitalization program) is available up to four times during the year, on a competitive basis, to eligible applicants statewide. Applications for the main street program and the downtown revitalization program are accepted annually. Applications will not be accepted after 5:00 pm on the final day of submission. The application deadline dates are included in the program guidelines.

(d) Repayment Requirements. TCF awards for real estate improvements and private infrastructure require repayment. Infrastructure payments and real estate lease payments are intended to be paid by the benefiting business to the applicant/contractor and constitute program income. The repayment is structured as follows:

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three year period or until the TCF contract between the applicant and TDA has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by TDA and may not be for the maximum of 20 years for smaller award amounts. There is no interest expense associated with an award. Payments begin the first day of the third month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. After the contract between the applicant and the Department is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five year ownership requirement and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) Infrastructure improvements.

(A) Private Infrastructure is infrastructure that will be located on the business's site or on adjacent and/or contiguous property, to the site, that is owned by the business, principals, or related entities. All funds for private infrastructure improvements require full repayment. Terms for repayment will be interest free, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(B) Public Infrastructure is infrastructure located on public property or right-of-ways and easements granted by entities unrelated to the business or its owners and not included or identified as private infrastructure. All funds for public infrastructure do not require repayment.

(C) Rail improvements on private property require full repayment. Terms for repayment will be no interest, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(e) Application process for the infrastructure and real estate programs. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to the TDA Commissioner. The TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The financial feasibility of the business to be assisted based on a credit analysis;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources;

(E) Whether there is evidence that the permanent jobs created or retained will primarily benefit low-and-moderate income persons; and

(F) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TxCDBG [~~TCDP~~] funds.

(5) Upon TDA staff determination that an application supports a feasible and eligible project, staff normally will schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official (or designee), business representative(s), and to visit the project site.

(6) TDA staff prepares a project report with recommendations (for approval or denial) to TDA's Commissioner.

(7) The TDA Commissioner reviews the recommendation and announces the final decision.

(8) TDA staff works with the recipient to execute the contract agreement. While the contract award must be based on the information provided in the application, TDA staff may negotiate some elements of the final contract agreement with the recipient.

(9) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, the award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the TDA Commissioner and then a single copy is returned to contractor.

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on county poverty rate. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on county unemployment rate. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Community Need (maximum 60 points). Measures the economic distress of the applicant community.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's quarterly county unemployment rate (the most recently available 3 months will be used) is higher than the state rate, indicating that the community is economically below the state average. Ten points awarded if the applicant's most recently available quarterly county unemployment rate is 1.5% over the state rate.

(B) Poverty (maximum 15 points). Awarded if the applicant's most recently available annual county poverty rate, as provided in Appendix A of the Application, is higher than the annual state rate, indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average; score 10 points if this figure exceeds the state average by at least 15%; and score 15 points if this figure exceeds the state average by at least 25%.

(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.

(D) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(E) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less and counties with a total population of 35,000 or less, using 2000 census data. For cities: score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. For counties: score 5 points if the county population is less than 35,000 and score 5 additional points if the county population is less than 15,350. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(F) Community Income (maximum 10 points). Ten points awarded to communities that have a low and moderate income level for a 4 person household that is in the bottom 90% of all county level 4 person low and moderate income levels, as provided in Appendix D of the application.

(3) Jobs (maximum 20 points).

(A) Job Impact (maximum 10 points). Awarded by taking the business' total job commitment, created and retained, and dividing by applicant's 2000 unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds the median job impact ratio for prior years; and score 10 points if this figure exceeds 200% of the ratio. County applicants should deduct the 2000 census population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown in the 2000 census data.

(B) Cost per Job (maximum 10 points). Awarded by dividing the amount of TCF monies requested (including administration) by the number of full-time job equivalents to be created and/or retained. Points are then awarded in accordance with the following scale:

(i) Below $15,000--10 points.

(ii) Below $20,000--5 points.

(4) Business Emphasis (maximum 20 points).

(A) Manufacturers (max 10 points). Awarded if 51% or more of the jobs created and/or retained are or will be employed by a benefiting Business' whose primary Standard Industrial Classification (SIC) code number starts with 20-39 or if their primary North American Industrial Classification System (NAICS) code number starts with 31-33. This is based on the SIC number reported on the Business' Texas Workforce Commission (TWC) Quarterly Contribution Report, Form C-3, their IRS business tax return, or other documentation from the Texas Workforce Commission. Foreign businesses that have not had an SIC/NAICS code number assigned to them by either the TWC or IRS may submit alternative documentation to support manufacturing as their primary business activity to be eligible for these points.

(B) Small businesses (maximum 5 Points). Awarded if each/the benefiting Business employs no more than 50 employees for all locations both in and out of state. This number is determined by the business and any related entities, such as parent companies, subsidiaries and common ownership. Common ownership is considered 51% or more of the same owners.

(C) HUB--Historically Underutilized Business (maximum 5 Points). Awarded if each/the benefiting business is certified by the state Texas Building and Procurement Commission (TBPC) as a Historically Underutilized Business (HUB). Provide a copy of TBPC's certification in the application.

(g) Equity requirement by the business. All businesses are required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. This equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. A minimum of a 33% equity injection (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required, if the business has been operating for less than three years and is accessing the R/E program. TDA staff will consider a business to have been operating for at least three years if:

(1) The business or principals have been operating for at least three years with comparable product lines or services;

(2) The parent company (100% ownership of the business) has been operating for at least three years with comparable product lines or services; or

(3) An individual or partnership (100% ownership of the business) has been in existence/operation for at least three years with comparable product lines or services.

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

(1) Each applicant must submit two complete applications to Texas Historical Commission (THC). No changes to the application are allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be

considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of the applications, THC evaluates applications based on the scoring criteria and ranks them in descending order.

(3) TDA staff will then review the four highest ranking applications for eligibility and completeness in descending order based on the scoring. In the event the staff determines the application contains activities that are ineligible for funding, the application will be restructured or considered ineligible. The applicant will be notified of any deficiencies and given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature (e.g., lack of financial commitments) may be declined. In any event a determination is made that an application contains activities that are ineligible for funding, the application will be restructured or declined and the application materials will be retained by TDA. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The project feasibility;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources; and

(E) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.

(5) Upon TDA staff determination that an application supports a feasible and eligible project, an on-site visit to the four highest scoring applicants may be conducted by TDA staff to discuss the project and program rules with the chief elected official, as applicable, or their designee and to visit the Main Street area.

(6) TDA staff prepares a project report and makes a recommendation for approval or denial to TDA's Commissioner or the Commissioner's designee for the final decision.

(7) The Commissioner reviews the recommendation and, if approved, an award letter is sent to the applicant's chief elected official.

(8) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the Commissioner or the Commissioner's designee and then a single copy is returned to contractor.

(i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.

(1) In the event of a tie score, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on the applicant's most recently available annual county poverty rate, as provided in Appendix A of the application. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria, then applications are ranked from lowest to highest based on the most recently available, quarterly, county unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Project Feasibility (maximum 70 points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten criteria for Main Street Recognition is required. First year Main Street Cities must receive prior approval from THC to apply and must submit the Main Street Criteria for Recognition Survey with the TCF application. The criteria include the following:

(A) Broad-based public support for the proposed project--(10 points). Show letters of support from the following:

(i) one (1) letter from the County Historical Commission (A letter of support from the County Historical Commission is required to receive any points in this category.)

(ii) Score 10 points for letters from 75% or more of the businesses and/or property owners in the proposed Texas Capital Fund project area.

(B) Infrastructure Project Plan--(10 points). Show the city's plan for dealing with an infrastructure project. Develop a plan for access to local business during the infrastructure project. Provide public notification to support the project.

(C) ADA Compliance Goals--(10 points). Does the project address ADA accessibility issues. How will ADA issues be addressed in the project. If project does not address ADA compliance issues, is the Main Street District in compliance with Federal ADA standards. If the project does not address ADA compliance, no points will be awarded for this category. Partial points may be awarded depending upon the degree in which the project addresses ADA compliance issues.

(D) Historic Preservation Ethic and Preservation Impact--Main Street's Role--(10 points). Preservation is a major component of the Texas Historical Commission's Main Street program. Officially designated cities are eligible for the Texas Capital Fund grant based on their inclusion in the Texas Main Street program. Points will be awarded if the applicant has successfully addressed the criteria as follows: if the applicant successfully addressed the issue of enhancing historic assets and/or historic preservation goals, up to 5 points may be awarded. If the applicant has demonstrated that they have a current historic preservation ordinance, up to 3 points may be awarded based upon the content of the ordinance. Up to 2 points may be awarded for historic preservation-related programs or incentives. The THC mission is "To protect and preserve the state's historic and prehistoric resources for the use, education, enjoyment and economic benefit of present and future generations." Therefore, in the interest of accomplishing our mission, please answer the following:

(i) Describe how the proposed Texas Capital Fund project enhances your historic assets or historic preservation goals.

(ii) Does the city have a current historic preservation ordinance?

(iii) Does the city have any historic preservation related programs or incentives?

(iv) List any building demolitions within your Main Street project area during the past five years. If you had any building demolitions in the past five years, what was the age of the buildings that were demolished?

(E) State Enterprise Zone and Economic Development Consideration--(10 points) Four points will be awarded if the city has a nominated or active Enterprise Zone project. Three points will be awarded if the city has the economic development sales tax (4A, 4B or both). Three points may be awarded for other viable economic development programs the city offers in order to further realize its full economic development potential. Please document any other economic development programs and strategies that your city is engaged in.

(F) Community Size--(10 points). Score 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using 2000 census data. City population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(G) Main Street Program Participation--(5 points). Points are awarded on the applicant's continuous participation in the Main Street program as follows: For every two years of continuous participation in the Main Street program, the applicant will be awarded 1 point. Points will only be awarded for every two consecutive years and will not be broken into half points for increments other than two-year increments. If a city leaves the Main Street program and then returns at a later date, "continuous participation" will be calculated from the date that they returned to the program. Applicants will receive the maximum amount of points if they have participated in the program for 10 continuous years.

(H) Texas Capital Fund Grant Training--(5 points). Has a city representative attended a Texas Capital Fund Main Street Improvements grant training workshop? At least one training workshop is held prior to each application deadline. List the date attended and the location. If the city is retaining a paid consultant to prepare the application, a city representative will still be required to attend training in order to receive the points in the category.

(3) Applicant (maximum 30 points). There are three applicant scoring categories each worth 5 to 10 points.

(A) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community. Score 10 points if the applicant's minority employment rate is equal to or greater than the applicant's community minority rate.

(B) Leverage (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and in-kind.

(C) Main Street Standing (maximum 10 points). If the Main Street program received National Recognition the prior year, 10 points will be awarded.

(j) Threshold criteria for the main street program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) and paragraph (3) of this subsection.

(1) The national objective of aiding in the prevention or elimination of slum or blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

(3) Main street designation. The applicant must be designated by the THC as a Main Street City prior to submitting a TCF application for main street improvements and must remain a participating city for the duration of the award/contract.

(k) Application process for the downtown revitalization program. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to TDA Commissioner or the Commissioner's designee. TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The strength of commitments from all other public and/or private investments identified in the application;

(B) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(C) Whether efforts have been made to maximize other financial resources; and

(D) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.

(l) Scoring criteria for downtown revitalization program. There are a total of 100 points.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on applicant's most recently available annual county poverty rate, as provided in Appendix A of the application. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the most recently available, quarterly, county unemployment rate provided by the

Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Maximum 100 points.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's quarterly county unemployment rate (the most recently available 3 months will be used) is higher than the state rate, indicating that the city is economically below the state average. Ten points awarded if the applicant's most recently available quarterly county unemployment rate is 1.5% over the state rate.

(B) Poverty (maximum 15 points). Awarded if the applicant's most recently available annual county poverty rate, as provided in Appendix A of the Application, is higher than the annual state rate, indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average; score 10 points if this figure exceeds the state average by at least 15%; and score 15 points if this figure exceeds the state average by at least 25%.

(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.

(D) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(E) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using 2000 census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(F) Community Income (maximum 10 points). Ten points awarded to communities that have a low and moderate income level for a 4 person household that is in the bottom 90% of all county level 4 person low and moderate income levels, as provided in Appendix D of the application.

(G) Leverage (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and in-kind.

(H) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Award 5 points if the city's minority employment rate is equal to or greater than the community minority percentages rate. Award 10 points if the city's minority employment rate is equal to or greater than 125% of the community minority percentage rate or in cities where the minority population is 80% or greater, the applicant must employ 95% minorities.

(I) Commercial Support (maximum 10 points) Award 5 points for letters from 50% or more of the businesses in the Downtown Revitalization area. Award 10 points for letters from 75% of the businesses in the Downtown Revitalization area.

(J) Sidewalks and ADA Compliance (10 points). Points awarded if a minimum of 70% of the requested funds will be used for sidewalk and/or ADA compliance activities.

(m) Threshold criteria for the downtown revitalization program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) of this subsection.

(1) The national objective of aiding in the prevention or elimination of Slum or Blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

§255.8. Regional Review Committees.

(a) Composition. There is a regional review committee in each of the 24 state planning regions. Each committee consists of at least 12 members appointed by the governor. Composition of each regional committee reflects geographic diversity within the region, difference in population among eligible localities, and types of government (general law cities, home rule cities, and counties). The chairperson of the committee is also appointed by the governor. Members of the committee serve two-year terms. An individual may not serve as a member of a regional review committee while serving as a member of the State Community Development Review Committee.

(b) Role. Each regional review committee reviews and scores all applications submitted from within its region under the community development fund. Each regional review committee may review and comment on other TxCDBG [~~TCDP~~] applications. Each regional review committee sends its scores and comments to the Office. Regional review committees may elect to utilize staff of regional planning commissions to assist with project review responsibilities except when staff of the regional planning commission intend to prepare TxCDBG [~~TCDP~~] applications for the current funding cycle or when staff of the regional planning commission intend to administer TxCDBG [~~TCDP~~] projects that could receive TxCDBG [~~TCDP~~] funding under the current funding cycle. When staff of the regional planning commissions cannot assist with project review responsibilities, the Office staff may provide the assistance.

(c) General requirements. In the performance of its responsibilities, each regional review committee shall comply with all federal and state laws and regulations relating to the administration of community development block grant nonentitlement area funds including, but not limited to, requirements of this subchapter, the scoring procedures specified in the current Regional Review Committee Guidebook, and the procedures established by the regional review committee under the TxCDBG [~~TCDP~~].

(1) Meetings. Each meeting held by a regional review committee shall conform to the following requirements.

(A) The regional review committee shall notify each eligible unit of general local government within the regional review committee's state planning region, in writing, of the date, time and location of its organizational meeting at least five days prior to the meeting. The regional review committee shall notify each applicant within its region, in writing, of the date, time and location of its scoring meeting at least five days prior to the meeting. The notices must be in the format specified by the Office in the most recent Regional Review Committee Guidebook. The notices must also be published in a regional newspa-

per at least three days prior to the meeting. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Office in lieu of publication of notices. The regional review committee must determine at its organizational meeting whether it will have a housing set-aside and include the decision and amount of housing set-aside in the regional review committee scoring guidelines.

(B) Each applicant shall be provided with the opportunity to make a presentation to the regional review committee at its scoring meeting.

(C) The order of the presentations shall be randomly selected by the regional review committee

(D) All discussions, deliberations and votes shall be made in public except for items which would be specifically exempted under the Texas Open Meetings Act. The scoring of applications must occur at the same meeting of the regional review committee at which the presentations by applicants are made.

(E) A quorum of a simple majority of the current members of the regional review committee, rounded to the nearest whole number, shall be present. Any actions taken by a regional review committee in which a quorum was not present shall be voidable, provided however, that if a conflict of interest situation has required a regional review committee member to excuse himself, thus dropping the number of participating members below the simple majority requirement, a quorum shall have been considered present.

(2) Conflicts of interest. No member of a regional review committee shall vote on an application if the member is on the governing body of the applicant or in cases where that member has a personal or pecuniary interest as defined under state law. A county judge or county commissioner may not score an application from an incorporated city within the county, unless specifically authorized by the regional review committee. A regional review committee member may not discuss any application, including the scoring of any application that the member is allowed to score, with any person that may benefit from an award of TxCDBG [~~TCDP~~] funds to such application. If a regional review committee member discusses an application with any person that may benefit from an award of TxCDBG [~~TCDP~~] funds to such application, the regional review committee member shall abstain from the scoring of that application.

(3) Voting. Only appointed members of a regional review committee may vote on an action of the regional review committee. A regional review committee member may designate an alternate to participate in the member's absence. Each regional review committee shall retain all ballots or other voting records used by its members. Such records shall be maintained in an accessible location and be made available for inspection by the public for a period of one year. Each member of a regional review committee shall score each application individually and shall sign each of his or her ballots and other voting records or scoring sheets. The high and low scores are eliminated and the average of the remaining individual scores is the regional review committee's score on each scoring factor. Consensus scoring is not permitted.

(4) Scoring procedures. Each regional review committee (RRC) must submit its scoring procedures to the Office for approval before the procedures are disseminated to all eligible applicants in its region. The committee must establish, as part of the organizational meeting, a scoring methodology for each of the selection factors listed under Local Effort and Merits of the Project consistent with HUD regulations, as determined by TXCDBG. The scoring procedure must prescribe the method of documenting the committee member's score. The RRC may:

(A) further subdivide the broad selection factors/categories into smaller categories/increments and provide additional detail in the RRC scoring for the Local Effort and Merits of the Project;

(B) select certain "Key questions/Considerations/Factors" that can be used to evaluate the broad selection factor/category and develop a specific number of scoring ranges, including a scoring range for Yes/No answers; or

(C) a combination of A and B, which includes a subdivision of the categories into smaller increments and key questions/considerations with specific scoring ranges. Factors selected must be unambiguous in the method of scoring them. As part of the process, the committee must retain documentation showing how each committee member awarded points under this factor and provide a copy of this documentation of the TXCDBG.

(d) Appeals. An applicant may appeal the actions of the regional review committee established in its state planning region by following the procedures set forth in this subsection. The Office will withhold the running of computer scores on community development fund applications for five working days after the regional review committee's scoring meeting or until all regional appeals, if any, have been resolved, whichever is longer. A regional review committee must provide written notification of each appeal to all applicants in the region. An applicant that is adversely affected by the action of its regional review committee on an appeal, may appeal that action in accordance with the procedures specified in this subsection.

(1) An applicant shall notify its regional review committee, in writing, of an alleged violation of regional review committee procedures committed by the regional review committee within five working days after the date of the regional review committee meeting which is the subject of the appeal. The applicant shall also send a copy of the appeal to the Office. All appeals must be based on a specifically identified violation of regional review committee procedures.

(2) Within 10 working days after the receipt of an appeal, the regional review committee shall notify all the applicants within its region that the regional review committee will reconvene to hear the appeal. If a quorum of the regional review committee agrees that the alleged procedural violation occurred, the regional review committee shall sustain the appeal, make appropriate adjustments to regional scores, and notify the Office. If a quorum of the regional review committee votes to deny the appeal, the regional review committee shall provide all applicants in the region and the Office with a written statement of the basis of its denial.

(3) If the appeal is resolved, the Office runs the computer scores and provides funding recommendations to the state review committee.

(4) If the appeal is not resolved, the Office prepares an appeal file for the state review committee. The file includes:

(A) the appeal;

(B) the response of the regional review committee;

(C) Office staff reports; and

(D) comments of other interested parties.

(5) The state review committee shall make one of the following recommendations to the executive director of the Office:

(A) sustain the appeal and suggest corrective actions; or

(B) reject the appeal and sustain the regional scores.

§255.9. Colonia Fund.

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low and moderate income persons for eligible water and sewer improvements projects, all other program eligible activities, eligible planning activities projects, and the establishment of colonia self-help centers to serve severely distressed unincorporated areas of counties which meet the definition of a colonia under this fund. A colonia is defined as: any identifiable unincorporated community that is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia prior to November 28, 1990. For an eligible county to submit an application on behalf of eligible colonia areas, the colonia areas must be within 150 miles of the Texas-Mexico border region, except that any county that is part of a standard metropolitan statistical area with a population exceeding one million is not eligible under this fund.

(1) An applicant may not submit an application under this fund and also under any other TxCDBG [~~TCDP~~] fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) In addition to the threshold requirements of §255.1(h) and §255.1(n) of this title (relating to General Provisions), in order to be eligible to apply for colonia funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Eligibility for the Office's colonia economically distressed areas program EDAP fund (colonia EDAP fund) is limited to counties, and nonentitlement cities (that meet other eligibility requirements including the geographic requirements of the Colonia Fund),located in those counties, that are eligible under the TxCDBG [~~TCDP~~] Colonia Fund and Texas Water Development Board's EDAP. Eligible colonia EDAP fund projects shall be located in unincorporated colonias and in eligible cities that annexed the eligible colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. A colonia EDAP fund application cannot be submitted until the construction of the Texas Water Development Board's Economically Distressed Areas Program financed water or sewer system begins.

(4) In accordance with Subchapter Z, Chapter 43, Section 43.905 of the Local Government Code, eligible colonia areas annexed by municipalities on or after September 1, 1999, remain eligible for five years after the effective date of the annexation to receive any form of assistance for which the colonia would be eligible if the annexation had not occurred. A nonentitlement city located in a county that is eligible under the TxCDBG [~~TCDP~~] Colonia Fund and Texas Water Development Board's Economically Distressed Areas Program that has annexed a colonia area is an eligible applicant for the Office's colonia EDAP fund. However, an application for TxCDBG [~~TCDP~~] colonia construction fund or colonia planning fund assistance for a colonia area annexed by a municipality on or after September 1, 1999, may only be submitted by the county where the annexed colonia area is located.

(b) Eligible activities. The only eligible activities under the colonia fund are:

(1) the payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public water and/or sewer improvement;

(2) payment of the cost of planning community development (including water and sewage facilities) and housing activities; costs for the provision of information and technical assistance to residents of the area in which the activities are located and to appropriate nonprofit organizations and public agencies acting on behalf of the residents; and costs for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans;

(3) other activities eligible under the Housing and Community Development Act of 1974, §105, as amended, designed to meet the needs of residents of colonias;

(4) the establishment of colonia self-help centers and activities conducted by colonia self-help centers in accordance with the provisions of Chapter 2306, Subchapter Z, of the Government Code.

(5) For the Office's colonia EDAP fund, eligible activities are limited to those that provide assistance to low and moderate income colonia residents that cannot afford the costs associated with connections and service to water or sewer systems funded through the Texas Water Development Board's Economically Distressed Areas Program. The eligible activities are water distribution lines connecting to water lines installed through the Texas Water Development Board's Economically Distressed Areas Program (when approved by the TxCDBG [~~TCDP~~]), sewer collection lines connecting to sewer lines installed through the Texas Water Development Board's Economically Distressed Areas Program (when approved by the TxCDBG [~~TCDP~~]), water or sewer connection fees, water or sewer taps, water meters, water or sewer yard service lines, plumbing improvements associated with the provision of water or sewer service to an occupied housing unit, water or sewer house service connections, reasonable associated administrative costs, and reasonable associated engineering costs.

(c) Types of applications. Eligible applicants may submit one application for the colonia construction fund and the colonia planning fund. Eligible applicants may submit one application for the colonia EDAP fund, unless the TxCDBG [~~TCDP~~] has an excess amount of colonia EDAP funds available in which case an eligible applicant could submit more than one application for the colonia EDAP fund. Eligible planning activities cannot be included in an application for the colonia construction fund. Two separate fund categories are available under the colonia planning fund. The colonia area planning fund is available for eligible planning activities that are targeted to selected colonia areas. The colonia comprehensive planning fund is available for countywide comprehensive planning activities that include an assessment and profiles of a county's colonia areas. Separate competitions are held for the colonia area planning fund and colonia comprehensive planning fund allocations. A county that has previously received a colonia comprehensive planning fund grant award from the Office may not submit another application for colonia comprehensive planning fund assistance. For a county to be eligible to submit an application for the colonia area planning fund, the county must have previously completed a colonia comprehensive plan that prioritizes problems and colonias for future action. The colonia or colonias included in the colonia area planning fund application must be colonias that were included in the colonia comprehensive plan.

(d) Funding cycle. The colonia construction fund is allocated to eligible county applicants on a biennial basis for the 2007 [~~2005~~] and 2008 [~~2006~~] program years pursuant to a competition held for the 2007 [~~2005~~] program year applicants. The colonia planning fund is allocated on an annual basis to eligible county applicants through competitions conducted during the program year. Applications for funding must be received by the Office by the dates and times specified in the most recent application guide for each separate colonia fund category. The colonia self-help centers fund is allocated on an annual basis to counties included in Subchapter Z, Chapter 2306, §2306.582, Government

Code, and/or counties designated as economically distressed areas under Chapter 17, Water Code. The colonia EDAP fund is allocated on an annual basis and the funds are distributed on an as-needed basis.

(e) Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for the colonia construction fund, for colonia comprehensive planning, and for colonia area planning. Eligible applicants for the colonia EDAP fund may submit one application after construction begins on the water or sewer system financed by the Texas Water Development Board's Economically Distressed Areas Program.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the Office prior to scoring of the applications.

(4) The Office then scores the colonia construction fund and colonia planning fund applications to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant. For colonia EDAP fund applications, the Office evaluates information in each application and other factors before the completion of a final technical review of each application.

(5) Following a final technical review, the Office staff presents the funding recommendations for the 2007 [~~2005~~] and 2008 [~~2006~~] colonia construction fund and the 2007 [~~2005~~] colonia planning fund to the executive director of the Office.

(6) The executive director of the Office reviews the 2007 [~~2005~~] final recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(7) Upon announcement of the 2007 [~~2005~~] contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(8) When the 2008 [~~2006~~] program year TxCDBG [~~TCDP~~] allocation becomes available, the executive director of the Office reviews the 2008 [~~2006~~] program year colonia construction fund final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(9) Upon announcement of the 2008 [~~2006~~] program year colonia construction fund contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(f) Selection criteria (colonia construction fund). The following is an outline of the selection criteria used by the Office for scoring colonia construction fund applications. For the 2007 [~~2005~~] and 2008 program years [~~year~~], four hundred thirty points are available.

(1) Community distress (total--35 [~~40~~] points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of persons living in poverty--15

(B) Per capita income--10 [~~15~~]

(C) Percentage of housing units without complete plumbing--5 [~~10~~]

(D) Unemployment rate--5

(2) Benefit to low and moderate income persons (total--30 points). A formula is used to determine the percentage of TxCDBG [~~TCDP~~] funds benefiting low to moderate income persons. The percentage of low to moderate income persons benefiting from each construction, acquisition, and engineering activity is multiplied by the TxCDBG [~~TCDP~~] funds requested for each corresponding construction, acquisition, and engineering activity. Those calculations determine the amount of TxCDBG [~~TCDP~~] benefiting low to moderate income person for each of those activities. Then, the funds benefiting low to moderate income persons for each of those activities are added together and divided by the TxCDBG [~~TCDP~~] funds requested minus the TxCDBG [~~TCDP~~] funds requested for administration to determine the percentage of TxCDBG [~~TCDP~~] funds benefiting low to moderate income persons. Points are then awarded in accordance with the following scale:

(A) 100% to 90% of funds benefiting [~~benefitting~~] low to moderate income persons--30

(B) 89.99% to 80% of funds benefiting [~~benefitting~~] low to moderate income persons--25

(C) 79.99% to 70% of funds benefiting [~~benefitting~~] low to moderate income persons--20

(D) 69.99% to 60% of funds benefiting [~~benefitting~~] low to moderate income persons--15

(E) Below 60% of funds benefiting [~~benefitting~~] low to moderate income persons--5

(3) Project priorities (total--195 points) When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the TxCDBG [~~TCDP~~] funds requested minus the TxCDBG [~~TCDP~~] funds requested for engineering and administration, a percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity is calculated. The percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations de-

termines the composite project priorities score. The different project priority scoring levels are:

(A) activities (service lines, service connections, and/or plumbing improvements) providing access to water and/or sewer systems funded through the Texas Water Development Board Economically Distressed Area program--195

(B) first time public water service activities (including yard service lines)--145 points

(C) first time public sewer service activities (including yard service lines)--145 points

(D) installation of approved residential on-site wastewater disposal systems for providing first time service --145 points

(E) installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues - 140 points

(F) [~~(E)~~] housing activities--140 points

(G) [~~(F)~~] first time water and/or sewer service through a privately-owned for profit utility--135 points

(H) [~~(G)~~] expansion or improvement of existing water and/or sewer service-- 120 points [~~110~~]

(I) [~~(H)~~] street paving and drainage activities--75 points

(J) [~~(I)~~] all other eligible activities--20 points

(4) Matching funds (total--20 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. Applications that include a housing rehabilitation and/or affordable new permanent housing activity for low- and moderate-income persons as a part of a multi-activity application do not have to provide any matching funds for the housing activity. This exception is for housing activities only. The TxCDBG [~~TCDP~~] does not consider sewer or water service lines and connections as housing activities. The TxCDBG [~~TCDP~~] also does not consider on-site wastewater disposal systems as housing activities. Demolition/clearance and code enforcement, when done in the same target area in conjunction with a housing rehabilitation activity, is counted as part of the housing activity. When demolition/clearance and code enforcement are proposed activities, but are not part of a housing rehabilitation activity, then the demolition/clearance and code enforcement are not considered as housing activities. Any additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(i) match equal to or greater than 5.0% of grant request--20;

(ii) match at least 2.0% but less than 5.0% of grant request--10;

(iii) match less than 2.0% of grant request--0.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(i) match equal to or greater than 10% of grant request--20;

(ii) match at least 2.5% but less than 10% of grant request--10;

(iii) match less than 2.5% of grant request--0.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--20;

(ii) match at least 3.5% but less than 15% of grant request--10;

(iii) match less than 3.5% of grant request--0.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--20;

(ii) match at least 5.0% but less than 20% of grant request--10;

(iii) match less than 5.0% of grant request--0.

(5) Project design (total--140 [~~135~~] points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund and in paragraph (6) of this subsection. Each application is scored by a committee composed of TxCDBG [~~TCDP~~] staff using the following information submitted in the application:

(A) the severity of need within the colonia area(s) and how the proposed project resolves the identified need (additional consideration is given to water activities addressing impacts from drought conditions);

(B) the TxCDBG [~~TCDP~~] cost per low to moderate income beneficiary;

(C) the applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG [~~TCDP~~] community development fund or through community development block grant entitlement funds;

(D) the projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage;

(E) the ability of the applicant to utilize the grant funds in a timely manner;

(F) the availability of grant funds to the applicant for project financing from other sources;

(G) whether the applicant, or the service provider, has waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries;

(H) whether the applicant's proposed use of TxCDBG [~~TCDP~~] funds is to provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program;

(I) whether the applicant has already met its basic water and wastewater needs if the application is for activities other than water or wastewater; and

(J) whether the project has provided for future funding necessary to sustain the project.

(K) whether the applicant has provided any local matching funds for administrative, engineering, or construction activities.

(L) the applicant's past performance on previously awarded TXCDBG contracts.

(M) proximity of project site to entitlement cities or metropolitan statistical areas.

(6) Project design scoring guidelines. Project design scores are assigned by Office staff using guidelines that first consider the severity of the need for each application activity and how the project resolves the need described in the application. The severity of need and resolution of the need determine the maximum project design score that can be assigned to an application. After the maximum project design score has been established, points are then deducted from this maximum score through the evaluation of the other project design evaluation factors until the maximum score and the point deductions from that maximum score determine the final assigned project design score. When necessary, a weighted average is used to set the maximum project design score to applications that include activities in the different severity of the need/project resolution maximum scoring levels. Using as a base figure the TxCDBG [~~TCDP~~] funds requested minus the TxCDBG [~~TCDP~~] funds requested for engineering and administration, a percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity is calculated. The percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity is then multiplied by the appropriate maximum project design point level. The sum of the calculations determines the maximum project design score that the applicant can be assigned before points are deducted based on the evaluation of the other project design factors.

(A) Maximum project design score that can be assigned based on the severity of the need and resolution of the problem.

(i) Activities providing first-time publicsewer service to the area--maximum score 140 [~~135~~] points.

(ii) Activities providing first-time publicwater service to the area--maximum score 140 [~~135~~] points.

(iii) Installation of approved residential on-site wastewater disposal systems providing first-time sewer service--maximum score 140 [~~135~~] points.

(iv) installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--maximum score 130 points.

(v) [~~(iv)~~] Housing rehabilitation and eligible new housing construction--maximum score 130 points.

(vi) [~~(v)~~] Water activities addressing and resolving water supply shortage from drought conditions--maximum score 130 points.

(vii) [~~(vi)~~] Water or sewer activities expanding or improving existing water or sewer system--maximum score 125 [~~120~~] points.

(viii) [~~(vii)~~] Street paving activities providing first time surface pavement to the area--maximum score 100 points.

(ix) [~~(viii)~~] Installation of designed drainage structures providing first time designed drainage system to the area--maximum score 100 points.

(x) [~~(ix)~~] Reconstruction of streets with existing surface pavement--maximum score 90 points.

(xi) [~~(x)~~] Installation of improvements or drainage structures to a designed drainage system--maximum score 90 points.

(xii) [~~(xi)~~] All other eligible activities--maximum score 80 points.

(B) TxCDBG [~~TCDP~~] cost per low to moderate income beneficiary. The total amount of TxCDBG [~~TCDP~~] funds requested by the applicant is divided by the total number of low to moderate income persons benefitting from the application activities to determine the TxCDBG [~~TCDP~~] cost per beneficiary.

(i) Cost per low to moderate income beneficiary is equal to or less than $2,000. Deduct zero points from the set maximum project design score.

(ii) Cost per low to moderate income beneficiary is greater than $2,000 but equal to or less than $4,000. Deduct 1 point from the set maximum project design score.

(iii) Cost per low to moderate income beneficiary is greater than $4,000 but equal to or less than $6,000. Deduct 2 points from the set maximum project design score.

(iv) Cost per low to moderate income beneficiary is greater than $6,000 but equal to or less than $8,000. Deduct 3 points from the set maximum project design score.

(v) Cost per low to moderate income beneficiary is greater than $8,000 but equal to or less than $10,000. Deduct 4 points from the set maximum project design score.

(vi) Cost per low to moderate income beneficiary is greater than $10,000. Deduct 5 points from the set maximum project design score.

(C) The applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG [~~TCDP~~] community development fund or through community development block grant entitlement funds.

(i) The nonentitlement county submitted an application under the TxCDBG [~~TCDP~~] community development fund 2005 [~~2003~~]/2006 [~~2004~~] biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(ii) The nonentitlement county submitted an application under the TxCDBG [~~TCDP~~] community development fund 2003 [~~2001~~]/2004 [~~2002~~] biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(iii) The entitlement county did not use 2005 [~~2003~~] CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(iv) The entitlement county did not use 2004 [~~2002~~] CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(D) The projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage.

(i) The projected water and/or sewer rates may be too high for the application beneficiaries. Deduct 1 point from the set maximum project design score.

(ii) The projected water and/or sewer rates are too low to discourage water conservation by the application beneficiaries. Deduct 1 point from the set maximum project design score.

(E) The ability of the applicant to utilize the grant funds in a timely manner.

(i) The application includes the acquisition of real property, easements or rights-of-way. Deduct 1 point from the set maximum project design score.

(ii) The application includes matching funds that have not been secured by the applicant. Deduct 1 point from the set maximum project design score.

(iii) The proposed application target area is not located in an area where a service provider already has the certificate of convenience and necessity (CCN) needed to provide service to the application beneficiaries. Deduct 1 point from the set maximum project design score.

(F) The availability of grant funds to the applicant for project financing from other sources. Grant funds for any activity included in the application are available from another source. Deduct 1 point from the set maximum project design score.

(G) The applicant, or the service provider, has not waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries.

(i) Assessments and fees budgeted in the application are equal to or less that $100 per low and moderate income household. Deduct 2 points from the set maximum project design score.

(ii) Assessments and fees budgeted in the application are greater than $100 but equal to or less that $200 per low and moderate income household. Deduct 4 points from the set maximum project design score.

(iii) Assessments and fees budgeted in the application are greater than $200 but equal to or less that $300 per low and moderate income household. Deduct 6 points from the set maximum project design score.

(iv) Assessments and fees budgeted in the application are greater than $300 but equal to or less that $500 per low and moderate income household. Deduct 8 points from the set maximum project design score.

(v) Assessments and fees budgeted in the application are greater than $500 per low and moderate income household. Deduct 10 points from the set maximum project design score.

(H) Applicant's proposed use of TxCDBG [~~TCDP~~] funds does not provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program. Deduct 2 points from the set maximum project design score.

(I) The application is for activities other than water or wastewater and the applicant has not already met its basic water and wastewater needs. Deduct 3 points from the set maximum project design score,

(J) The applicant has not documented that future funding necessary to sustain the project is available. Deduct 3 points from the set maximum project design score,

(7) Past performance. An applicant receives from zero to ten (10) points based on the applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two (2) most recent TxCDBG [~~TCDP~~] contracts that have reached the end of the original contract period stipulated in the contract. TxCDBG [~~TCDP~~] staff may also assess the applicant's performance on existing TxCDBG [~~TCDP~~] contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG [~~TCDP~~] grant award will automatically receive these points. TxCDBG [~~TCDP~~] staff will assess the applicant's performance on TxCDBG [~~TCDP~~] contracts up to the application deadline date. The applicant's performance on TxCDBG [~~TCDP~~] contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may [~~will~~] include, but is not necessarily limited to the following:

(A) The applicant's completion of the previous contract activities within the original contract period. [~~Deduct 2 points from the maximum past performance score for each occurrence where the applicant did not complete contract activities within the original contract period (maximum of 4 points deducted from the maximum past performance score).~~]

(B) The applicant's submission of the required close-out documents within the period prescribed for such submission. [~~Deduct 1 point from the maximum past performance score for each occurrence where the applicant did not submit the required close-out documents within the period prescribed for such submission (maximum of 2 points deducted from the maximum past performance score).~~]

(C) The applicant's timely response to monitoring findings on previous TxCDBG [~~TCDP~~] contracts especially any instances when the monitoring findings included disallowed costs. [~~Deduct 1 point from the maximum past performance score for any occurrence where the applicant did not provide a timely response to monitoring findings (maximum of 1 point deducted from the maximum past performance score).~~]

(D) The applicant's timely response to audit findings on previous TxCDBG [~~TCDP~~] contracts. [~~Deduct 1 point from the maximum past performance score for any occurrence where the applicant did not provide a timely response to audit findings (maximum of 1 point deducted from the maximum past performance score).~~]

(E) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports. [~~Deduct 1 point from the maximum past performance score for each occurrence where the applicant did not submit contract reporting documents (maximum of 2 points deducted from the maximum past performance score).~~]

(g) Selection criteria (colonia area planning fund). The following is an outline of the selection criteria used by the Office for scoring applications for eligible planning activities under this fund. Three hundred forty points are available.

(1) Community distress (total--up to 35 [~~40~~] points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of persons living in poverty--15 points

(B) Per capita income--10 points [~~15~~]

(C) Percentage of housing units without complete plumbing--5 points [~~10~~]

(D) Unemployment Rate--5 points

(2) Benefit to low and moderate income persons (total--30 points). Points are awarded based on the low and moderate income percentage for all of the colonia areas where project activities are located according to the following scale:

(A) 100% to 90% of funds benefiting [~~benefitting~~] low to moderate income persons--30

(B) 89.99% to 80% of funds benefiting [~~benefitting~~] low to moderate income persons--25

(C) 79.99% to 70% of funds benefiting [~~benefitting~~] low to moderate income persons--20

(D) 69.99% to 60% of funds benefiting [~~benefitting~~] low to moderate income persons--15

(E) Below 60% of funds benefiting [~~benefitting~~] low to moderate income persons--5

(3) Project design (total--255 [~~250~~] points). Each application is scored based on how the proposed planning effort resolves the identified need and the severity of need within the applying jurisdiction. A colonia planning fund application must receive a minimum score for the project design selection factor of at least 70 percent of the maximum number of points available under this factor to be considered for funding. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund. Each application is scored by TxCDBG [~~TCDP~~] staff using the following information submitted in the application:

(A) the severity of need within the colonia area(s) (total--up to 60 points);

(i) Evidence of severity of need as described in originally received application (total--up to 10 points).

(ii) Primary need within all target area colonia(s) generally as reported in originally received application (total--up to 20 points):

(I) all target area colonia(s) not platted (up to 20 points)

(II) all target area colonia(s) with no water (up to 20 points)

(III) all target area colonia(s) with no wastewater (up to 20 points)

(IV) all or some target area colonia(s) are partially platted or platted but not recorded (up to10 points)

(V) target area colonia(s) partial water (up to10 points)

(VI) target area colonia(s) partial sewer (up to10 points)

(iii) Population (total--10 points). The change in county population from 1990 and 2000 is between:

(I) greater than 5% but less than or equal to 10% (2 points)

(II) greater than 10% but less than or equal to 15% (4 points)

(III) greater than 15% but less than or equal to 20% (6 points)

(IV) greater than 20% but less than or equal to 25% (8 points)

(V) greater than 25% (10 points)

(iv) Needs are clearly identified in original application by priority through a community needs assessment (total--up to 5 points).

(v) Evidence provided in the original application of strong citizen input or known citizen involvement in addressing need (total--up to 5 points).

(vi) Evidence provided in the original application of effort to notify special groups to solicit information on severity of need (total--up to 5 points).

(vii) Evidence provided in the original application that the public hearings to solicit input on needs were performed as described in the application guide (total--up to 5 points).

(B) how clearly the proposed planning effort removes barriers to the provision of public facilities to the colonia area(s) and results in a strategy to resolve the identified needs (total--up to 60 points);

(i) Proposed planning efforts as described in the application are clear, concise and reasonable (total--up to 15 points).

(ii) Proposed target area is clearly defined in the application (total--up to 15 points).

(iii) Proposed planning efforts as described in the application match the needs in the target area (total--up to 15 points).

(iv) Evidence in the application that the county is organized to implement the plan or would ensure that the plan is implemented (total--up to 15 points).

(C) the planning activities proposed in the application (total--up to 65 [~~60~~] points);

(i) The description of planning activity in the original application:

(I) Describes eligible activities (total--up to 7 [~~6~~] points).

(II) Describes understanding of plan process (total--up to 7 [~~6~~] points).

(III) Addresses identified needs (total--up to 7 [~~6~~] points).

(IV) Appears to result in solution to problems (total--up to 7 [~~6~~] points).

(V) Indicates a strategy that can be implemented (total--7 [~~6~~] points).

(ii) Considering the applicant's probable capability, the Colonia Questionnaire in the original application indicates an attempt to control problems and the original submission was complete (total--up to10 points).

(iii) Applicant has indicated in the application that a capital improvement programming process is routinely accomplished or will be developed as part of the planning project (total--up to10 points).

(iv) Applicant's responses to questions in the originally submitted application appear to indicate that the applicant will produce a valid Capital Improvements Program that would draw on local resources and other grant/loan programs (total--up to10 points).

(D) whether each proposed planning activity is conducted on a colonia-wide basis (total--up to10 points). All proposed activities will be conducted on a colonia-wide basis (up to10 points);

(E) the extent to which any previous planning efforts for colonia areas have been accomplished (total--up to12 points). Applicant was a previous recipient of Colonia Planning Funds and some implementation of previously funded activities or special or extenuating circumstances prohibiting implementation exist. Points will be awarded if applicant is not a previous recipient of a Colonia Planning Fund award. Points will not be awarded if applicant did not implement previously funded activities and no special or extenuating circumstances prohibiting implementation exist;

(F) the TxCDBG [~~TCDP~~] cost per low to moderate income beneficiary;

(i) TxCDBG [~~TCDP~~] cost per low to moderate income beneficiary (total--15 points):

(I) the TxCDBG [~~TCDP~~] cost per low to moderate income beneficiary is at least 50 percent below the median cost per beneficiary of all eligible applicants (15 points); or

(II) the TxCDBG [~~TCDP~~] cost per low to moderate income beneficiary is at or below the median cost per beneficiary of all eligible applicants (10 points); or

(III) the TxCDBG [~~TCDP~~] cost per low to moderate income beneficiary is below 150 percent of the median cost per beneficiary of all eligible applicants (7 points); or

(IV) the TxCDBG [~~TCDP~~] cost per low to moderate income beneficiary is 150 percent or greater than the median cost per beneficiary of all eligible applicants (5 points).

(ii) Amount requested originally appears to be reasonable and relates to the described needs with respect to the location and characteristics of the proposed target area (up to 15 points).

(G) the availability of grant funds to the applicant for project financing from other sources (total--6 points) The area would be eligible for funding under the Texas Water Development Board's Economically Distressed Areas Program (EDAP) or other programs as described in the original application; and

(H) the applicant's past performance on prior TxCDBG [~~TCDP~~] contracts. An applicant can receive from zero to twelve (12) points based on the applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two (2) most recent TxCDBG [~~TCDP~~] contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG [~~TCDP~~] may also assess the applicant's performance on existing TxCDBG [~~TCDP~~] contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG [~~TCDP~~] grant award will automatically receive these points. The TxCDBG [~~TCDP~~] will assess the applicant's performance on TxCDBG [~~TCDP~~] contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may [~~will~~] include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period (up to 3 points).

(ii) The applicant's submission of the required close-out documents within the period prescribed for such submission (up to 3 points).

(iii) The applicant's timely response to monitoring findings on previous TxCDBG [~~TCDP~~] contracts especially any instances when the monitoring findings included disallowed costs (up to 3 points).

(iv) The applicant's timely response to audit findings on previous TxCDBG [~~TCDP~~] contracts (up to 3 points).

(4) Matching funds (total--20 points). The population category under which county applications are scored is based on the actual number of beneficiaries to be served by the colonia planning activities.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(i) match equal to or greater than 5.0% of grant request--20;

(ii) match at least 2.0% but less than 5.0% of grant request--10;

(iii) match less than 2.0% of grant request--0.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(i) match equal to or greater than 10% of grant request--20;

(ii) match at least 2.5% but less than 10% of grant request--10;

(iii) match less than 2.5% of grant request--0.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--20;

(ii) match at least 3.5% but less than 15% of grant request--10;

(iii) match less than 3.5% of grant request--0.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--20;

(ii) match at least 5.0% but less than 20% of grant request--10;

(iii) match less than 5.0% of grant request--0.

(h) Selection criteria (colonia comprehensive planning fund). The following is an outline of the selection criteria used by the Office for scoring applications for eligible planning activities under this fund. Two hundred points are available.

(1) Community distress (total--25 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of persons living in poverty--10 points [~~15~~]

(B) Per capita income--5 points [~~10~~]

(C) Percentage of housing units without complete plumbing--5 points

(D) Unemployment Rate--5 points

(2) Project design (total--175 points). A colonia planning fund application must receive a minimum score for the project design selection factor of at least 70 percent of the maximum number of points available under this factor to be considered for funding. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund. Each application is scored by the Office staff using the following information submitted in the application:

(A) the severity of need for the comprehensive colonia planning effort and how effectively the proposed comprehensive planning effort will result in a useful assessment of colonia populations, locations, infrastructure conditions, housing conditions, and the development of short-term and long-term strategies to resolve the identified needs (total--140 points);

(i) Evidence of severity of need as described in originally received application (total--10 points).

(ii) Population (total--10 points). The change in county population from 1990 and 2000 is between:

(I) greater than 5% but less than or equal to 10% (2 points).

(II) greater than 10% but less than or equal to 15% (4 points).

(III) greater than 15% but less than or equal to 20% (6 points).

(IV) greater than 20% but less than or equal to 25% (8 points).

(V) greater than 25% (10 points).

(iii) the county population in 2000 (total--10 points):

(I) the county population is at least 50 percent below the median county population of all eligible applicants (10 points).

(II) the county population is at or below the median county population of all eligible applicants (7 points).

(III) the county population is below 150 percent of the median county population of all eligible applicants (5 points).

(IV) the county population is 150 percent or greater than the median county population of all eligible applicants (2 points).

(iv) Needs are clearly identified in original application by priority through a community needs assessment (total--5 points);

(v) Evidence provided in the original application of strong citizen input or known citizen involvement in addressing need (total--5 points);

(vi) Evidence provided in the original application of effort to notify special groups to solicit information on severity of need (total--5 points);

(vii) Evidence provided in the original application that the public hearings to solicit input on needs were performed as described in the application guide (total--5 points);

(viii) Proposed planning efforts as described in the application are clear, concise and reasonable (total--10 points).

(ix) Proposed planning efforts as described in the application match the needs in the target area (total--25 points).

(x) Evidence in the application that the county is organized to implement the plan or would ensure that the plan is implemented (total--20 points).

(xi) The description of planning activity in the original application:

(I) Describes eligible activities (total--5 points).

(II) Describes understanding of plan process (total--5 points).

(III) Addresses identified needs (total--5 points).

(IV) Appears to result in solution to problems (total--5 points).

(V) Indicates a strategy that can be implemented (total--5 points).

(xii) Considering the applicant's probable capability, the Colonia Questionnaire in the original application indicates an attempt to control problems and the original submission was complete (total--10 points).

(B) the extent to which any previous planning efforts for colonia areas have been implemented (total--10 points). Applicant was a previous recipient of Colonia Planning Funds and some implementation of previously funded activities or special or extenuating circumstances prohibiting implementation exist. Points will be awarded if applicant is not a previous recipient of a Colonia Planning Fund award. Points will not be awarded if applicant did not implement previously funded activities and no special or extenuating circumstances prohibiting implementation existed;

(C) whether the applicant provides any local matching funds for project activities. (total--13 points). The population category under which county applications are scored is based on the actual number of beneficiaries to be served by the colonia planning activities;

(i) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(I) match equal to or greater than 5.0% of grant request--13;

(II) match at least 2.0% but less than 5.0% of grant request--7;

(III) match less than 2.0% of grant request--0.

(ii) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(I) match equal to or greater than 10% of grant request--13;

(II) match at least 2.5% but less than 10% of grant request--7;

(III) match less than 2.5% of grant request--0.

(iii) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(I) match equal to or greater than 15% of grant request--13;

(II) match at least 3.5% but less than 15% of grant request--7;

(III) match less than 3.5% of grant request--0.

(iv) Applicants with populations over 5,000 according to the 2000 census:

(I) match equal to or greater than 20% of grant request--13;

(II) match at least 5.0% but less than 20% of grant request--7;

(III) match less than 5.0% of grant request--0; and

(D) the applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts. An applicant can receive from zero to twelve (12) points based on the applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two (2) most recent TxCDBG [~~TCDP~~] contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG [~~TCDP~~] may also assess the applicant's performance on existing TxCDBG [~~TCDP~~] contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG [~~TCDP~~] grant award will automatically receive these points. The TxCDBG [~~TCDP~~] will assess the applicant's performance on TxCDBG [~~TCDP~~] contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period (up to 3 points).

(ii) The applicant's submission of the required close-out documents within the period prescribed for such submission (up to 3 points).

(iii) The applicant's timely response to monitoring findings on previous TxCDBG [~~TCDP~~] contracts especially any instances when the monitoring findings included disallowed costs (up to 3 points).

(iv) The applicant's timely response to audit findings on previous TxCDBG [~~TCDP~~] contracts (up to 3 points).

(i) Program guidelines (colonia self-help centers fund). The colonia self-help centers fund is administered by the Texas Department of Housing and Community Affairs (TDHCA) under an interagency agreement with the Office. The following is an outline of the administrative requirements and eligible activities under this fund.

(1) The geographic area served by each colonia self-help center shall be determined by the Office or by the TDHCA. Five colonias located in each established colonia self-help center service area shall be designated to receive concentrated attention from the center. Each colonia self-help center shall set a goal to improve the living conditions of the residents located in the colonias designated for concentrated attention within a two-year period set under the contract terms. The Office and the TDHCA have the authority to make changes to the colonias designated for this concentrated attention.

(2) The Office's grant contract for each colonia self-help center is awarded and executed with the county where the colonia self-help center is located. Each county executes a subcontract agreement with a non-profit community action agency or a public housing authority.

(3) A colonia advisory committee is established and not fewer than five persons who are residents of colonias are selected from the candidates submitted by local nonprofit organizations and the commissioners court of a county where a self-help center is located. One committee member shall be appointed to represent each of the counties in which a colonia self-help center is located. Each committee member must be a resident of a colonia located in the county the member represents but may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract through the TxCDBG [~~TCDP~~]. The advisory committee shall advise the Office and the TDHCA regarding:

(A) the needs of colonia residents;

(B) appropriate and effective programs that are proposed or are operated through the centers; and

(C) activities that may be undertaken through the centers to better serve the needs of colonia residents.

(4) The purpose of each colonia self-help center is to assist low income and very low income individuals and families living in colonias located in the center's designated service area to finance, refinance, construct, improve or maintain a safe, suitable home in the designated service area or in another suitable area. Each self-help center may serve low income and very low income individuals and families by:

(A) providing assistance in obtaining loans or grants to build a home;

(B) teaching construction skills necessary to repair or build a home;

(C) providing model home plans;

(D) operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in colonias who are building or repairing a residence or installing necessary residential infrastructure;

(E) helping to obtain, construct, assess, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets and utilities;

(F) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(G) providing credit and debt counseling related to home purchase and finance;

(H) applying for grants and loans to provide housing and other needed community improvements;

(I) monthly programs to educate individuals and families on their rights and responsibilities as property owners;

(J) providing other eligible services that the self-help center, with the Office's approval, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area;

(K) providing assistance in obtaining loans or grants to enable an individual or family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract; and

(L) providing access to computers, the internet, and computer training.

(5) A self-help center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home in a colonia if water service and suitable wastewater disposal are not available.

(j) Selection criteria (colonia EDAP fund). The following is an outline of the application information evaluated by a committee composed of the Office's staff.

(1) The proposed use of the colonia EDAP funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through the Texas Water Development Board Economically Distressed Area Program.

(2) The ability of the applicant to utilize the grant funds in a timely manner.

(3) The availability of grant funds to the applicant for project financing from other sources.

(4) The applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts.

(5) Cost per beneficiary.

(6) Proximity of project site to entitlement cities or metropolitan statistical areas.

§255.10. Housing Fund.

(a) General provisions. Two separate fund categories are available under the housing fund. The housing infrastructure fund is available for public facilities and infrastructure improvements supporting the development and construction of single family and multifamily low to moderate income housing. The housing infrastructure funds may not be used for the actual construction cost of new housing. The housing rehabilitation fund is available for the rehabilitation or existing owner-occupied and renter-occupied housing units and, in strictly limited circumstances, the construction of new housing that is accessible to persons with disabilities. The housing rehabilitation fund selection criteria places emphasis on housing activities that provide accessible housing for persons with disabilities.

(1) An applicant may not submit an application under this fund and also under any other TxCDBG [~~TCDP~~] fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) Each applicant must meet the threshold requirements of §255.1(h) and §255.1(n) of this title (relating to General Provisions), in order to be eligible to apply for housing fund assistance.

(3) In order to meet a national program objective under the housing infrastructure fund, at least 51% of the housing units built in conjunction with each housing infrastructure fund project must be occupied by low to moderate income persons. In the case of a rental housing construction project, occupancy by low to moderate income persons must be at affordable rents. TxCDBG [~~TCDP~~] funds can be used to finance 100% of the eligible project costs when at least 51% of the units are occupied by low to moderate income persons.

(4) There is only one type of housing infrastructure fund project that may qualify for assistance when less than 51% of the units will be occupied by low to moderate income persons. Eligible assistance may also be provided to reduce the cost of new construction of a multifamily non-elderly rental housing project. However, at least 20% of the units must be occupied by persons of low to moderate income at affordable rents. For this type of project, the maximum percentage of TxCDBG [~~TCDP~~] funds available for the eligible project costs is equal to the percentage of the project's units that are occupied by persons of low to moderate income at affordable rents.

(5) A housing rehabilitation fund applicant must document that at least 51% of the persons who would directly benefit from the implementation of housing activities proposed in the application are of low to moderate income. It is generally expected that 100% of the persons benefiting [~~benefitting~~] from the housing activities will be low to moderate income persons.

(b) Eligible activities (housing infrastructure fund). The only eligible activities under the housing infrastructure fund are:

(1) The provision of public facilities improvements supporting the development of the low to moderate income housing.

(2) Engineering costs associated with the public facilities improvements.

(3) Administrative costs associated with the site clearance, site improvements and public facilities improvements.

(4) Eligible projects must leverage public (local, state, or federal) or private resources for the actual housing construction costs and any other project costs that are not eligible for assistance under this fund.

(c) Funding cycle (housing infrastructure fund). This fund is allocated on an annual basis to eligible units of general local government through a statewide competition. Applications for funding must be received by the TxCDBG [~~TCDP~~] by the application deadline date or dates specified in the application guide for this fund.

(d) Eligible activities (housing rehabilitation fund). Housing units rehabilitated under this fund must be brought up to HUD Section 8 Existing Housing Quality Standards or local housing codes. The only eligible activities under the housing rehabilitation fund are:

(1) Loan or deferred loan assistance for the rehabilitation of owner-occupied or renter-occupied housing units that are inhabited by persons with disabilities or that will be occupied by persons with disabilities after completion of the housing unit rehabilitation. Rehabilitated housing units must include any improvements necessary to make the housing unit accessible to persons with disabilities.

(2) Loan or deferred loan assistance for the rehabilitation of owner-occupied housing units that are not inhabited by persons with disabilities.

(3) Loan or deferred loan assistance for the construction of new housing units that include accessibility features for persons with disabilities. Construction of new housing must be provided through an eligible subrecipient such as a neighborhood-based non-profit organization or a non-profit organization serving the development needs of the TxCDBG [~~TCDP~~]-eligible community. In this instance, the applicant must provide documentation that confirms a need for a housing unit or units, that are accessible to persons with disabilities; and that there is no existing housing currently available in the applicant's jurisdiction that can satisfy or meet the documented need.

(4) Soft costs associated with the delivery of the housing program assistance including the preparation of work write-ups; required architectural or professional services that are directly attributable to a particular housing unit; interim and final inspections; and inspections for lead-based paint, asbestos, termites, and existing septic systems.

(5) Administrative costs associated with the housing assistance program.

(6) TxCDBG [~~TCDP~~] assistance for the hard costs of housing assistance is limited to no more than $25,000 per housing unit. The cost of replacement housing can exceed this $25,000 limit.

(e) Funding cycle (housing rehabilitation fund). This fund is allocated to eligible units of general local government on a biennial basis for the 2003 and 2004 program years pursuant to a statewide competition held during the 2003 program year. Applications for funding from the 2003 and 2004 program year allocations must be received by the TxCDBG [~~TCDP~~] by the dates and times specified in the most recent application guide for this fund.

(f) Selection procedures (housing rehabilitation fund).

(1) Each eligible local government may submit one application for funding under the housing rehabilitation fund. Two copies of the application must be submitted to the Office and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified by the Office staff in the timeframe stated in the notification.

(3) Each regional review committee may, at its option, review and comment on an application from a local government within its state planning region. These comments become part of the application file, provided such comments are received by the Office prior to final review of an application.

(4) The Office then scores the housing rehabilitation fund to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant.

(5) Following a final technical review, the Office staff submits the 2003 program year and 2004 program year funding recommendations to the executive director of the Office.

(6) The executive director of the Office reviews the 2003 program year funding recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(7) Upon announcement of the 2003 program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(8) When the 2004 program year TxCDBG [~~TCDP~~] allocation becomes available, the executive director of the Office reviews the 2004 program year final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(9) Upon announcement of the 2004 program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(g) Selection criteria (housing rehabilitation fund). The following is an outline of the selection criteria used by the Office for scoring applications under this fund. Two hundred points are available.

(1) Community distress (total--25 points). All community distress factor scores are based on the population of the applicant. For counties, the population may include the unincorporated county population and the populations of any cities located in the county participating in the application.

(A) Percentage of persons living in poverty--15

(B) Per capita income--10

(2) Project design (total--175 points). Each application is scored by a committee composed of the Office staff using the following information submitted in the application:

(A) how the proposed project will resolve the identified housing needs and the severity of the needs within the applicant's jurisdiction;

(B) whether the application includes a commitment to rehabilitate existing housing units addressing the needs of persons with disabilities (applications that include housing activities providing accessible housing for persons with disabilities receive additional consideration);

(C) whether the applicant provides any local matching funds for the administration or service delivery soft costs activities; and

(D) the applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts.

(h) Selection procedures (housing infrastructure fund).

(1) Each eligible local government may submit one application for funding under the housing infrastructure fund. Two copies of the application must be submitted to the Office and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, the Office staff review the application to determine whether it is complete, if all proposed activities are program eligible, and if the project is financially feasible. If not subject to disqualification, the applicant may correct any deficiencies identified by the Office staff in the timeframe stated in the notification.

(3) After review by Office staff, each application is evaluated by a team of reviewers. Reviewer's scores are averaged for a final team score and applications recommended for funding are forwarded to the executive director of the Office.

(4) The executive director of the Office reviews the funding recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(5) Upon announcement of the contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased.

(i) 2003 program year selection criteria (housing infrastructure fund). The following is an outline of the selection criteria used by the Office for scoring 2003 program year applications under this fund. One hundred seventy points are available.

(1) Financial feasibility (20 points).

(2) Market assessment (30 points).

(3) Affordable housing solutions (30 points).

(4) Organizational capacity (25 points).

(5) Program consideration (35 points).

(6) Project design (10 points).

(7) Community support (10 points).

(8) Rural project (10 points). Project is located in a community with a population of 10,000 persons or less.

(j) 2004 program year selection criteria (housing infrastructure fund). Within the selection criteria described in paragraphs (1) through (9) of this subsection, different factors may be evaluated for single family projects and multi-family projects. These different selection criteria factors will be described in the application guide for the program. The following is an outline of the selection criteria used by the Office for scoring 2004 program year applications under this fund. One hundred seventy (170) points are available. Applications determined not to be financially feasible will be eliminated from funding consideration. Any such application will not be reviewed any further and the applicant will be notified that the application lacked sufficient financial feasibility.

(1) Market assessment (60 points). The market assessment will be scored based on housing market information, realtor information, census data provided, public housing authority waiting lists, project site information, and other information in the application.

(A) Documented market description. Maximum of 6 points for Single Family or Multi-Family.

(B) Documented analysis of market trends. Maximum of 6 points for Single Family or Multi-Family.

(C) Evaluation and understanding of the local housing needs. Maximum of 6 points for Single Family or Multi-Family.

(D) Ability of the market to absorb the proposed number of homes/units. Maximum of 6 points for Single Family or Multi-Family.

(E) Project location in terms of commercial and social services, and appropriateness and general appeal of site. Maximum of 6 points for Single Family or Multi-Family.

(F) An occupancy rate of 90 percent or higher exists in the community where the housing project is located. Maximum of 6 points for Single Family or Multi-Family.

(G) New industry/businesses in the area have created jobs that have increased the need for affordable housing. Maximum of 6 points for Single Family or Multi-Family.

(H) No existing TxCDBG [~~TCDP~~] funded Housing Infrastructure project is located within 50 miles of the proposed project site. Maximum of 6 points for Single Family or Multi-Family.

(I) The market assessment has been prepared by an independent party other than the locality's staff or application preparer. Maximum of 6 points for Single Family or Multi-Family.

(J) Other factors that demonstrate a need for additional housing in the area such as an increase in the cost of housing, lack of affordable housing, and major transportation changes. Maximum of 6 points for Single Family or Multi-Family.

(2) Affordable housing solutions (20 points).

(A) Degree that project includes housing located in stable neighborhoods for the targeted population. This is determined by TxCDBG [~~TCDP~~] during its site visit assessment. Maximum of 5 points for Single Family or Multi-Family.

(B) Affordability of project to individuals with 80%, 60% or 50% area median family income. Maximum of 5 points for Single Family or Multi-Family.

(i) Project encompasses units affordable to families with 80 percent, 60 percent and 50 percent of area median family income--5 points.

(ii) Project encompasses units affordable to families with 80 percent and 60 percent of area median family income--3 points.

(iii) Project encompasses units affordable to families with 80 percent of area median family income--1 point.

(C) Availability of down-payment and closing cost assistance. Maximum of 5 points for Single Family.

(D) Availability of homebuyer counseling services. Maximum of 5 points for Single Family.

(E) Support Services Plan of resident services available to tenants. Maximum of 10 points for Multi-Family.

(3) Organizational capacity (15 points).

(A) Experience and capacity of the developer and applicant (in relation to the scale of the project). Maximum of 10 points for Single Family or Multi-Family.

(B) Readiness to proceed. Score will consider financial commitments, evidence of zoning, options on land, and other evidence that the project will not encounter delays upon receipt of program funds. Maximum of 5 points for Single Family or Multi-Family.

(4) Program consideration and matching funds (20 points).

(A) Program Consideration. Maximum of 10 points for Single Family or Multi-Family.

(i) Descriptions of how proposed project will resolve the identified need and the severity of the need within the jurisdiction--up to 5 points.

(ii) Minimal displacement, relocation, site acquisition, and clearance costs--up to 1 points.

(iii) Adequacy of community infrastructure and services in relation to the project site--up to 2 points.

(iv) Description of applicant's other efforts to provide affordable housing in the community--up to 2 points.

(B) Financial commitment from local government (local contribution). Maximum of 5 points for Single Family or Multi-Family.

(i) Local government has provided a contribution in the amount of 2 percent of the fund grant amount requested--5 points.

(ii) Local government has provided a contribution in the amount of 1 percent of the fund grant amount requested--3 points.

(iii) Local government has not provided a contribution--0 points.

(C) Adequacy of community infrastructure in relation to the project. Maximum of 5 points for Single Family or Multi-Family.

(5) Applicant has not received a previous housing infrastructure fund contract (5 points).

(6) Project design (10 points). Maximum of 10 points for Single Family or Multi-Family.

(A) Maximum of 5 points for creative housing designs that incorporate cost-effectiveness, practicality, and security without compromising comfort, attractiveness, and privacy, as well as a variety of floor plans and elevations.

(B) Maximum of 2 points for housing units that incorporate energy efficient construction and appliances.

(C) Maximum of 2 points for projects that incorporate a main entrance to the proposed subdivision that enhances the visual appeal of the property.

(D) Maximum of 1 point for applications from governing bodies of communities designated as defense economic readjustment zones over other eligible applications for TxCDBG [~~TCDP~~] grants if at least fifty percent (50%) of the grant will be expended for the direct benefit of the readjustment zone and the purpose of the grant is to promote TxCDBG [~~TCDP~~]-eligible economic development in the community or for TxCDBG [~~TCDP~~]-eligible construction, improvement, extension, repair, or maintenance of TxCDBG [~~TCDP~~]-eligible public facilities in the community.

(7) Community support (20 points).

(A) Community awareness of the project as demonstrated by support letters and newspaper articles. Maximum of 10 points for Single Family or Multi-Family.

(B) Financial commitments from other sources (leveraging). Greater weight will be provided for financial commitments from within the community for the project. Maximum of 10 points for Single Family or Multi-Family.

(8) Cost per beneficiary (10 points). Single Family and Multi-Family applications will be considered separately. The beneficiaries used in this determination will be based on the number of units proposed and the assumption that a family of four will occupy a single family unit or multi-family unit.

(A) the TxCDBG [~~TCDP~~] cost per beneficiary is at least 50 percent below the calculated median cost per beneficiary of all eligible applicants within the respective single or multi-family category--(10 points);

(B) the TxCDBG [~~TCDP~~] cost per beneficiary is at or below the calculated median cost per beneficiary of all eligible applicants within the respective single or multi-family category (7 points);

(C) the TxCDBG [~~TCDP~~] cost per beneficiary is below 150 percent of the calculated median cost per beneficiary of all eligible applicants within the respective single or multi-family category (5 points); or

(D) the TxCDBG [~~TCDP~~] cost per beneficiary is 150 percent or greater than the calculated median cost per beneficiary of all eligible applicants within the respective single or multi-family category (2 points).

(9) Rural project (10 points). Project is located in a community with a population of 10,000 persons or less--10 points.

(k) Principal residence requirement (housing infrastructure fund). Each resident must be one that, at the time the mortgage loan is executed, the borrower reasonably expects to become his or her principal residence within a reasonable time (not to exceed 60 days) after the financing is provided. Whether a residence is occupied as a principal residence depends upon all the facts and circumstances of each case, including the good faith of the borrower. A residence that is intended to be used primarily in a trade of business will not satisfy the principal residence requirement. Further, a residence that will be used as an investment property or a recreational home does not satisfy the principal residence requirement.

§255.11. Small Towns Environment Program Fund.

(a) General provisions. This fund is available to eligible units of general local government to provide financial assistance to cities and communities that are willing to address water and sewer needs through self-help methods that are encouraged and supported by the Small Towns Environment Program (STEP). The self-help method for addressing water and sewer needs is best utilized by cities and communities recognizing that conventional water and sewer financing and construction methods cannot provide an affordable response to the water or sewer needs. By utilizing a city's or community's own resources (human, material, and financial), the costs for the water or sewer improvements can be reduced significantly from the retail costs of the improvements through conventional construction methods. Participants in the small town environment program fund should attain at least a forty percent reduction in the costs of the water or sewer project by using self-help in lieu of conventional financing and construction methods.

(1) Small towns environment program funds can be used to cover material costs, certain engineering costs, administrative costs, and other necessary project costs that are approved by program staff.

(2) In addition to the threshold requirements of §255.1(h) and §255.1(n) of this title (relating to General Provisions), in order to be eligible to apply for small towns environment program funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Cities and counties receiving 2007 [~~2005~~] and 2008 [~~2006~~] Community Development Fund/Community Development Supplemental Fund grant awards for applications that do not include water, sewer, or housing activities are not eligible to receive a 2008 [~~2006~~] grant award from this fund. However, the Office may consider a city's or county's request to transfer funds that are not financing

water, sewer, or housing activities under a 2007 [~~2005~~] or 2008 [~~2006~~] Community Development Fund/Community Development Supplemental Fund grant award to finance water and sewer activities that will be addressed through self-help methods.

(b) Eligible activities. For the small towns environment program fund eligible activities are limited to the following:

(1) The installation of facilities to provide first-time water or sewer service.

(2) The installation of water or sewer system improvements.

(3) Ancillary repairs related to the installation of water and sewer systems or improvements.

(4) The acquisition of real property related to the installation of water and sewer systems or improvements (easements, rights of way, etc.).

(5) Sewer or water taps and water meters.

(6) Water or sewer yard service lines (for low and moderate income persons).

(7) Water or sewer house service connections (for low and moderate income persons).

(8) Plumbing improvements associated with providing water or sewer service to a housing unit.

(9) Water or sewer connection fees (for low and moderate income persons).

(10) Equipment for installation of water or sewer if justification is provided.

(11) Reasonable associated administrative costs.

(12) Reasonable associated engineering services costs.

(c) Ineligible activities. Any activity not described in subsection (b) of this section is ineligible under this fund unless the activity is approved by the TxCDBG [~~TCDP~~]. Other ineligible activities are temporary solutions, such as emergency inter-connects that are not used on an on-going basis for supply or treatment and back-ups not required by the regulations of the Texas Commission on Environmental Quality. The TxCDBG [~~TCDP~~] will not reimburse for force account work for construction activities on the STEP project.

(d) Funding cycle. Applications are accepted three times a year as long as funds are available. Funds will be divided among the three application periods. After all projects are ranked, only those that can be fully funded will be awarded a grant. There will be no marginally funded grant awards. The TxCDBG [~~TCDP~~] will not accept an application for STEP fund assistance until TxCDBG [~~TCDP~~] staff and representatives of the potential applicant have evaluated the self-help process and TxCDBG [~~TCDP~~] staff determine that self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready and has the capacity to begin and complete a self-help project. If it is determined that the community meets all of the STEP criteria then an invitation to apply for funds will be extended to the community and the application may be submitted.

(e) Threshold criteria. The self-help response to water and sewer needs may not be appropriate in every community. In most cases, the decision by a community to utilize self-help to obtain needed water and sewer facilities is based on the community's realization that it cannot afford even a "no frills" water or sewer system based on the initial construction costs and the operations/maintenance costs (including debt service costs) for water or sewer facilities installed through conventional financing and construction methods. The following are threshold requirements for the STEP framework: Without all these elements the project may not be considered under the STEP fund.

(1) The community receiving benefits from the project must have one or more sparkplugs (preferably three). Sparkplugs are local leaders willing to both lead and sustain the effort to complete the project. While local officials may serve as sparkplugs, at least two of the three sparkplugs must be residents and not local officials. One of the sparkplugs should have the skills necessary to maintain the paperwork needed for the project. One of the sparkplugs should have knowledge or skills necessary to lead the self-help effort, and one sparkplug can have a combination of these skills or just be the motivator and problem solver of the group.

(2) The community receiving benefits from the project should exhibit a readiness to proceed with the project. The community's readiness to proceed is based on a strong local perception of the problem and the willingness to take action to solve the problem. A community's readiness to proceed is shown when the following conditions exist:

(A) A strong local perception of the problem exists.

(B) The community has the perception that local implementation is the best and maybe only solution to the problem.

(C) The residents of the community have confidence that they can adequately complete the project.

(D) The community has no strong competing priority.

(E) The local government is supportive of the effort and understands the urgency.

(F) There exists a public and private willingness to pay additional costs if needed such as fees, hook-ups for churches, and other costs.

(G) Some effort and attention have already been given to local assessment of the problem.

(H) There is enthusiastic, capable support for the community from the county or regional field staff of any regulatory agency involved with solutions to the problem.

(3) The community receiving benefits from the project should have the capacity and manpower with the skills needed to complete the project. The capacity and skills to complete the project include the following:

(A) Skilled workers within the community such as an electrician, plumber, engineer water system operator and persons with experience operating heavy equipment, and persons with construction skills and pipe laying experience.

(B) The community has a list of volunteers that includes the tasks that are assigned to each volunteer.

(C) The community has equipment that will be needed to complete the project.

(D) The community has letters stating support from local businesses in form of donation of supplies or manpower.

(E) The community has letter from the water and/or sewer service provider supporting the project and agreeing to provide service.

(F) A letter from a Certified Public Accountant documenting that applying locality has financial and management capacity to compete project.

(4) The community receiving benefits from the project must be able to show that by completing the proposed project through self-help volunteer methods the community can achieve at least a 40% savings off the retail price of completing the same project through the bid/contract process. The information provided to the TxCDBG [~~TCDP~~] to document the reduced project cost through self-help includes the following:

(A) Two engineering break-outs of cost, one that shows the retail construction cost and another that shows the self-help cost and demonstrates the 40% savings.

(B) Documents containing material prices and pledges of equipment.

(C) A list of the volunteers by project completion task.

(D) A determination of appropriate technology for the project and the feasibility of project through a letter from an engineer.

(5) Project work, except for any contract administrative activities or engineering services activities, must be performed predominately by community volunteer workers.

(f) Selection procedures.

(1) During each of the two application rounds, the Office staff initially evaluate eligible cities or counties that have expressed an interest in using the self-help method and potentially applying for funding under the STEP Fund. Office staff assess whether self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready along with having the capacity to begin and complete a self-help project. If Office staff determines that the community meets all of the STEP threshold criteria then the community is invited to apply prior to the application deadline.

(2) The Office will not accept an application under the STEP Fund unless this assessment and invitation process is followed.

(3) Applicants invited to apply under the STEP Fund are scored using the selection criteria to determine the ranking.

(4) Following a final technical review, the Office staff makes funding recommendations to the executive director of the Office.

(5) The executive director of the Office reviews the final recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(6) Upon announcement of contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(g) Selection criteria. The following is an outline of the selection criteria used by the Office for scoring applications under the STEP fund. One hundred twenty (120) points are available.

(1) Project impact (total--up to 60 points). When necessary, a weighted average is used to assign scores to applications which include activities in the different project impact scoring levels. Using as a base figure the TxCDBG [~~TCDP~~] funds requested minus the TxCDBG [~~TCDP~~] funds requested for engineering and administration, a percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity will be calculated. The percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity will then be multiplied by the appropriate project impact point level. The sum of these calculations will determine the composite project impact score. Factors that are evaluated by the TxCDBG [~~TCDP~~] staff in the assignment of scores within the predetermined scoring ranges for activities include, but are not limited to, how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction; and projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are generally given additional consideration. The different project impact scoring levels and scoring ranges within each level are:

(A) first time water and/or sewer service--up to 60-- 50 points

(B) water activities addressing drought conditions--up to 60-- 50 points

(C) activities addressing severe impact to a water system (imminent loss of well, transmission line, supply impact)--up to 60-- 50 points

(D) water and/or sewer activities addressing an imminent threat to health as documented by the Texas Commission of Environmental Quality or Department of State Health Services--60-- 50 points

(E) activities addressing documented severe water pressure problems--up to 50--40 points

(F) replacement of existing water or sewer lines that are not addressing activities described in subparagraphs (A) - (E) of this paragraph--up to 40-- 30 points

(G) all other proposed water and sewer projects that are not addressing activities described in subparagraphs (A) - (F) of this paragraph--up to 30-- 20 points

(2) STEP Characteristics, Merits of the Project, and Local Effort (total--up to 30 points). The TxCDBG [~~TCDP~~] staff will assess the proposal for the following STEP characteristics not scored in other factors:

(A) Degree work will be performed by community volunteer workers, including information provided on the volunteer work to total work;

(B) Local leaders (sparkplugs) willing to both lead and sustain the effort;

(C) Readiness to proceed--the local perception of the problem and the willingness to take action to solve it;

(D) Capacity--the manpower required for the proposal including skills required to solve the problem;

(E) Merits of the projects, including the severity of the need, whether the applicant sought funding from other sources, cost in TxCDBG [~~TCDP~~] dollars requested per beneficiary, etc.; and

(F) Local efforts being made by applicants in utilizing local resources for community development.

(3) Past participation and performance (total--up to15 points). An applicant receives up to 15 points on the following two factors.

(A) Ten of the 15 points available are awarded to applicants that do not have a current TxCDBG [~~TCDP~~] STEP grant.

(B) An applicant can receive from zero to five (5) points based on the applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts. The applicant's score will be primarily based

on our assessment of the applicant's performance on the applicant's two (2) most recent TxCDBG [~~TCDP~~] contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG [~~TCDP~~] may also assess the applicant's performance on existing TxCDBG [~~TCDP~~] contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG [~~TCDP~~] grant award will automatically receive these points. The TxCDBG [~~TCDP~~] will assess the applicant's performance on TxCDBG [~~TCDP~~] contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may [~~will~~] include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period (total--2 points).

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports, Certificates of Expenditures, and Project Completion Reports (total--1 point).

(iii) The applicant's submission of the required close-out documents within the period prescribed for such submission (total--1 point).

(iv) The applicant's timely response to monitoring findings on previous TxCDBG [~~TCDP~~] contracts especially any instances when the monitoring findings included disallowed costs and the applicant's timely response to audit findings on previous TxCDBG [~~TCDP~~] contracts (total--1 point).

(4) Percentage of savings off the retail price (total--up to10 points). For STEP, the percentage of savings off of the retail price is considered a form of community match for the project. In STEP, a threshold requirement is a minimum of 40% savings off the retail price for construction activities. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. An applicant can receive from zero to 10 points based on the following population levels and savings percentages:

(A) Communities with populations equal to or less than 1,500 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--9

(iii) 45% - 49.99% savings--7

(iv) 41% - 44.99% Savings--5

(B) Communities with populations above 1,500 but equal to or less than 3,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--8

(iii) 45% - 49.99% savings--6

(iv) 41% - 44.99% Savings--3

(C) Communities with populations above 3,000 but equal to or less than 5,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--7

(iii) 45% - 49.99% savings--5

(iv) 41% - 44.99% Savings--2

(D) Communities with populations above 5,000 but less than 10,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--6

(iii) 45% - 49.99% savings--3

(iv) 41% - 44.99% Savings--1

(E) Communities with populations that are 10,000 or above 10,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--5

(iii) 45% - 49.99% savings--2

(iv) 41% - 44.99% Savings--0

(5) Benefit to low/moderate income persons (total--up to 5 points). Applicants are required to meet the 51 percent low/moderate-income benefit for each activity as a threshold requirement. Any project where at least 60 percent of the TxCDBG [~~TCDP~~] funds benefit low/moderate-income persons will receive 5 points.

§255.12. Microenterprise Fund.

(a) General provisions. This fund is available on an annual basis for funding from available program income through an annual statewide competition. Applications received by the application deadline are eligible to receive grant awards from available program income. An eligible community submits the application and must contract with a non-profit organization (economic development corporation, community development corporation, etc.) for the purpose of establishing a local loan program that directly assists for-profit microenterprise businesses. Proceeds from the repayment of the loans will be retained by the non-profit organization.

(b) Conditions. A microenterprise is a commercial enterprise that has five (5) or fewer employees, one (1) or more of whom owns the enterprise. The microenterprise receiving the loan assistance must commit to creating or retaining jobs that will not exceed a maximum cost of $25,000 per job. The jobs created or retained by the microenterprise must principally benefit low and moderate income persons. The funds cannot be used by the microenterprise for debt service, refinancing, or payment of the business owner's salaries.

(c) Eligible activities. The activities eligible under this fund are:

(1) Working capital (purchase of raw materials, inventory, rent, utilities, salaries, and others needed for business operations);

(2) Machinery and equipment (cars and trucks considered rolling stock would not be an eligible use of funds); and

(3) Real estate improvements.

(d) Selection criteria. The following is an outline of the selection criteria used by the Office for scoring microenterprise fund applications. One hundred twenty (120) points are available. Additional

information on the selection criteria may be provided in the application guide.

(1) Community Distress (total - 50 points). All community distress factor scores are based on the population of the applicant. For counties, the population may include the unincorporated county population and the populations of any cities located in the county participating in the application. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage Of Persons Living In Poverty (total - 15 points).

(B) Per Capita Income (total - 15 points).

(C) Population Loss from 1990 to 2000 (total - 10 points).

(D) Unemployment Rate - (total - 10 points).

(2) Program Design (total - up to 50 points).

(A) Nonprofit Capacity. The score will be based on evidence in the application of the experience and/or capability of the contracted non-profit organization to administer a local business lending program, including the staff of the non-profit who will operate the fund (total - up to 10 points).

(B) Overall Program Design. The score will be based on design of the revolving loan program, including the application and selection process, credit analysis procedure, collection process, and other procedures necessary to sustain the long-term viability of the revolving loan fund (total - up to 10 points).

(C) Technical Assistance and Counseling Services. The score will be based on the magnitude and scope of the non-profit's proposed technical assistance and counseling services for microenterprise businesses on operational, financial, marketing, and other business-related matters (total - up to 5 points).

(D) Citizen Involvement. The score will be based on degree of input on the design of the fund that has been solicited from the citizens in the region who could benefit from the fund (total - up to 5 points).

(E) Business Involvement. The score will be based on degree of input on the design of the fund from businesses, particularly potential applicants, in the region who could benefit from the fund. Consideration will be given for any business involvement in assisting in reviewing applications or providing technical assistance and counseling services (total - up to 5 points).

(F) Potential Applicants. If the application includes a list of the names of potential business applicants who met the eligibility requirements (total - up to 5 points).

(G) Marketing Plan. The score will be based on the plan submitted to market the availability of the revolving loan fund to potential microenterprise businesses in the region to be served (total - up to 5 points).

(H) Terms. The score will be based on whether the loan terms are consistent with the life of the security and risk factors (total - up to 5 points).

(3) Leverage Ratio (total - 5 points). Score five (5) points if matching dollars are greater than or equal to grant dollars received under this fund based on the following:

(A) For an applicant with a population in 2000 of less than 5,000 persons, the match is at least equal to 100 percent of the grant.

(B) For an applicant with a population in 2000 equal to or greater than 5,000 persons, the match is 125 percent of the grant.

(4) Previous Participation (total - 10 points).

(A) If no previous Texas Capital Fund participation - 10 points, or

(B) If no open Texas Capital Fund contracts - 5 points.

(5) Rural Projects (total - 5 points). Score five (5) points if:

(A) The applicant is a city with a population in 2000 under 10,000 persons, or

(B) The applicant is a county with a population in 2000 under 100,000 persons.

(6) An application must receive at least 25 points under Program Design to be considered eligible for funding consideration.

§255.13. Small Business Fund.

(a) General provisions. This fund is available on an annual basis for funding from available program income through an annual statewide competition. Applications received by the application deadline are eligible to receive grant awards from available program income. An eligible community submits the application for the purpose of supporting for-profit small businesses through loans meeting a gap financing need. Retention of the proceeds from the repayment of the loans will meet the same requirements for program income that apply to Texas Capital Fund contracts.

(b) Conditions. A small business is a for-profit business with less than one hundred (100) employees. The small business receiving the loan assistance must commit to creating or retaining jobs that will not exceed a maximum cost of $25,000 per job. The jobs created or retained by the small business must principally benefit low and moderate income persons. The funds cannot be used by the small business for debt service, refinancing, or payment of the business principal's salaries.

(c) Eligible activities. The activities eligible under this fund are:

(1) Working capital (purchase of raw materials, inventory, rent, utilities, salaries, and others needed for business operations);

(2) Machinery and equipment (cars and trucks considered rolling stock would not be an eligible use of funds); and

(3) Real estate improvements.

(d) Selection criteria. The following is an outline of the selection criteria used by the Office for scoring small business fund applications. One hundred twenty five (125) points are available. Additional information on the selection criteria may be provided in the application guide.

(1) Community Distress (total - up to 50 points). All community distress factor scores are based on the population of the applicant. For counties, the population may include the unincorporated

county population and the populations of any cities located in the county participating in the application. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of [~~Of~~] Persons Living In Poverty (total - 15 points).

(B) Per Capita Income (total - 15 points).

(C) Population Loss from 1990 to 2000 (total - 10 points).

(D) Unemployment Rate (total - 10 points).

(2) Jobs (total - up to 20 points).

(A) Below $10,000 per job - 20 points,

(B) Below $15,000 per job - 15 points,

(C) Below $20,000 per job - 10 points, or

(D) Below $25,000 per job - 5 points.

(3) Project Feasibility (total - up to 30 points). The feasibility of each project is evaluated and scored based on the financial soundness of the project. Factors examined include:

(A) Firm commitments for financial investments. The score will be based on evidence in the application that financing from other sources, including owner equity, has been committed in sufficient amounts for the proposed project (total - up to5 points);

(B) The jobs to be created or retained. The score will be based on evidence in the application that the type, skill, and wage of the proposed jobs to be created or retained is appropriate for the overall labor force in the area such as local employment data, surveys, or local, state or federal data (total - up to 5 points);

(C) The history of the business. The score will be based on either the success of the business over the last five years or, for new businesses, the history of the successful start-up period, including a discussion of the products, facilities, markets, job growth, and financial investments in the business (total - up to 3 points);

(D) The current financial condition of the business (including a full review of the credit analysis). The score will be based on whether the business has a sound balance sheet, including debt to equity ratios, and is currently profitable as demonstrated by recent income statements (total - up to 5 points);

(E) Cash flow projections. The score will be based on the detail and reasonableness of the projected cash flow statements for the proposed project (total - 5 points);

(F) The business or marketing plan. The score will be based on evidence that the business has the capacity to sustain operations beyond the period of program assistance (total - up to 5 points); and

(G) Management. The score will be based on the experience and capabilities of the business owners and managers (total - up to 2 points).

(4) Leverage Ratio (total - 5 Points) A minimum ten percent (10%) equity injection by the assisted business is required. Score five (5) points if matching dollars are greater than or equal to grant dollars received under this fund based on the following:

(A) For an applicant with a population in 2000 of less than 5,000 persons, the match is at least equal to 100 percent of the grant.

(B) For an applicant with a population in 2000 equal to or greater than 5,000 persons, the match is 125 percent of the grant.

(5) Previous Participation (total - 10 points).

(A) If no previous Texas Capital Fund participation - 10 points.

(B) If no open Texas Capital Fund contracts - 5 points.

(6) Innovative Projects (total - 5 points). Projects that support a business addressing a community need or economic/population trend would receive five (5) points.

(7) Rural Projects (total - 5 points). Score five (5) points if:

(A) The applicant is a city with a population in 2000 under 10,000 persons, or

(B) The applicant is a county with a population in 2000 under 100,000 persons.

(8) An application must receive at least 15 points under Project Feasibility to be considered for funding.

§255.14. Section 108 Loan Guarantee Pilot Program.

(a) General Provisions. Section 108 is the loan guarantee provision authorized under section 108 of the Housing and Community Development Act (42 United States Code §§5301 et seq.). The loan is made by a private lender to an eligible community. The United States Department of Housing and Urban Development (HUD) guarantees the loan; however, TxCDBG [~~TCDP~~] must pledge the state's current and future Community Development Block Grant nonentitlement area funds to cover any losses. An eligible community would prepare a loan guarantee application for submission to HUD.

(b) Conditions. The following conditions apply under the TxCDBG [~~TCDP~~] Section 108 program:

(1) the Office will not provide a commitment for an application submitted to HUD for a Section 108 guarantee unless the Office has reviewed the application, conducted an underwriting analysis, and specifically recommended its approval;

(2) the Office will charge the eligible community receiving the Section 108 loan a non-refundable loan loss reserve fee at the rate of one percent per annum on the principal amount outstanding. The funds from the one percent fee would be used for any debt service payments the Office would need to pay on account of the loan, or to cover any loan losses, if the recipient does not make its Section 108 loan payments;

(3) the application must be only for an activity eligible under the TxCDBG [~~TCDP~~];

(4) the Office will require the community to submit adequate information necessary to track all loan repayments made by any third party borrowers such as assisted businesses; and

(5) the Office will monitor compliance with program requirements.

(c) Eligible Activities.

(1) The project must meet a national objective of Housing and Community Development Act:

(A) principally benefit low- and moderate-income persons;

(B) aid in the elimination of slums or blight; or

(C) meet other community development needs of particular urgency which represent an immediate threat to the health and safety of residents of the community.

(2) In addition, the State program is specifically restricting eligibility to economic development activities eligible under the state Community Development Block Grant (CDBG) Program. Other activities eligible under the 24 Code of Federal Regulations Part 570 will not be eligible under the pilot phase of this program.

(d) Terms. The maximum repayment period for a Section 108 guaranteed loan under the TxCDBG [~~TCDP~~] will be twenty years. The TxCDBG [~~TCDP~~] will not establish a funded loss reserve. The Office anticipates entering into a Reimbursement Agreement with the community providing for recovery of amounts required to be paid by the TxCDBG [~~TCDP~~]. Should the TxCDBG [~~TCDP~~] be required to cover any Section 108 loan payments not made by the recipient of the loan guarantee, it would first use funds that have been collected from the additional one percent per annum fee charged on the loan.

(e) Pilot Program Application and Amount. In order to provide eligible communities an additional funding source, the TxCDBG [~~TCDP~~] is authorizing a loan guarantee pilot program consisting of one application up to a maximum of $500,000 for a particular project. Additional information on the selection criteria and underwriting thresholds will be provided in the application guide for applicants interested in being selected as the pilot project under this program.

(f) Application Review and Underwriting Analysis. The Office will review each complete application to make threshold determinations with respect to:

(1) whether the application meets the Section 108 eligibility requirements;

(2) whether the use of CDBG Section 108 loan guarantee funds is appropriate to carry out the project proposed in the application;

(3) the strength of commitments from all other public and/or private investments identified in the application;

(4) whether there is evidence that the permanent jobs created or retained will primarily benefit low-and-moderate income persons; and

(5) the financial feasibility of the business to be assisted, including reviews of appropriate projections of revenues, expenses, debt service and returns on equity investments in the project as described in subsection (g) of this section, Underwriting Analysis and Review, of this subsection. Generally, the project should demonstrate that it would generate a positive net present value of discounted cash flows.

(g) Underwriting Analysis and Review.

(1) Project costs are reasonable. The Office will review a breakdown of all project costs and that each cost element making up the project for reasonableness.

(2) Commitment of all project sources of financing. The Office will review all projected sources of financing necessary to carry out the economic development project to determine whether the proposal is ready to proceed. To the extent practicable, prior to the commitment of Section 108 CDBG funds to the project, the Office will verify that sufficient sources of funds have been identified to finance the project; all participating parties providing those funds have affirmed their intention to make the funds available; and the participating parties have the financial capacity to provide the funds.

(3) Avoid substitution of Section 108 CDBG funds for non-Federal financial support. The Office will review the economic development project to ensure that, to the extent practicable, CDBG funds will not be used to substantially reduce the amount of non-Federal financial support for the activity. The Office will review whether or not the business being assisted has applied for private debt financing from a commercial lending institution and whether that institution has completed all of its financial underwriting and loan approval actions resulting in either a firm commitment of its funds or a decision not to participate in the project.

(4) Financial feasibility of the project. The Office will evaluate the financial viability of the project. A project would be considered financially viable if:

(A) all of the assumptions about the project's market share, projections of revenue, projections of expenses, non-cash expenses, net income, and debt service, including the repayment of the Section 108 guaranteed loan, are determined to be realistic;

(B) it projects positive accumulated cash flow for the life of the project including cash from both operational and financial cash flows;

(C) it projects a debt service coverage ratio of 1.5 and cash flow coverage ratio of 1.25 by the 5th year; and

(D) it projects a return on equity by the 10th year of at least 400 basis points greater than the current rate for 30-year U.S. Treasury Bonds.

(5) Disbursement of Section 108 CDBG funds on a pro rata basis. To the extent practicable, the proceeds should be disbursed on a pro rata basis with other funding sources.

(h) Selection Criteria. Applications meeting threshold requirements of subsection (f) of this section will be scored based on the following:

(1) Community Need (Maximum of 30 points)

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's unemployment rate is higher than the state rate, indicating that the community is economically below the state average. Ten points awarded if the applicant's most recently available unemployment rate is 1.5% over the state rate. (For cities, the most recently available city rate will be used; for counties, the most recently available county or census tract rate, for where the business site is located, whichever is higher, will be used).

(B) Poverty (maximum 10 points). Awarded if the applicant's most recently available annual county poverty rate is higher than the annual state rate, indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average and score 10 points if this figure exceeds the state average by at least 15%.

(C) Community Population (more Rural) (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less and counties with a total population of 35,000 or less, using 2000 census data. For cities: score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. For counties: score 5 points if the county population is less than 35,000 and score 5 additional points if the county population is less than 15,350.

(2) Jobs (Maximum of 20 points).

(A) Job Impact (Jobs Created or Retained per Population of Community) (Maximum 10 points). Awarded by taking the Business' total job commitment, created and retained, and dividing by applicant's 2000 unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds the median job impact ratio for prior years; and score 10 points if this figure exceeds 200% of the ratio. County applicants should deduct the 2000 census population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's.

(B) Cost per Job (Maximum 10 points). Awarded by dividing the amount of Section 108 loan guarantee amount requested by the number of full-time job equivalents to be created and/or retained. Points are then awarded in accordance with the following scale:

(i) Below $15,000--10 points.

(ii) Below $20,000--5 points.

(3) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on poverty rate stated on the score sheet. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on unemployment rate stated on the score sheet. Thus, preference is then given to the applicant with the higher unemployment rate.

§255.15. Community Development Supplemental Fund.

(a) General provisions. Applications for there funds are submitted under the community development fund for eligible activities including but not limited to housing, public facilities, and public service projects. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities. An application submitted for the community development fund can receive a grant from the community development fund regional allocation and/or from the community development supplemental fund regional allocation.

(1) An applicant may not submit an application for community development supplemental funds under the community development fund and also under any other TxCDBG [~~TCDP~~] fund category at the same time if the proposed activity under each application is the same or substantially similar. An application submitted for the community development fund is also considered for the regional allocation for the community development supplemental fund.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for community development funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(b) Funding cycle. Community development supplemental funds are allocated to eligible units of general local government on a biennial basis for the 2007 [~~2005~~] and 2008 [~~2006~~] program years pursuant to regional competitions held for the 2007 [~~2005~~] program year community development fund applicants. Applications for funding must be received by the TxCDBG [~~TCDP~~] by the dates and times specified in the most recent application guide for this fund.

(c) Allocation plan.

(1) Additional information on the allocation and distribution of community development supplemental funds is described in §255.2(c) of this title (related to the Community Development Fund). This fund is allocated among the 24 state planning regions established pursuant to Texas Local Government Code, §391.003, through the methodology and formulas used by the U.S. Department of Housing and Urban Development to allocate community development block grant funds to states. Each region receives an allocation for the 2007 [~~2005~~] and 2008 [~~2006~~] program years based on the higher amount derived from either of the two following formulas:

(A) Formula A includes the following factors and weights:

(i) population--25%

(ii) number of persons living in poverty--50%

(iii) number of overcrowded housing units--25%

(B) Formula B includes the following factors and weights:

(i) population--20%

(ii) number of persons living in poverty--30%

(iii) number of housing units built before 1940--50%

(2) The higher amount available for each regional allocation is determined through one of the two formulas. The higher amounts for each region are then added together and the total will exceed the total amount allocated for the community development supplemental fund. Each regional allocation is then adjusted downward by the same percentage to equal the total allocation for the community development supplemental fund. As an example, if the community development supplemental fund allocation was 4 million dollars and the total of the higher allocations for each of the 24 state planning regions was 5 million dollars, then each region would only receive 80% of its higher allocation amount calculated through one of the two formulas.

(d) Selection procedures.

(1) In general, both the Community Development (CD) Fund and Community Development Supplemental (CDS) Fund scores will be considered under the first year's CD and CDS allocation to provide an applicant the greater award amount in the first year of competition, whether from the anticipated CD or CDS allocations.

(2) Specifically, the Community Development Fund dollars for the first year will be allocated using the CD score until a marginal CD award amount remains for the anticipated first year allocation. A comparison will then be made to compare the preliminary first-year marginal CD applicant's CDS score with the remaining applicants and also if it could be offered a higher dollar award in the first year under the CDS Fund allocation. If its CDS score was higher than the next highest ranked applicant's CDS score and it would receive a higher award amount in the first year under the CDS allocation, it would be offered a first year CDS award. The remaining applicants would compete for the remaining CD and CDS first-year funds based on the method of providing the highest ranked applicants under the respective CD and CDS scoring criteria with the higher award amount, whether from the first year CD or CDS allocation.

(3) In the second year, the Community Development Fund marginal funds may be used in the second year to fund a non-fully funded Community Development Supplemental Fund application.

(4) If there are sufficient Community Development Supplemental Funds in the first year to fully fund an application, then the applicant may accept the amount available or wait for full funding in the second year by combining the two years.

(5) If there are insufficient Community Development Supplemental Funds in the two years to fully fund an application, then Community Development Fund marginal funds may be used to fully fund the application. If marginal funds are not available to fully fund the application, the applicant may accept the amount of the funds available or, if declined, the funds will be part of the marginal competition.

(6) Additional information on the [~~The~~] selection procedures for the use of community development supplemental funds are described in §255.2(d) of this title (related to the Community Development Fund).

(e) Selection criteria. The following is an outline of the selection criteria used by the Office and the regional review committees to determine the applicants that will receive community development supplemental funds. Three hundred sixty points are available.

(1) Other considerations (total--10 points). An applicant receives from zero to ten (10) points based on the applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two (2) most recent TxCDBG [~~TCDP~~] contracts that have reached the end of the original contract period stipulated in the contract. TxCDBG [~~TCDP~~] staff may also assess the applicant's performance on existing TxCDBG [~~TCDP~~] contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG [~~TCDP~~] grant award will automatically receive these points. TxCDBG [~~TCDP~~] staff will assess the applicant's performance on TxCDBG [~~TCDP~~] contracts up to the application deadline date. The applicant's performance on TxCDBG [~~TCDP~~] contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(A) The applicant's completion of the previous contract activities within the original contract period.

(B) The applicant's submission of the required close-out documents within the period prescribed for such submission.

(C) The applicant's timely response to monitoring findings on previous TxCDBG [~~TCDP~~] contracts especially any instances when the monitoring findings included disallowed costs.

(D) The applicant's timely response to audit findings on previous TxCDBG [~~TCDP~~] contracts.

(E) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports.

(2) Regional scoring factors (total--350 points). Each regional review committee shall use the following three factors to score applications in its region:

(A) Project priorities. Each regional review committee shall rank and assign points to categories of eligible activities based on the priority of such projects in the region. The first priority shall receive at least 100 points.

(B) Local effort. A minimum of 75 points shall be made available based on definitions and criteria adopted by each regional review committee. The regional review committee must establish the methods its members will use to score this factor, consistent with HUD regulations as determined by TxCDBG [~~TCDP~~].

(C) Merits of the project. A maximum of 175 points shall be awarded based on definitions and criteria adopted by each regional review committee. The regional review committee must establish the methods its members will use to score this factor, consistent with HUD regulations as determined by TxCDBG [~~TCDP~~].

§255.16. Non-Border Colonia Fund.

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low and moderate income persons for eligible water and sewer improvements projects and all other program eligible activities with the exception of planning activities and economic development activities. This fund is available to eligible county applicants for projects in severely distressed unincorporated areas located farther than 150 miles from the Texas-Mexico border and non-entitlement counties, or portions of counties, within 150 miles of the Texas-Mexico border that are not eligible for the colonia fund because they are located in a standard metropolitan statistical area that has a population exceeding 1,000,000, as specified the Cranston-Gonzalez National Affordable Housing Act. Non-border colonia areas would be an identifiable unincorporated community that is determined to be colonia-like on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act (November 28, 1990).

(1) An applicant may not submit a single jurisdiction application or a multi-jurisdiction application under this fund and also under any other TxCDBG [~~TCDP~~] fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) A nonentitlement county that is eligible for the colonia fund and that has only a portion of the county located within 150 miles of the Texas-Mexico border cannot submit an application for the non-border colonia fund for any unincorporated areas located within the portion of the county located within 150 mile Texas-Mexico border. However, the eligible nonentitlement count can submit an application under the non-border colonia fund for the unincorporated areas located outside of 150 miles of the Texas-Mexico border.

(3) In addition to the threshold requirements of §255.1(h) and §255.1(n) of this title (relating to General Provisions), in order to be eligible to apply for colonia funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(b) Funding cycle. This fund is allocated to eligible counties on a biennial basis for the 2007 [~~2005~~] and 2008 [~~2006~~] program years pursuant to a competition held for the 2007 [~~2005~~] program year applicants. Applications for funding must be received by the TxCDBG [~~TCDP~~] by the dates and times specified in the most recent application guide for this fund.

(c) Selection procedures.

(1) Prior to the submission deadline specified in the most recent application guide for this fund, each eligible county may submit one application to the Office for funding under the non-border colonia funds. Two copies of the application must be submitted. Each applicant should also provide at least one copy of its application to the applicant's state planning region for review and comment.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding, if ranked. The results of this initial review are provided to the applicant. If not subject

to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a non-border colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the Office prior to scoring of the applications.

(4) The Office then scores the applications to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant.

(5) Following a final technical review, the Office staff submits the 2007 [~~2005~~] program year and 2008 [~~2006~~] program year funding recommendations to the executive director of the Office.

(6) The executive director of the Office reviews the 2007 [~~2005~~] program year funding recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(7) Upon announcement of the 2007 [~~2005~~] program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(8) When the 2008 [~~2006~~] program year TxCDBG [~~TCDP~~] allocation becomes available, the executive director of the Office reviews the 2008 [~~2006~~] program year final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(9) Upon announcement of the 2008 [~~2006~~] program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(d) Selection criteria (non-border colonia fund). The following is an outline of the selection criteria used by the Office for scoring colonia construction fund applications. Three [~~Four~~] hundred eighty [~~thirty~~] points are available.

(1) Community distress (total--35 [~~40~~] points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of persons living in poverty--15 points

(B) Per capita income--10 points [~~15~~]

(C) Percentage of housing units without complete plumbing--5 points [~~10~~]

(D) Unemployment Rate -- 5 points

(2) Benefit to low and moderate income persons (total--30 points). A formula is used to determine the percentage of TxCDBG [~~TCDP~~] funds benefiting low to moderate income persons. The percentage of low to moderate income persons benefiting from each construction, acquisition, and engineering activity is multiplied by the TxCDBG [~~TCDP~~] funds requested for each corresponding construction, acquisition, and engineering activity. Those calculations determine the amount of TxCDBG [~~TCDP~~] benefiting low to moderate income person for each of those activities. Then, the funds benefiting low to moderate income persons for each of those activities are added together and divided by the TxCDBG [~~TCDP~~] funds requested minus the TxCDBG [~~TCDP~~] funds requested for administration to determine the percentage of TxCDBG [~~TCDP~~] funds benefiting low to moderate income persons. Points are then awarded in accordance with the following scale:

(A) 100% to 90% of funds benefiting [~~benefitting~~] low to moderate income persons--30

(B) 89.99% to 80% of funds benefiting [~~benefitting~~] low to moderate income persons--25

(C) 79.99% to 70% of funds benefiting [~~benefitting~~] low to moderate income persons--20

(D) 69.99% to 60% of funds benefiting [~~benefitting~~] low to moderate income persons--15

(E) Below 60% of funds benefiting [~~benefitting~~] low to moderate income persons--5

(3) Project priorities (total--145 [~~195~~] points) When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the TxCDBG [~~TCDP~~] funds requested minus the TxCDBG [~~TCDP~~] funds requested for engineering and administration, a percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity is calculated. The percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations determines the composite project priorities score. The different project priority scoring levels are:

~~[(A) activities (service lines, service connections, and/or plumbing improvements) providing access to water and/or sewer systems funded through the Texas Water Development Board Economically Distressed Area program--195]~~

(A) [~~(B)~~] first time public water service activities (including yard service lines)--145 points

(B) [~~(C)~~] first time public sewer service activities (including yard service lines)--145 points

(C) [~~(D)~~] installation of approved residential on-site wastewater disposal systems for providing first time service--145 points

(D) installation of approved residential on-site wastewater disposal systems or failing systems that cause health issues--140 points

(E) housing activities--140 points

(F) first time water and/or sewer service through a privately-owned for profit utility--135 points

(G) expansion or improvement of existing water and/or sewer service--110 points

(H) street paving and drainage activities--75 points

(I) all other eligible activities--20 points

(4) Matching funds (total--20 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. Applications that include a housing rehabilitation and/or affordable new permanent housing activity for low- and moderate-income persons as a part of a multi-activity application do not have to provide any matching funds for the housing activity. This exception is for housing activities only. The TxCDBG [~~TCDP~~] does not consider sewer or water service lines and connections as housing activities. The TxCDBG [~~TCDP~~] also does not consider on-site wastewater disposal systems as housing activities. Demolition/clearance and code enforcement, when done in the same target area in conjunction with a housing rehabilitation activity, is counted as part of the housing activity. When demolition/clearance and code enforcement are proposed activities, but are not part of a housing rehabilitation activity, then the demolition/clearance and code enforcement are not considered as housing activities. Any additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(i) match equal to or greater than 5.0% of grant request--20;

(ii) match at least 2.0% but less than 5.0% of grant request--10;

(iii) match less than 2.0% of grant request--0.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(i) match equal to or greater than 10% of grant request--20;

(ii) match at least 2.5% but less than 10% of grant request--10;

(iii) match less than 2.5% of grant request--0.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--20;

(ii) match at least 3.5% but less than 15% of grant request--10;

(iii) match less than 3.5% of grant request--0.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--20;

(ii) match at least 5.0% but less than 20% of grant request--10;

(iii) match less than 5.0% of grant request--0.

(5) Project design (total--140 [~~135~~] points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund and in paragraph (6) of this subsection. Each application is scored by a committee composed of TxCDBG [~~TCDP~~] staff using the following information submitted in the application:

(A) the severity of need within the colonia area(s) and how the proposed project resolves the identified need (additional consideration is given to water activities addressing impacts from drought conditions);

(B) the TxCDBG [~~TCDP~~] cost per low to moderate income beneficiary;

(C) the applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG [~~TCDP~~] community development fund;

(D) the projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage;

(E) the ability of the applicant to utilize the grant funds in a timely manner;

(F) the availability of grant funds to the applicant for project financing from other sources;

(G) whether the applicant, or the service provider, has waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries;

(H) whether the applicant's proposed use of TxCDBG [~~TCDP~~] funds is to provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program;

(I) whether the applicant has already met its basic water and wastewater needs if the application is for activities other than water or wastewater; and

(J) whether the project has provided for future funding necessary to sustain the project.

(K) whether the applicant has provided any local matching funds for administrative, engineering, or construction activities.

(L) the applicant's past performance on previously awarded TXCDBG contracts.

(M) proximity of project site to entitlement cities or metropolitan statistical areas.

(6) Project design scoring guidelines. Project design scores are assigned by Office staff using guidelines that first consider the severity of the need for each application activity and how the project resolves the need described in the application. The severity of need and resolution of the need determine the maximum project design score that can be assigned to an application. After the maximum project design score has been established, points are then deducted from this maximum score through the evaluation of the other project design evaluation factors until the maximum score and the point deductions from that maximum score determine the final assigned project design score. When necessary, a weighted average is used to set the maximum project design score to applications that include activities in the different severity of the need/project resolution maximum scoring levels. Using as a base figure the TxCDBG [~~TCDP~~] funds requested minus the TxCDBG [~~TCDP~~] funds requested for engineering and administration, a percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity is calculated. The percentage of the total TxCDBG [~~TCDP~~] construction dollars for each activity is then multiplied by the appropriate maximum project design point level. The sum of the calculations determines the maximum project design score that the applicant can be assigned before points are deducted based on the evaluation of the other project design factors.

(A) Maximum project design score that can be assigned based on the severity of the need and resolution of the problem.

(i) Activities providing first-time publicsewer service to the area--maximum score 140 [~~135~~] points.

(ii) Activities providing first-time publicwater service to the area--maximum score 140 [~~135~~] points.

(iii) Installation of approved residential on-site wastewater disposal systems providing first time sewer service--maximum score 140 [~~135~~] points.

(iv) installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--maximum score 130 points.

(v) [~~(iv)~~] Housing rehabilitation and eligible new housing construction--maximum score 130 points.

(vi) [~~(v)~~] Water activities addressing and resolving water supply shortage from drought conditions--maximum score 130 points.

(vii) [~~(vi)~~] Water or sewer activities expanding or improving existing water or sewer system--maximum score 125 [~~120~~] points.

(viii) [~~(vii)~~] Street paving activities providing first time surface pavement to the area--maximum score 100 points.

(ix) [~~(viii)~~] Installation of designed drainage structures providing first time designed drainage system to the area--maximum score 100 points.

(x) [~~(ix)~~] Reconstruction of streets with existing surface pavement--maximum score 90 points.

(xi) [~~(x)~~] Installation of improvements or drainage structures to a designed drainage system--maximum score 90 points.

(xii) [~~(xi)~~] All other eligible activities--maximum score 80 points.

(B) TxCDBG [~~TCDP~~] cost per low to moderate income beneficiary. The total amount of TxCDBG [~~TCDP~~] funds requested by the applicant is divided by the total number of low to moderate income persons benefiting [~~benefitting~~] from the application activities to determine the TxCDBG [~~TCDP~~] cost per beneficiary.

(i) Cost per low to moderate income beneficiary is equal to or less than $2,000. Deduct zero points from the set maximum project design score.

(ii) Cost per low to moderate income beneficiary is greater than $2,000 but equal to or less than $4,000. Deduct 1 point from the set maximum project design score.

(iii) Cost per low to moderate income beneficiary is greater than $4,000 but equal to or less than $6,000. Deduct 2 points from the set maximum project design score.

(iv) Cost per low to moderate income beneficiary is greater than $6,000 but equal to or less than $8,000. Deduct 3 points from the set maximum project design score.

(v) Cost per low to moderate income beneficiary is greater than $8,000 but equal to or less than $10,000. Deduct 4 points from the set maximum project design score.

(vi) Cost per low to moderate income beneficiary is greater than $10,000. Deduct 5 points from the set maximum project design score.

(C) The applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG [~~TCDP~~] community development fund.

(i) The nonentitlement county submitted an application under the TxCDBG [~~TCDP~~] community development fund 2005 [~~2003~~]/2006 [~~2004~~] biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(ii) The nonentitlement county submitted an application under the TxCDBG [~~TCDP~~] community development fund 2003 [~~2001~~]/2004 [~~2002~~] biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(D) The projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage.

(i) The projected water and/or sewer rates may be too high for the application beneficiaries. Deduct 1 point from the set maximum project design score.

(ii) The projected water and/or sewer rates are too low to discourage water conservation by the application beneficiaries. Deduct 1 point from the set maximum project design score.

(E) The ability of the applicant to utilize the grant funds in a timely manner.

(i) The application includes the acquisition of real property, easements or rights-of-way. Deduct 1 point from the set maximum project design score.

(ii) The application includes matching funds that have not been secured by the applicant. Deduct 1 point from the set maximum project design score.

(iii) The proposed application target area is not located in an area where a service provider already has the certificate of

convenience and necessity (CCN) needed to provide service to the application beneficiaries. Deduct 1 point from the set maximum project design score.

(F) The availability of grant funds to the applicant for project financing from other sources. Grant funds for any activity included in the application are available from another source. Deduct 1 point from the set maximum project design score.

(G) The applicant, or the service provider, has not waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries.

(i) Assessments and fees budgeted in the application are equal to or less that $100 per low and moderate income household. Deduct 2 points from the set maximum project design score.

(ii) Assessments and fees budgeted in the application are greater than $100 but equal to or less that $200 per low and moderate income household. Deduct 4 points from the set maximum project design score.

(iii) Assessments and fees budgeted in the application are greater than $200 but equal to or less that $300 per low and moderate income household. Deduct 6 points from the set maximum project design score.

(iv) Assessments and fees budgeted in the application are greater than $300 but equal to or less that $500 per low and moderate income household. Deduct 8 points from the set maximum project design score.

(v) Assessments and fees budgeted in the application are greater than $500 per low and moderate income household. Deduct 10 points from the set maximum project design score.

(H) Applicant's proposed use of TxCDBG [~~TCDP~~] funds does not provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program. Deduct 2 points from the set maximum project design score.

(I) The application is for activities other than water or wastewater and the applicant has not already met its basic water and wastewater needs. Deduct 3 points from the set maximum project design score,

(J) The applicant has not documented that future funding necessary to sustain the project is available. Deduct 3 points from the set maximum project design score,

(7) Past performance. An applicant receives from zero to ten (10) points based on the applicant's past performance on previously awarded TxCDBG [~~TCDP~~] contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two (2) most recent TxCDBG [~~TCDP~~] contracts that have reached the end of the original contract period stipulated in the contract. TxCDBG [~~TCDP~~] staff may also assess the applicant's performance on existing TxCDBG [~~TCDP~~] contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG [~~TCDP~~] grant award will automatically receive these points. TxCDBG [~~TCDP~~] staff will assess the applicant's performance on TxCDBG [~~TCDP~~] contracts up to the application deadline date. The applicant's performance on TxCDBG [~~TCDP~~] contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may [~~will~~] include, but is not necessarily limited to the following:

(A) The applicant's completion of the previous contract activities within the original contract period. [~~Deduct 2 points from the maximum past performance score for each occurrence where the applicant did not complete contract activities within the original contract period (maximum of 4 points deducted from the maximum past performance score).~~]

(B) The applicant's submission of the required close-out documents within the period prescribed for such submission. [~~Deduct 1 point from the maximum past performance score for each occurrence where the applicant did not submit the required close-out documents within the period prescribed for such submission (maximum of 2 points deducted from the maximum past performance score).~~]

(C) The applicant's timely response to monitoring findings on previous TxCDBG [~~TCDP~~] contracts especially any instances when the monitoring findings included disallowed costs. [~~Deduct 1 point from the maximum past performance score for any occurrence where the applicant did not provide a timely response to monitoring findings (maximum of 1 point deducted from the maximum past performance score).~~]

(D) The applicant's timely response to audit findings on previous TxCDBG [~~TCDP~~] contracts. [~~Deduct 1 point from the maximum past performance score for any occurrence where the applicant did not provide a timely response to audit findings (maximum of 1 point deducted from the maximum past performance score).~~]

(E) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports. [~~Deduct 1 point from the maximum past performance score for each occurrence where the applicant did not submit contract reporting documents (maximum of 2 points deducted from the maximum past performance score).~~]

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605918
Mark Wyatt
Program Manager
Office of Rural Community Affairs
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 936-6733

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SUBCHAPTER B. CONTRACT ADMINISTRATION

10 TAC §255.41

The amendments are proposed under the §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§255.41. Uniform Administrative Requirements.

(a) (No change.)

(b) Applicability. This section applies to all units of general local government, as defined in 42 United States Code §5302(a)(1), which apply for, or are awarded a contract under the TXCDBG [~~TCDP~~].

(c) Variations.

(1) The federal laws and regulations specified in the Housing and Community Development Act of 1974, as amended (42 United States Code §§5302 et seq.) and federal Community Development Block Grant (CDBG) Program regulations in 24 Code of Federal Regulations, Part 58, concerning federal laws and regulations with which nonentitlement area CDBG recipients are required to comply, constitute additional assurances under the UGCMS with which TXCDBG [~~TCDP~~] recipients must comply.

(2) Beginning with the expenditure of federal fiscal year 1984 CDBG funds, the provisions of Public Law 98-181, §106(i), (November 30, 1983) constitute additional assurances under the UGCMS with which TXCDBG [~~TCDP~~] applicants and recipients must certify they will comply.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605979
Mark Wyatt
Program Manager
Office of Rural Community Affairs
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 936-6733

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

The Texas State Library and Archives Commission proposes new 13 TAC §§2.110 - 2.120, 2.210 - 2.212, 2.310 - 2.312, 2.410 - 2.412, 2.510 - 2.512, 2.610 - 2.612, 2.710 - 2.712, and 2.810 - 2.815, relating to grant policies and procedures for the management of grants distributed or administered by the agency. The proposed new rules are being done in coordination with an effort by the agency to repeal existing rules for the administration of its grants.

Edward Seidenberg, Assistant State Librarian, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal implications for state or local governments. Mr. Seidenberg does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed new rules. There will be no impact on small businesses or individuals as a result of enforcing the rules. The public benefit of the proposed new rules is that they will help standardize the policies and procedures for numerous grant programs.

Written comments on the proposed rules may be submitted to Edward Seidenberg, Texas State Library, Box 12927, Austin, Texas 78711; or deputy.director@tsl.state.tx.us; or by fax to (512) 463-5436.

DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §§2.110 - 2.120

The new sections are proposed under Government Code, §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

§2.110. Scope of Subchapter.

The agency operates a variety of grant programs including negotiated, competitive, and formula grants. This subchapter applies to all types of grant programs. However, §§2.112, 2.113, 2.117, 2.118, 2.119, and 2.120 of this title (relating to Eligible and Ineligible Expenses, Peer Review, Grant Review and Award Process, Decision Making Process, Multiple Applications and Special Consideration) apply only to competitive grant programs. Formula grant guidelines are also specified in §2.810 et al (relating to Loan Star Libraries grants), and §1.41 et al (relating to Library Systems grants).

§2.111. General Selection Criteria.

(a) Grants shall be awarded based on guidelines that reflect applicable state or federal priorities and mandates. The grant guidelines issued by the agency will specify the timetable, forms, procedures, and any supplemental criteria or requirements applicable to a particular grant for that year. Grant guidelines include the goals describing the purpose of the grant program, applicant eligibility requirements, description of the services to be provided, applicable priorities and restrictions, and the selection criteria and the process to evaluate grant applications and select awards. Selection criteria and requirements are designed to select applications that provide the best overall value to the state.

(b) The award criteria include:

(1) applicant eligibility;

(2) relevance to goals;

(3) community impact;

(4) program scope and quality;

(5) the cost of proposed service;

(6) measurability of service impact; and

(7) compliance with requirements.

(c) The commission may consider additional factors in determining best value, including:

(1) financial ability to perform services;

(2) state and regional service needs and priorities;

(3) improved access for poorly served areas and populations;

(4) ability to continue services after grant period; and

(5) past performance and compliance.

§2.112. Eligible and Ineligible Expenses.

(a) Except as provided in grant guidelines, competitive grants may fund costs for staff, equipment, capital expenditures, supplies, professional services, and other typical operating expenses, as permitted

by §2.116 of this title (relating to Uniform Grants Management Standards). The purpose of competitive grants is not for collection development, or other activities primarily focused on the acquisition of library materials or resources.

(b) Except as provided in grant guidelines, competitive grants may not fund the following costs, in addition to those not permitted by §2.116 of this title (relating to Adoption of Uniform Grants Management Standards):

(1) building construction or renovation;

(2) food, beverages, awards, honoraria, prizes, or gifts;

(3) equipment or technology not specifically needed to carry out the goals of the grant;

(4) transportation/travel for project participants or non-grant funded personnel;

(5) databases currently offered or similar to ones offered by the agency (i.e., a magazine index database may not be purchased if a comparable one is provided by the agency);

(6) collection development purchases not targeted directly to the grant goals nor integral to the service program;

(7) advertising or public relations costs not directly related to promoting awareness of grant-funded activities; or

(8) performers or presenters whose purpose is to entertain rather than to educate.

§2.113. Peer Review.

(a) The commission may use peer review panels to evaluate applications in competitive grant programs.

(b) The director and librarian may select professionals, citizens, community leaders, and agency and library staff to evaluate grant applications. Peer reviewers must have appropriate training or service on citizen boards in an oversight capacity and may not evaluate grant applications in which there is, or is a possible appearance of, a conflict of interest.

(c) The agency staff will distribute selected applications to reviewers and will provide written instructions or training for peer reviewers. Reviewers must complete any training prior to reviewing applications.

(d) The reviewers score each application according to the review criteria and requirements stated in the grant guidelines.

(e) Each peer review evaluation of an application for competitive grants shall be appropriately documented by the peer reviewer conducting the evaluation. The documentation shall include the scores assigned by the peer reviewer. The peer reviewer may also include comments that may be shared with the applicant.

(f) To be eligible for review, each application must be submitted by the specified deadline with all required components and all necessary authorization signatures.

§2.114. Funding Decisions.

(a) The agency staff will submit a recommended priority-ranked list of applicants for possible funding. Final approval of a grant award is solely at the determination of the State Library and Archives Commission.

(b) Applications for grant funding will be evaluated only upon the information provided in the written application.

(c) The agency staff may negotiate with selected applicants to determine the terms of the award. To receive an award, the applicant must accept any additional or special terms and conditions listed in the grant contract and any changes in the grant application.

(d) The agency staff will notify unsuccessful applicants in writing.

§2.115. Awarding of Grants.

The commission has the right to reject applications or cancel or modify a grant solicitation at any point before a contract is signed. The award of any grant is subject to the availability of funds.

§2.116. Uniform Grants Management Standards (UGMS).

The agency adopts by reference the Uniform Grant Management Standards. The standards adopted by reference have been published as 1 TAC §§5.141 - 5.151 and §5.167.

§2.117. Grant Review and Award Process.

(a) Agency staff will review each application for the following:

(1) legal eligibility of the institution to participate in a grant program and appropriate authorizing signature;

(2) conformance to the federal and state regulations pertaining to grants;

(3) inclusion of unallowable costs;

(4) errors in arithmetic or cost calculations;

(5) submission of all required forms; and

(6) compliance with submission procedures and deadlines.

(b) Agency staff will raise issues and questions regarding the needs, methods, staffing and costs of the applications. Staff comments will be sent to the review panel with the applications for consideration by the panel.

(c) Applicants will be sent a copy of the staff comments to give applicants an opportunity to respond in writing. Applicants may not modify the proposal in any way; however, applicants' responses to staff comments will be distributed to the panel.

(1) Applications with significant errors, omissions, or eligibility problems will not be rated.

(2) Agency staff will be available to offer technical assistance to reviewers.

(d) Applications will be scored using the following process:

(1) The peer reviewers will review all complete and eligible grant applications forwarded to them by agency staff and complete a rating form for each. Each reviewer will evaluate the proposal in relation to the specific requirements of the criteria and will assign a value, depending on the points assigned to each criterion.

(2) No reviewer who is associated with an applicant or with an application, or who stands to benefit directly from an application will evaluate that application. Any reviewer who feels unable to evaluate a particular application fairly may choose not to review that application.

(3) Reviewers will consider and assess the strengths and weaknesses of any proposed project only on the basis of the documents submitted. Considerations of geographical distribution, demographics, type of library, or personality will not influence the assessment of a proposal by the review panel.

(4) Reviewers may not discuss proposals with any applicant before the proposals are reviewed. Agency staff is available to provide technical assistance to reviewers. Agency staff will conduct all negotiations and communication with the applicants.

(5) Reviewers may recommend setting conditions for funding a given application or group of applications (e.g., adjusting the project budget, revising project objectives, modifying the timetable, amending evaluation methodology, etc.). The recommendation must include a statement of the reasons for setting such conditions. Reviewers who are ineligible to evaluate a given proposal will not participate in the discussion of funding conditions.

(6) Reviewers will submit their evaluation forms to the agency. In order to be counted, the forms must arrive before the specified due date.

§2.118. Decision Making Process.

To be considered eligible for funding by the commission, any application must receive a minimum adjusted mean score of more than 50 percent of the maximum points available. To reduce the impact of scores that are exceedingly high or low score, or otherwise outside the range of scores from other reviewers, agency staff will tabulate the panel's work using calculations such as an adjusted mean score.

(1) Applications will be ranked in priority order by score for consideration by the commission.

(2) If insufficient funds remain to fully fund the next application, the staff will negotiate a reduced grant with the next ranked applicant.

(3) If the panel recommends funding an application which, for legal, fiscal, or other reasons, is unacceptable to the staff, a contrary recommendation will be made. The applicant will be informed of this situation prior to presentation to the commission. A positive recommendation to the commission will be contingent upon successfully completing these negotiations prior to the commission meeting. If panel is unable to produce a set of recommendations for funding, the agency staff will use the same evaluation procedures to develop recommendations to the commission.

§2.119. Multiple Applications.

Applicants for competitive grants may submit more than one grant application for different projects, in different grant categories. Applicants may not submit the same, or nearly the same, application in more than one grant category.

§2.120. Special Consideration.

In state fiscal years 2008 and 2009, major resource systems or regional library systems will be given special consideration in the awarding of competitive grants. Up to 33 percent of the funds for each type of grant will be awarded to major resource systems or regional library systems applications that are eligible for funding, despite the numerical ranking of their score. The system applications with the highest eligible adjusted mean scores will be funded first, up to 33 percent of the total. The remaining applicants with eligible adjusted mean scores may be funded from the remaining funds; this includes applications from individual libraries, groups of libraries, and major resource systems or regional library systems that were not funded with the special consideration funding.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605969

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 2. NEGOTIATED GRANTS

13 TAC §§2.210 - 2.212

The new sections are proposed under Government Code, §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

§2.210. Negotiated Grants.

Agency staff will screen applications to determine if all requested information has been provided on time and on prescribed forms. To be eligible for funding, each application must be submitted by the specified deadline with all required components and all necessary authorization signatures. The agency staff will provide written notification to applicants eliminated though the screening process. Renewal of an award is not automatic. All grants are subject to the availability of funds.

§2.211. Resource Sharing--Interlibrary Loan Grants.

(a) Goals and Purposes. This grant provides funds for interlibrary lending and borrowing, or other resource sharing activities, which enables libraries to provide their customers access to other library materials.

(b) Eligible Applicants include:

(1) major resource center libraries;

(2) public libraries serving a population of 100,000 or more; or

(3) the commission may contract with another library, nonprofit corporation, or business to provide service.

(c) Criteria for Grant. The commission may award negotiated grants to provide interlibrary loan or other resource sharing services. An award may be made and/or renewed each year if:

(1) the applicant demonstrates capability of delivering the specified interlibrary loan or other resource sharing service in a timely fashion at a reasonable cost;

(2) the commission finds a continuing regional and statewide need for the services (relative to other services); and,

(3) the commission finds that the best value to the state will be achieved without competition.

(d) Eligible Expenses.

(1) This grant will fund costs for personnel, equipment/property, telecommunications, supplies, travel and professional services necessary to provide the specified interlibrary loan or other resource sharing service.

(2) This grant will not fund building construction or renovation; major capital expenses; food, beverages, or gifts; equipment/property or technology not specifically needed to carry out the goals of the grant; or travel for non-grant funded personnel.

§2.212. Technical Assistance Grants.

(a) Goals and Purposes. This grant provides funds for technical assistance to public or other libraries to help enable library staff use and maintain information resource technology.

(b) Eligible Applicants include major resource library systems and regional library systems; if a major resource library system or regional library system is not awarded a grant, the commission may contract with another library, non-profit corporation, or business to provide service.

(c) Criteria for Grant. The commission may award negotiated grants to provide technical assistance services. An award may be made and/or renewed each year if:

(1) the applicant demonstrates capability of delivering the specified technical assistance in a timely fashion at a reasonable cost;

(2) the commission finds a continuing regional and statewide need for the services (relative to other services); and,

(3) the commission finds that the best value to the state will be achieved without competition.

(d) Eligible Expenses.

(1) This grant will fund costs for personnel, equipment/property, telecommunications, supplies, travel and professional services necessary to provide the specified technical assistance.

(2) This grant will not fund building construction or renovation; major capital expenses; food, beverages, or gifts; equipment/property or technology not specifically needed to carry out the goals of the grant; or travel for non-grant funded personnel.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605970
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 3. LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION GRANTS

13 TAC §§2.310 - 2.312

The new sections are proposed under Government Code, §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

§2.310. Goals and Purposes.

(a) This grant program provides funds for programs that promote cooperative services for learning and access to information. Programs involving collaboration are encouraged. Programs must emphasize improved services by the library to its customers.

(b) Programs may be in the following categories:

(1) Expand services for learning and access to information and educational resources in a variety of formats;

(2) develop library services that provide all users access to information through local, state, regional, national, and international electronic networks;

(3) provide electronic and other linkages between and among all types of libraries; or

(4) develop public and private partnerships with other agencies and community-based organizations.

§2.311. Eligible Applicants.

(a) Through their governing authority, major resource library systems, regional library systems, and libraries that are members of the TexShare Library Consortium are eligible to apply for funds. These funds are awarded to major resource or regional library systems or TexShare member libraries but may be used with all types of libraries as specified it the grant guidelines and application. Applicants must be members of the TexShare Library Consortium or the Texas Library System at the time of application and for the period of grant funding. Non-profit organizations may be awarded funds for projects that involve a number of TexShare member libraries, as well as other types of libraries or organizations. Public school libraries may participate as partners in grants lead by eligible entities.

(b) Successful applicants are eligible to apply for grant funds for the two years following the initial grant year. The second and third application will be evaluated with the same criteria as new applications. No applicant will be eligible for a fourth year of funding for the same project.

§2.312. Criteria for Award.

Proposals will be scored by peer reviewers on seven criteria. The maximum points for each criterion is shown.

(1) Needs assessment. (15 points) Applicants describe why the program is needed, the program goals and audience. They describe the greater community to be served. They include demographic statistics, library records, or surveys to support these statements. They attach letters of cooperation showing commitment to the project from agencies to be involved.

(2) Program design. (20 points) Applicants thoroughly describe services, programs, activities; describe the location where they will be offered; and explain how these services will attract shared library users. Collaborative projects have priority and inclusion of relevant community organizations is encouraged.

(3) Personnel. (5 points) Applicants identify who will administer the funds and which positions will provide the services. List how much time will be spent in each position on assigned duties. List how the qualifications of each person relate to their job duties. Full job descriptions are required for new hires.

(4) Timetable. (5 points) Applicants present a timetable for project activities within the fiscal year (i.e., a list of actions with a date by which they will be accomplished); provide verification that facilities will be available, equipment and materials delivered; and explain how the staff will be hired and trained in time to carry out the services as planned.

(5) Evaluation. (15 points) Applicants set achievable, measurable outcomes, and present a reasonable method to collect data. Applicants present a method to count users of the services as well as the effectiveness of the service.

(6) Budget. (20 points) Applicants provide a complete budget for the proposed project and fully justify the budget by describing how budgeted items will contribute to the project; identify a source for the stated costs (e.g., city pay classification for staff, catalog or city/county bid list for equipment); the costs are reasonable to achieve project objectives. If new staff are to be employed, applicants take into account the time for a realistic hiring process to occur.

(7) Sustainability. (15 points) Applicants describe the resources that will be used to support the services developed through the grant in the future. A written commitment of future support from governing bodies is desirable, but not required.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605971
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 4. LIBRARY SERVICES AND TECHNOLOGY ACT, SPECIAL PROJECTS GRANTS

13 TAC §§2.410 - 2.412

The new sections are proposed under Government Code, §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

§2.410. Goals and Purposes.

(a) This grant program expands library services to all members of the library's community. It enables libraries to develop programs for populations with special needs. Programs involving collaboration are encouraged. Programs must emphasize improved services by the library to its customers.

(b) Programs may be in one of the following categories:

(1) Target library services to individuals of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to individuals with limited functional literacy or information skills.

(2) Target library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children from families with incomes below the poverty line.

§2.411. Eligible Applicants.

(a) Through their governing authority, major resource library systems, regional library systems, and libraries that are members of the TexShare Library Consortium are eligible to apply for funds. These funds are awarded to major resource or regional library systems or TexShare member libraries but may be used with all types of libraries as specified it the grant guidelines and application. Applicants must be members of the TexShare Library Consortium or the Texas Library System at the time of application and for the period of grant funding. Non-profit organizations may be awarded funds for projects that involve a number of TexShare member libraries, as well as other types of libraries or organizations. Public school libraries may participate as partners in grants lead by eligible entities.

(b) Successful applicants are eligible to apply for grant funds for the two years following the initial grant year. The second and third application will be evaluated with the same criteria as new applications. No applicant will be eligible for a fourth year of funding for the same project.

§2.412. Criteria for Award.

Proposals will be scored by peer reviewers on seven criteria. The maximum points for each criterion is shown.

(1) Needs assessment. (15 points) Applicants describe why the program is needed, the program goals and audience. They describe the greater community to be served. They include demographic statistics, library records, or surveys to support these statements. They attach letters of cooperation showing commitment to the project from agencies to be involved.

(2) Program design. (20 points) Applicants thoroughly describe services, programs, activities; describe the location where they will be offered; and explain how these services will attract shared library users. Collaborative projects have priority and inclusion of relevant community organizations is encouraged.

(3) Personnel. (5 points) Applicants identify who will administer the funds and which positions will provide the services. List how much time will be spent in each position on assigned duties. List how the qualifications of each person relate to their job duties. Full job descriptions are required for new hires.

(4) Timetable. (5 points) Applicants present a timetable for project activities within the fiscal year (i.e., a list of actions with a date by which they will be accomplished); provide verification that facilities will be available, equipment and materials delivered; and explain how the staff will be hired and trained in time to carry out the services as planned.

(5) Evaluation. (15 points) Applicants set achievable, measurable outcomes, and present a reasonable method to collect data. Applicants present a method to count users of the services as well as the effectiveness of the service.

(6) Budget. (20 points) Applicants provide a complete budget for the proposed project and fully justify the budget by describing how budgeted items will contribute to the project; identify a source for the stated costs (e.g., city pay classification for staff, catalog or city/county bid list for equipment); the costs are reasonable to achieve project objectives. If new staff are to be employed, applicants take into account the time for a realistic hiring process to occur.

(7) Sustainability. (15 points) Applicants describe the resources that will be used to support the services developed through the grant in the future. A written commitment of future support from governing bodies is desirable, but not required.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605972
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 5. LIBRARY SERVICES AND TECHNOLOGY ACT, TEXTREASURES GRANTS

13 TAC §§2.510 - 2.512

The new sections are proposed under Government Code, §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

§2.510. Goals and Purposes.

The TexTreasures grant program provides assistance and encouragement to libraries to provide access to their special or unique holdings and to make information about these holdings available to library users across the state. This grant program focuses on making unique library collections accessible for TexShare constituents. Applicants may propose projects designed to increase accessibility through a wide range of activities such as organizing, cataloging, indexing, or digitizing local materials.

§2.511. Eligible Applicants.

(a) Through their governing authority, libraries that are members of the TexShare Library Consortium, or non-profit organizations that are applying on behalf of TexShare members, are eligible to apply for funds. These funds are awarded to eligible applicants, but may be used with all types of libraries or with non-profit organizations that participate as partners in the grant project, as specified it the grant guidelines and application.

(b) Successful applicants are eligible to apply for grant funds for the two years following the initial grant year. The second and third application will be evaluated with the same criteria as new applications. No applicant will be eligible for a fourth year of funding for the same project.

§2.512. Criteria for Award.

Proposals will be scored by peer reviewers on five criteria. The maximum points for each criterion is shown.

(1) Significance of the collection (30 points). Is the collection unique, or unique for a geographic region? Will the materials be useful to users throughout the state? Does this project focus on materials about Texas? Will the project provide an "advancement of knowledge," rather than cleaning up general backlogs?

(2) Availability (30 points). How will access to the collection be provided? Will bibliographic records be available through OCLC or the Internet? Will materials themselves be available through an Internet connection, through interlibrary loan, through reciprocal borrowing, or only on-site use? Will common interoperability standards be used?

(3) Project Design (20 points). Is the project well defined? Will access to the collection be sustainable beyond the grant period? Does the project design reference commonly accepted standards and practices?

(4) Cost Effectiveness (15 points). How appropriate are the chosen hardware, software, staffing, and service providers for the project, given the cost of the project? Is the budget realistic? Does the project proposal make effective use of the grant funds?

(5) Evaluation (5 points). How well has the applicant designed and described the methodology to evaluate the project and estimate the level of usage? Is the evaluation methodology appropriate and effective?

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605973
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 6. LIBRARY SERVICES AND TECHNOLOGY ACT, GUIDELINES FOR LIBRARY SYSTEMS

13 TAC §§2.610 - 2.612

The new sections are proposed under Government Code, §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

§2.610. Goals and Purposes.

This grant may provide special funding for Texas Library Systems to assist libraries in developing services for learning, access to information, and expanding library services to all members of the library's community. Programs involving collaboration are encouraged. Programs must address one or more LSTA purposes.

§2.611. Eligible Applicants.

In fiscal years 2008 and 2009, only major resource library systems and regional library systems may apply for these grants. Successful applicants are eligible to apply for grant funds for the year following the initial grant year. This second application will be evaluated with the same criteria as new applications. Renewal of a grant is not automatic.

§2.612. Criteria for Award.

Proposals will be scored by on seven criteria. The maximum points for each criterion is shown.

(1) Needs assessment. (15 points) Applicants describe why the program is needed, the program goals and audience. They describe the greater community to be served. They include demographic statistics, library records, or surveys to support these statements. They attach letters of cooperation showing commitment to the project from agencies to be involved.

(2) Program design. (20 points) Applicants thoroughly describe services, programs, activities; describe the location where they will be offered; and explain how these services will attract shared library users. Collaborative projects have priority and inclusion of relevant community organizations is encouraged.

(3) Personnel. (5 points) Applicants identify who will administer the funds and which positions will provide the services. List how much time will be spent in each position on assigned duties. List how the qualifications of each person relate to their job duties. Full job descriptions are required for new hires.

(4) Timetable. (5 points) Applicants present a timetable for project activities within the fiscal year (i.e., a list of actions with a date by which they will be accomplished); provide verification that facilities will be available, equipment and materials delivered; and explain how staff will be hired and trained in time to carry out the services as planned.

(5) Evaluation. (15 points) Applicants set achievable, measurable outcomes, and present a reasonable method to collect data. Applicants present a method to count users of the services as well as the effectiveness of the service.

(6) Budget. (20 points) Applicants provide a complete budget for the proposed project and fully justify the budget by describing how budgeted items will contribute to the project; identify a source for the stated costs (e.g., city pay classification for staff, catalog or city/county bid list for equipment); the costs are reasonable to achieve project objectives. If new staff are to be employed, applicants take into account the time for a realistic hiring process to occur.

(7) Sustainability. (15 points) Applicants describe the resources that will be used to support the services developed through the grant in the future. A written commitment of future support from governing bodies is desirable, but not required.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605974
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 7. TEXAS READS GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.710 - 2.712

The new sections are proposed under Government Code, §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

§2.710. Goals and Purposes.

This grant funds public library programs to promote reading and literacy within local communities. Programs may be targeted to the entire community or to a segment of the community. Programs involving collaboration with other community organizations are encouraged. The agency may designate specific funding priorities for each grant cycle in response to identified needs. If this occurs, staff will provide details of funding priorities and scoring implications to applicants and to the peer review panel. The purpose is not for collection development, or other activities primarily focused on the acquisition of library materials or resources.

§2.711. Eligible Applicants.

Public libraries and local public library systems, through their governing authority (city, county, corporation, or district) are eligible to apply for grants. To receive a grant, applicants must be members of the Texas Library System for the fiscal year the grant contracts are issued. Libraries or library systems will not be awarded more than one grant in a single grant cycle. Libraries or library systems will not be awarded a grant in two consecutive grant cycles.

§2.712. Criteria for Award.

Proposals will be scored by peer reviewers on six criteria. The maximum points for each criterion is shown.

(1) Needs Assessment (15 points). Describe why the program is needed in the community.

(2) Program purpose (15 points). Describe the program goals, audience, outcomes, and relationship to the library long range plan or goals.

(3) Program design (15 points). Provide a detailed description of the program and its activities.

(4) Timetable (5 points). Provide a timetable of program activities.

(5) Evaluation plan (10 points). Describe how the anticipated outcomes will be measured.

(6) Budget (15 points). Provide a detailed budget and justify budgeted costs.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605976
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 8. LOAN STAR LIBRARIES GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.810 - 2.815

The new sections are proposed under Government Code, §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed rules.

§2.810. Goals and Purposes.

This grant program provides direct formula grants-in-aid to public libraries that are members of the Texas Library System to provide an incentive for local communities to extend public library services without charge to those residing outside each library's local legal service area in order to improve library services statewide and improve access to public library resources and services for all Texans.

§2.811. Definitions.

(a) "Public library service without charge" has the relevant meaning defined in §1.72(a) of this title.

(b) "Non-resident" means any adult or child who does not already live in the public library's local legal service area and who can provide satisfactory proof of Texas residency.

(c) "In accordance with the same policies and procedures the library has adopted for its local resident customers" means the library shall provide the same library services and may impose the same restrictions on non-resident customers as it does for those customers who live locally.

§2.812. Eligible Applicants.

(a) Public libraries and local public library systems, through their governing authority (city, county, or corporation) are eligible to apply for grants. To receive a grant, applicants must be members of the Texas Library System for the fiscal year the grant contracts are issued.

(b) To be eligible for a full grant, the governing authority of a public library must certify that it will provide public library service without charge to non-residents in accordance with the same policies and procedures the library has adopted for its local resident customers.

§2.813. Eligible Expenses.

(a) This grant program will fund public library operating expenditures such as salary, supplies, library materials, equipment, contractual services, and minor renovations. To be eligible, grant expenses must be reasonable and in accordance with appropriate state or local operating policies and procedures. Further, all grant expenses must be designed to maintain, improve, expand, or enhance the resources or services of the public library.

(b) This grant will not fund the following:

(1) Capital expenditures related to the purchase of real property, buildings, or motor vehicles.

(2) Capital expenditures related to the construction or expansion of library facilities.

(3) Capital expenditures related to major renovation costs (projects exceeding $250,000).

(4) Other expenditures not allowed by the Uniform Grant and Contract Management Act (Government Code Chapter 783).

§2.814. Funding Formula.

(a) The State Library will annually set and allocate a total amount of appropriated funding to be awarded by this grant program.

(b) Loan Star Libraries grants will be awarded according to the following formula:

(1) Base Grant. One-quarter (25%) of the total funds allocated for Loan Star Libraries Grants constitutes a base award and will be divided equally among those libraries eligible for the program that either:

(A) provide library services to non-residents without charge, or

(B) participate in the TexShare Library Consortium card program.

(2) Matching Grant. Three-quarters (75%) of the total funds allocated for Loan Star Libraries Grants constitutes a matching award and will be awarded to eligible libraries as a percentage match on their total local operating expenditures (as reported in the most recently collected report, as required by §1.85 of this title) minus any indirect costs (as reported in the most recent state collected public library annual report) as follows:

(A) Libraries that provide library services to non-residents without charge will be allocated 100% of their eligible match.

(B) Libraries that do not provide library services to non-residents without charge, but participate in the TexShare card program will be allocated 85% of their eligible match.

(C) Libraries that do not provide library services to non-residents without charge, and do not participate in the TexShare card program will be allocated 75% of their eligible match.

(D) The funds in this matching category not allocated to the libraries receiving only 75% or 85% of their match are added to the amount allocated to libraries receiving 100% of their match, and are distributed among these libraries based on their share of the total local operating expenditures.

§2.815. Application Review and Awarding Process.

(a) Eligible libraries must submit the following documentation as part of the review and award process:

(1) Status form--this form is submitted annually by a deadline to be determined each year, to indicate whether a library will change its status for the following fiscal year regarding services to non-residents or participation in the TexShare card program.

(2) Assurance of Compliance form--this form certifies that a public library provides services to non-residents without charge; it is submitted once, generally upon removal of non-resident fees, and remains valid until revoked in writing by the local governing authority.

(3) Plan of Action form--this form is submitted annually by a deadline to be determined each year, to detail the library's plans for spending the grant funds; this plan will be incorporated into the grant award contract.

(b) Errors in the calculation of an award to an individual library will be corrected in the following fiscal year by adjusting the award to that library by a comparable amount.

(c) If a library has certified that it provides service to non-residents without charge or it has elected to participate in the TexShare card program, the library must maintain these services for the duration of the contract that it received.

(d) Willful falsification of documents or reports, as determined by the Commission, shall cause the library to be disqualified for not less than one year in the first occurrence and disqualified for not less than three years in the second occurrence.

(e) Funds will not be awarded to a library until all requirements for all preceding contracts have been fulfilled.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605977
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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SUBCHAPTER C. GRANT POLICIES

The Texas State Library and Archives Commission proposes the repeal of 13 TAC §§2.111 - 2.125, 2.130 - 2.135, 2.140 - 2.146, 2.150 - 2.155, 2.160 - 2.165, and 2.170 - 2.175, relating to grant policies and procedures for the management of grants distributed or administered by the agency. The proposed repeal is being done in coordination with an effort by the agency to adopt new, extensively revised rules for the administration of its grants.

Edward Seidenberg, Assistant State Librarian, has determined that for each year of the first five years after the repeal, there will be no fiscal implications for state or local governments. Mr. Seidenberg does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed repeal. There will be no impact on small businesses or individuals as a result of enforcing the repeal. The public benefit of the proposed repeal is that they will help standardize the policies and procedures for numerous grant programs.

Written comments on the proposed repeal may be submitted to Edward Seidenberg, Texas State Library, Box 12927, Austin, Texas 78711; or deputy.director@tsl.state.tx.us; or by fax to (512) 463-5436.

DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §§2.111 - 2.119

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

The repeal is proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed repeal.

§2.111. Scope of Subchapter.

§2.112. General Selection Criteria.

§2.113. Content of Grant Guidelines.

§2.114. Screening of Applications.

§2.115. Peer Review.

§2.116. Funding Decisions.

§2.117. Cancellation or Suspension of Grants.

§2.118. Adoption of Uniform Grants Management Standards (UGMS).

§2.119. Negotiated Grants.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605960
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 2. LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION GRANTS--PART A, TECHNOLOGY, GUIDELINES FOR TEXSHARE LIBRARIES

13 TAC §§2.120 - 2.125

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

The repeal is proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed repeal.

§2.120. Goals and Purposes.

§2.121. Eligible Applicants.

§2.122. Eligible Expenses.

§2.123. Criteria for Award.

§2.124. Grant Review and Award Process.

§2.125. Decision Making Process.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605961
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 3. LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION

GRANTS--PART B, SERVICES, GUIDELINES FOR TEXSHARE LIBRARIES

13 TAC §§2.130 - 2.135

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

The repeal is proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed repeal.

§2.130. Goals and Purposes.

§2.131. Eligible Applicants.

§2.132. Eligible Expenses.

§2.133. Criteria for Award.

§2.134. Grant Review and Award Process.

§2.135. Decision Making Process.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605962
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 4. LIBRARY ESTABLISHMENT GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.140 - 2.146

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

The repeal is proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed repeal.

§2.140. Goals and Purposes.

§2.141. Requirements for a Grant.

§2.142. Eligible Applicants.

§2.143. Eligible Expenses.

§2.144. Criteria for Award.

§2.145. Grant Review and Award Process.

§2.146. Decision Making Process.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605963
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 5. LIBRARY SERVICES AND TECHNOLOGY ACT, SPECIAL PROJECTS GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.150 - 2.155

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

The repeal is proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed repeal.

§2.150. Goals and Purposes.

§2.151. Eligible Applicants.

§2.152. Eligible Expenses.

§2.153. Criteria for Award.

§2.154. Grant Review and Award Process.

§2.155. Decision Making Process.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605964
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 6. LOAN STAR LIBRARIES GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.160 - 2.165

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

The repeal is proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed repeal.

§2.160. Goals and Purposes.
§2.161. Definitions.
§2.162. Eligible Applicants.
§2.163. Eligible Expenses.
§2.164. Funding Formula.
§2.165. Application Review and Awarding Process.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605965
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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DIVISION 7. TEXAS READS GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.170 - 2.175

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

The repeal is proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

Government Code, §441.0091, is affected by the proposed repeal.

§2.170. Goals and Purposes.
§2.171. Eligible Applicants.
§2.172. Eligible Expenses.
§2.173. Criteria for Award.
§2.174. Grant Review and Award Process.
§2.175. Decision Making Process.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605966
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.6

(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 State Library and Archives Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Library and Archives Commission proposes the repeal of 13 TAC §8.6, relating to the "Grants: Access to Local Holdings" grant policies and procedures administered by the agency. The proposed repeal is being done in coordination with an effort by the agency to adopt new, extensively revised rules for the administration of its grants.

Edward Seidenberg, Assistant State Librarian, has determined that for each year of the first five years after the repeal, there will be no fiscal implications for state or local governments. Mr. Seidenberg does not anticipate either a loss of, or an increase in, revenue to state or local governments as a result of the proposed repeal. There will be no impact on small businesses or individuals as a result of enforcing the repeal. The public benefit of the proposed repeal is that it will help standardize the policies and procedures for numerous grant programs.

Written comments on the proposed repeal may be submitted to Edward Seidenberg, Texas State Library, Box 12927, Austin, Texas 78711; or deputy.director@tsl.state.tx.us; or by fax to (512) 463-5436.

The repeal is proposed under Government Code §441.0091, Grant program for local libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries, and Government Code §441.225(b), which permits the commission to adopt rules to govern the operation of the consortium.

Government Code, §441.0091 and §441.225(b) are affected by the proposed repeal.

§8.6. Grants: Access to Local Holdings.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605967
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-5459

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §§3.2, 3.5, 3.14, 3.25, 3.56, 3.58, 3.80

The Railroad Commission of Texas proposes amendments to §§3.2, 3.5, 3.14, 3.25, 3.56, 3.58, and 3.80, relating to Commission Access to Properties; Application To Drill, Deepen, Reenter, or Plug Back; Plugging; Use of Common Storage; Scrubber Oil and Skim Hydrocarbons; Oil, Gas, or Geothermal Resource Operator's Reports; and Commission Oil and Gas Forms, Applications, and Filing Requirements.

The Commission proposes the amendments to §§3.5, 3.14, 3.25, 3.56, and 3.58 to delete references to old Forms P-1 and P-2, which have been replaced with Form PR, Monthly Production Report. The proposed amendment in §3.2 corrects a grammatical error, and an amendment at the end of §3.58(b) adds the wording "if requested by the transporter," which matches existing wording on the form. No substantive or procedural changes are being proposed.

The Commission proposes to amend Table 1 in §3.80 to reflect proposed changes to Form L-1, Electric Log Status Report, pursuant to recent amendments to §3.16, relating to Log and Completion or Plugging Report. The changes on Form L-1 replace language from §3.16 currently on the back of the form with the amended §3.16 language, which became effective on January 30, 2006. The Commission also proposes to amend the instructions on Form ST-1, Application for Texas Severance Tax Incentive Certification, to replace an obsolete reference to federal regulations with a reference to 16 TAC §3.101, relating to Certification for Severance Tax Exemption or Reduction for Gas Produced From High-Cost Gas Wells (Statewide Rule 101); to clarify dates associated with tax exemptions as opposed to tax reductions for high-cost gas; and to change a reference in paragraph 2 from "well gas" to "gas well gas." In the rows for Forms L-1 and ST-1 in the Table, the revision date is shown as "12/06" but would be changed on adoption to indicate the month the amendment actually becomes effective. In addition, the Commission proposes some minor clean-up changes in the rows for Forms H-1, H-1A, W-1, and W-14 to delete an old effective date, and on the row for Form PR to delete the statement that it is a new form.

Leslie Savage, Planning and Administration, Oil and Gas Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal implications on state or local governments as a result of enforcing or administering the proposed amendments.

Texas Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales. Ms. Savage has determined that there will be no cost of compliance with the proposed amendments for the individual, small business, or micro-business operator.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect the primary public benefit will be clear and consistent Commission rules and forms.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. Comments should refer to Oil & Gas Docket No. 20-0249367. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission. Texas Natural Resources Code, §85.201 and §85.202, require the Commission to adopt and enforce rules and orders for the conservation of oil and gas and prevention of waste of oil and gas, generally, and specifically, for the drilling of wells and preserving a record of the drilling of wells; to require wells to be drilled and operated in a manner that will prevent injury to adjoining property; to require records to be kept and reports made; and to provide for issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the commission's rules or orders for the prevention of waste. Texas Natural Resources Code, §86.041 and §86.042, give the Commission broad discretion in administering the provisions of Chapter 86, and authorize the Commission, generally, to adopt any rule or order necessary to effectuate the provisions and purposes of Chapter 86. Texas Natural Resources Code, §91.552, directs the Commission by rule to establish criteria for electric logs to be filed with the Commission.

Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, and 91.551 - 91.556; and Texas Tax Code, §201.057, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, and 91.552.

Cross-reference to statutes: Texas Natural Resources Code, §§81.051, 81.052, 85.201, 85.202, 86.041, 86.042, and 91.551 - 91.556; and Texas Tax Code, §201.057.

Issued in Austin, Texas on October 30, 2006.

§3.2. Commission Access to Properties.

(a) (No change.)

(b) Designated agents of the commission are authorized to make any tests on any well at any time necessary for [~~to~~] conservation regulation, and the owner of such well is hereby directed to do all things that may be required of him by the commission's agent to make such tests in a proper manner.

§3.5. Application To Drill, Deepen, Reenter, or Plug Back.

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

(d) Testing of existing wells in other reservoirs inside the casing. For an existing well, an operator may request authorization to commence operations to deepen inside the casing or plug back prior to the granting of a permit to deepen or plug back.

(1) (No change.)

(2) Operations of deepening inside the casing or plugging back shall not be commenced until the district office has reviewed and approved the request. Testing pursuant to this authorization shall be completed within 90 days from the date the district office approves the request.

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

(C) Within 30 days of completion of testing, the operator must either file an application for a permit to produce a reservoir tested pursuant to this subsection or file an amended completion report in accordance with §3.16 of this title (relating to Log and Completion or Plugging Report) (Statewide Rule 16) with a copy of the request signed by the district office and a statement that a permit to produce a tested reservoir is not being sought, or if the well has been plugged and abandoned, a plugging report including reservoir and perforation data. If a permit is not obtained for the tested reservoirs and/or an allowable is not assigned, the producer shall report all test production on Form PR, Monthly Production Report, [~~in the producer's monthly report~~] filed for the last permitted reservoir in which the well was completed and may request authorization to sell the test production. The test production may be sold after such authorization is granted.

(e) - (h) (No change.)

§3.14. Plugging.

(a) Definitions and application to plug.

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

(A) - (I) (No change.)

(J) Reported production--Production of oil or gas, excluding production attributable to well tests, accurately reported to the Commission on Form PR, Monthly Production Report [~~a monthly producer's report~~].

(K) - (N) (No change.)

(2) - (5) (No change.)

(b) - (k) (No change.)

§3.25. Use of Common Storage.

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

(c) The operator of a lease or leases for which the commission has authorized the use of common storage of oil produced from two or more reservoirs or zones and from two or more leases shall file Form PR, Monthly Production Report, [~~a Monthly Producer's Report~~] for each separate reservoir or zone and/or for each separate lease and, in addition thereto, said operator shall file a report showing the data included on the individual reports on a combined basis for the total amount of commingled oil in common storage.

§3.56. Scrubber Oil and Skim Hydrocarbons.

(a) (No change.)

(b) Disposition of scrubber oil, skim hydrocarbons, and identifiable liquid hydrocarbon volumes.

(1) (No change.)

(2) Skim hydrocarbons.

(A) - (D) (No change.)

(E) The operator of each producing property shall report the volume of liquid hydrocarbons allocated to the producing property as production from the property on Form PR, Monthly Production Report [~~either Form P-1 (Producer's Monthly Report of Oil Wells) or Form P-2 (Producer's Monthly Report of Gas Wells)~~]. The volume allocated back shall be shown as skim oil or skim condensate on the [~~appropriate~~] form.

(3) (No change.)

§3.58. Oil, Gas, or Geothermal Resource Operator's Reports.

(a) (No change.)

(b) Monthly production [~~producer's~~] report (oil, natural gas and geothermal resources). For each calendar month, each operator who is a producer of crude oil, natural gas or geothermal resources shall file with the commission a report for each of the operator's producing properties. Operators shall file such reports on commission Form PR, Monthly Production Report, [~~form P-1 (producer's monthly report of oil wells), commission form P-2 (producer's monthly report of gas wells)~~], or commission Form [~~form~~] GT-2 (producer's monthly report of geothermal wells). These commission forms report monthly production and disposition of oil and condensate, and casinghead gas and gas well gas (Form PR) [~~casinghead gas (form P-1), gas well gas and condensate (form P-2)~~] and geothermal resources (Form [~~form~~] GT-2). On or before the last day of the month subsequent to the period of the report, the operator shall file the [~~an~~] original [~~and one copy of each such~~] form with [~~, the original to be filed in~~] the Austin office, and one copy with the transporter taking the oil, gas or geothermal resources from the property if requested by the transporter.

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

§3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

(a) Forms. Forms required to be filed at the Commission shall be those prescribed by the Commission as listed in Table 1 of this subsection. A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For any required or discretionary filing, an organization may either file the prescribed form on paper or use any electronic filing process in accordance with subsections (e) or (f) of this section, as applicable. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information and meets the requirements of subsection (e)(3) of this section.
Figure: 16 TAC §3.80(a)

(b) - (f) (No change.)

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605956
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.5, relating to Definitions, §25.472, relating to Privacy of Customer Information, §25.473, relating to Non-English Language Requirements, §25.474, relating to Selection of Retail Electric Provider, §25.475, relating to Information Disclosures to Residential and Small Commercial Customers, §25.478, relating to Credit Requirements and Deposits, §25.480, relating to Bill Payment and Adjustments, §25.481, relating to Unauthorized Charges, §25.483, relating to Disconnection of Service, §25.485, relating to Customer Access and Complaint Handling, §25.488, Procedures for a Premise with No Service Agreement, §25.491, Record Retention and Reporting Requirements, and §25.493, Acquisition and Transfer of Customers from One Retail Electric Provider to Another and the repeal of §25.482, relating to Termination of Service. The proposed amendments and repeal change or eliminate these sections to comport with the provisions outlined in §25.43, Provider of Last Resort (POLR), which detail when a customer may receive or be placed on POLR service. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 33025 is assigned to this proceeding.

Erin K. Wasik-Gutierrez, Retail Market Analyst, Retail Market Oversight Section, Electric Industry Oversight Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Wasik-Gutierrez has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be clarity and consistency throughout the Substantive Rules in regard to POLR service. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Wasik-Gutierrez has also determined that for each year of the first five years the proposed sections are in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, December 11, 2006, at 9:00 a.m. The request for a public hearing must be received within 21 days after publication.

Comments on the proposed amendments and/or repeal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Sixteen copies of comments to the proposed amendments and/or repeal are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 31 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amendments and/or repeal. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments and/or repeal. The commission will consider the costs and benefits in deciding whether to adopt the proposed amendments and/or repeal. All comments should refer to Project Number 33025. The commission will also accept comments on the following question:

Is there any other language in the Substantive Rules not identified herein that needs to be amended so that it comports with §25.43, POLR? If so, please suggest how the language should be amended.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.5

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and, in particular, §17.004 and §39.101, which direct the commission to implement customer protections for electric customers, and §39.106, which directs the commission to designate providers of last resort.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.001 and 39.106.

§25.5. Definitions.

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

(1) - (89) (No change.)

(90) Provider of last resort (POLR)--A retail electric provider (REP) certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)) [~~to customers that are not being served by a REP for reasons other than non-payment~~].

(91) - (144) (No change.)

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605907
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 936-7223

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §§25.472 - 25.475, 25.478, 25.480, 25.481, 25.483, 25.485, 25.488, 25.491, 25.493

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and, in particular, §17.004 and §39.101, which direct the commission to implement customer protections for electric customers, and §39.106, which directs the commission to designate providers of last resort.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.001 and 39.106.

§25.472. Privacy of Customer Information.

(a) (No change.)

(b) Individual customer and premise information.

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

(5) Upon the request of a customer, a REP shall notify a third person chosen by the customer of any pending disconnection [~~or termination~~] of electric service with respect to the customer's account.

[~~(c) This section is effective June 1, 2004.~~]

§25.473. Non-English Language Requirements.

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

(d) Dual language requirement. The following documents shall be provided to all customers in both English and Spanish, unless a customer has designated a language other than English or Spanish as the language in which they will receive the information described in subsection (b) of this section, in which case the documents described in paragraphs (1) and (3) of this subsection shall be provided in English and the other language designated by the customer.

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

(3) a disconnection [~~or termination~~] notice.

(e) (No change.)

[~~(f) This section is effective June 1, 2004.~~]

§25.474. Selection of Retail Electric Provider.

(a) - (l) (No change.)

(m) Exemptions for certain transfers. The provisions of this section relating to authorization and right of rescission are not applicable when the applicant's or customer's electric service is:

[~~(1) transferred to the affiliated REP by a REP for non-payment pursuant to §25.482 of this title (relating to Termination of Service);~~]

(1) [~~(2)~~] transferred to the POLR pursuant to §25.43 of this title (relating to Provider of Last Resort (POLR)) when the customer's REP of record defaults or otherwise ceases to provide service. Nothing in this subsection implies that the customer is accepting a contract with the POLR for a specific term;

(2) [~~(3)~~] transferred to the competitive affiliate of the POLR pursuant to §25.43(o) of this title;

(3) [~~(4)~~] transferred to another REP in accordance with section §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another); or

(4) [~~(5)~~] transferred from one premise to another premise without a change in REP and without a material change in the terms of service.

(n) (No change.)

[~~(o) This section is effective August 1, 2004.~~]

§25.475. Information Disclosures to Residential and Small Commercial Customers.

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

(d) Terms of service document.

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

(5) The following information shall be conspicuously contained in the terms of service document:

(A) - (K) (No change.)

(L) A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically distressed geographic area, or qualification for low income or energy efficiency services; [~~and~~]

(M) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the terms of service document; and [~~,~~]

(N) A statement of customer's ability to terminate service in the event:

(i) The customer moves to another premises;

(ii) Market conditions change and the terms of service document allows the REP to terminate service without penalty in response to changing market conditions; or

(iii) A REP notifies the customer of a material change in the terms and conditions of the service agreement.

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

(g) Your Rights as a Customer disclosure. In addition to the terms of service document required by this section, a REP shall develop a separate disclosure statement for residential customers and small commercial customers entitled "Your Rights as a Customer" that summarizes the standard customer protections provided by the rules in this subchapter.

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

(4) The disclosure shall inform the customer of the following:

(A) - (H) (No change.)

(I) Protections relating to [~~termination of service protections pursuant to §25.482 of this title (relating to Termination of Service) and~~] disconnection of service pursuant to §25.483 of this title (relating to Disconnection of Service);

(J) - (Q) (No change.)

[~~(h) This section is effective June 1, 2004.~~]

§25.478. Credit Requirements and Deposits.

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

(d) Additional deposits by existing customers.

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

(3) A REP may [~~terminate or~~] disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued concurrently with the written request for the additional deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title.

(e) - (h) (No change.)

(i) Guarantees of residential customer accounts. A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to the following requirements:

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

(6) The REP may initiate disconnection [~~termination of the guarantor's service (or disconnection of service for the POLR, or any REP having disconnect authority)~~] for nonpayment of the guaranteed amount only if the disconnection of service[~~termination of service (or, where applicable, the disconnection of service)~~] was disclosed in the written guarantee agreement, and only after proper notice as described by paragraph (5) of this subsection [~~and §25.482 of this title (relating to Termination of Service)~~] or §25.483 of this title.

(j) Refunding deposits and voiding letters of guarantee.

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

(3) If a customer's or applicant's service is not connected, or is [~~terminated or~~] disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the guarantee agreement has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, [~~or is terminated~~] or is disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.

(4) (No change.)

(k) - (l) (No change.)

§25.480. Bill Payment and Adjustments.

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

(e) Underbilling by a REP. If charges are found to be lower than authorized by the REP's terms and conditions of service, or if the REP fails to bill the customer for service, then the customer's bill may be corrected.

(1) (No change.)

(2) The REP may [~~terminate service pursuant to §25.482 of this title (relating to Termination of Service) or~~] disconnect service pursuant to [~~pursuant to~~] §25.483 of this title (relating to Disconnection of Service) if the customer fails to pay the additional charges within a reasonable time.

(3) - (5) (No change.)

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

(i) Payment arrangements. A payment arrangement is any agreement between the REP and a customer that allows a customer to pay the outstanding bill after its due date, but before the due date of the next bill. If the REP issues a [~~termination or~~] disconnection notice before a payment arrangement was made, that [~~termination or~~] disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be [~~terminated or~~] disconnected after the later of the due date for the payment arrangement or the [~~termination or~~] disconnection date indicated in the notice, without issuing an additional disconnection notice.

(j) Deferred payment plans. A deferred payment plan is an agreement between the REP and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the current bill. A deferred payment plan may be established in person or by telephone, but all deferred payment plans shall be confirmed in writing by the REP.

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

(6) A copy of the deferred payment plan shall be provided to the customer and:

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

(F) shall allow for the [~~termination or~~] disconnection of service (as appropriate) if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection [~~or termination of service~~]; and

(G) (No change.)

(7) A REP may pursue [~~termination or~~] disconnection of service if a customer does not meet the terms of a deferred payment plan. However, service shall not be [~~terminated or~~] disconnected until appropriate notice has been issued, pursuant to §25.483 of this title [~~or §25.482 of this title~~], notifying the customer that the customer has not met the terms of the plan. The requirements of subsection (j)(3) of this section shall not apply with respect to a customer who has received notice of a [~~termination or~~] disconnection due to failure to meet the terms of a deferred payment plan.

(k) Allocation of partial payments. A REP shall allocate a partial payment by the customer first to the oldest balance due for electric service, followed by the current amount due for electric service. When there is no longer a balance for electric service, payment may be applied to non-electric services billed by the REP. Electric service shall not be [~~terminated or~~] disconnected for non-payment of non-electric services.

[~~(l) This section is effective June 1, 2004.~~]

§25.481. Unauthorized Charges.

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

(c) Responsibilities for unauthorized charges.

(1) (No change.)

(2) A REP shall not:

(A) seek to [~~terminate or~~] disconnect electric service to any customer for nonpayment of an unauthorized charge;

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

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

(d) - (e) (No change.)

[(f) This section is effective June 1, 2004.]

§25.483. Disconnection of Service.

(a) (No change.)

(b) Disconnection authority.

(1) Any REP may authorize the disconnection of a medium non-residential or large non-residential customer, as that term is defined in §25.43 of this title (relating to Provider of Last Resort (POLR)), unless the customer is receiving service under a contract entered into prior to September 24, 2002, the original term of which has not expired and the contract makes no provision for waiver of the customer's right to be transferred to the POLR for non-payment.

(2) Except [Until June 1, 2004, and except] as provided in subsection (d) of this section, all [only the affiliated REP or the POLR may authorize disconnection of residential and small non-residential customers, as those terms are defined in §25.43 of this title. All] REPs shall have the [such] authority to authorize the disconnection of customers pursuant to Commission rules. Prior [as of June 1, 2004, provided that prior] to authorizing disconnections for non-payment in accordance with this subchapter, a REP shall:

(A) (No change.)

(B) inform customers in the Terms of Service Document of the REP's authority to order the disconnection of customers for non-payment; and [except for the affiliated REP and POLR, send a notice to each retail customer stating the following: "As of June 1, 2004, the Public Utility Commission of Texas (commission) will allow (REP) to request disconnection of your service if you do not pay your electric bill by the final due date. If you have any questions about this change in policy, please call (REP's toll-free phone number);" and]

(C) (No change.)

(c) - (f) (No change.)

[(g) Disconnection due to abandonment by the POLR. A POLR shall not abandon a customer or a service area without written notice to its customers and approval from the commission, in accordance with §25.43 of this title.]

(g) [(h)] Disconnection of ill and disabled. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.

(1) Each time a customer seeks to avoid disconnection of service under this subsection, the customer shall accomplish all of the following by the stated date of disconnection:

(A) Have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the REP by the stated date of disconnection;

(B) Have the person's attending physician submit a written statement to the REP; and

(C) Enter into a deferred payment plan.

(2) The prohibition against service disconnection provided by this subsection shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer or physician.

(3) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for delay of disconnection pursuant to this subsection, and the TDU reasonably believes that the information may be unknown to the REP, the TDU shall delay the disconnection and promptly communicate the information to the REP. The TDU shall disconnect such customer if it subsequently receives a confirmation of the disconnect notice from the REP. Nothing herein should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection, or to provide prior notice of the disconnection, when not otherwise required.

(h) [(i)] Disconnection of energy assistance clients.

(1) A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider.

(2) If an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer Information), the REP shall extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided.

(3) A REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the TDU.

(4) A REP may request disconnection of service to a customer if payment from the energy assistance provider's pledge is not received within the time frame agreed to by the REP and the energy assistance provider, or if the customer fails to pay any portion of the outstanding balance not covered by the pledge.

(i) [(j)] Disconnection during extreme weather. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP shall offer residential customers a deferred payment plan upon request by the customer that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency.

(1) The term "extreme weather emergency" shall mean a day when:

(A) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or

(B) the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.

(2) A TDU shall notify the commission of an extreme weather emergency in a method prescribed by the commission, on each day that the TDU has determined that an extreme weather emergency has been issued for a county in its service area. The initial notice shall include the county in which the extreme weather emergency occurred and the name and telephone number of the utility contact person.

(j) [~~(k)~~] Disconnection of master-metered apartments. When a bill for electric service is delinquent for a master-metered apartment complex:

(1) The REP having disconnection authority under the provisions of subsection (b) of this section shall send a notice to the customer as required by subsection (k)[~~(l)~~] of this section. At the time such notice is issued, the REP, or its agents, shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the REP shall post a minimum of five notices in English and Spanish in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be in large type and shall read: "Notice to residents of (name and address of apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

(k) [~~(l)~~] Disconnection notices. A disconnection notice for nonpayment shall:

(1) not be issued before the first day after the bill is due;

(2) be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. The REP may send the disconnection notice concurrently with the request for a deposit;

(3) have a disconnection date that is not a holiday, weekend day, or day that the REP's personnel are not available to take payments, and is not less than ten days after the notice is issued;

(4) include a statement notifying the customer that if the customer needs assistance paying the bill by the due date, or is ill and unable to pay the bill, the customer may be able to make some alternate payment arrangement, establish a deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.

(l) [~~(m)~~] Contents of disconnection notice. Any disconnection notice shall include the following information:

(1) The reason for disconnection;

(2) The actions, if any, that the customer may take to avoid disconnection of service;

(3) The amount of all fees or charges which will be assessed against the customer as a result of the default;

(4) The amount overdue;

(5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of disconnection or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at www.puc.state.tx.us/ocp/complaints/complain.cfm;"

(6) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation and with the consent of both REPs;

(7) The availability of deferred payment or other billing arrangements, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs; and

(8) A description of the activities that the REP will use to collect payment, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.

(m) [~~(n)~~] Reconnection of service. Upon a customer's satisfactory correction of the reasons for disconnection, the REP shall request the TDU, municipally owned utility, or electric cooperative to reconnect the customer's electric service as quickly as possible. The REP shall inform the customer of the approximate reconnection time in accordance with this subsection. If a REP submits a reconnection order with no priority or same day reconnect request and the TDU completes the reconnect the same day, the TDU shall not assess a priority reconnect fee. A TDU may assess a priority reconnect fee only when the customer expressly requests it. A customer's service shall be reconnected no later than the timelines set forth below:

(1) For payments made between 8:00 a.m. and 12:00 p.m. on a business day, a REP shall send a reconnection request to the TDU no later than 2:00 p.m. on the same day. The TDU shall reconnect service to that customer that day if possible, but no later than the end of the next utility field operational day after the reconnection request was received by the TDU.

(2) For payments made after 12:00 p.m., but before 5:00 p.m. on a business day, a REP shall send a reconnection request to the TDU by 7:00 p.m. on the same day. The TDU shall reconnect service to that customer the next day if possible, but no later than the end of the next utility field operational day after the reconnection request was received by the TDU.

(3) For payments made after 5:00 p.m., but before 7:00 p.m. on a business day, a REP shall send a reconnection request to the TDU by 9:00 p.m. The TDU shall reconnect service to that customer as soon as possible, but no later than the end of the next utility field operational day after the reconnection request was received by the TDU.

(4) For payments made after 7:00 p.m., but before 8:00 a.m. on the next business day, a REP shall send a reconnection request to the TDU by 2:00 p.m. on the next business day. The TDU shall reconnect service to that customer no later than the end of the next utility field operational day after the reconnection request was received by the TDU.

(5) For payments made on a weekend day or a holiday, a REP shall send a reconnection request to the TDU by 2:00 p.m. on the first business day after the payment was made. The TDU shall reconnect service to that customer no later than the end of the next utility field operational day after the reconnection request was received by the TDU.

(6) In no event shall a REP fail to send a reconnection notice within 48 hours after the customer's satisfactory correction of the reasons for disconnection as specified in the disconnection notice.

(7) In no event shall a TDU fail to reconnect service within 48 hours after a reconnection request is received.

[(o) This section is effective June 1, 2004.]

§25.485. Customer Access and Complaint Handling.

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

(e) Complaints to the commission.

(1) (No change.)

(2) While an informal complaint process is pending:

(A) The REP or aggregator shall not initiate collection activities, including [termination or] disconnection of service (as appropriate) or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill.

(B) A customer shall be obligated to pay any undisputed portion of the bill and the REP may pursue [termination or] disconnection of service (as appropriate) for nonpayment of the undisputed portion after appropriate notice.

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

[(f) This section is effective June 1, 2004.]

§25.488. Procedures for a Premise with No Service Agreement.

(a) (No change.)

(b) Service to premise with no service agreement. If a REP finds that a current occupant at a premise for which the provider is shown as the REP of record in the ERCOT or TDU system is not the customer with whom the REP currently has a service agreement for retail electric service:

(1) (No change.)

(2) the REP with disconnection authority [the non-affiliated REP may issue a termination notice and the affiliated REP] may issue a disconnection notice to the current occupant. The notice shall contain the following:

(A) The date the disconnection [termination (or disconnection)] will occur, provided that the date shall not be sooner than ten days from the date the notice is issued;

[(B) For notices issued by a non-affiliated REP to a residential or small non-residential customer, as those terms are defined in §25.43 of this title (relating to Provider of Last Resort (POLR)), that the customer's service shall be transferred to the affiliated REP if the customer does not respond within ten days after issuance of the notice;]

(B) [(C)] For notices issued [by the affiliated REP] to customers, [residential and small non-residential customers, as those terms are defined in §25.43 of this title,] that the customer's service shall be disconnected if the customer does not respond within ten days after the issuance of the notice;

[(D) For notices issued to large non-residential customers, as that term is defined in §25.43 of this title, that the customer's service shall be transferred to the provider of last resort if the customer does not respond within ten days after the issuance of the notice;]

(C) [(E)] What actions the customer must take if that customer believes the notice is in error or desires to establish service with the REP; and

(D) [(F)] A statement that informs the customer of the right to obtain service from another licensed REP and that information about other REPs can be obtained from the commission.

[(c) Termination of service to residential and small non-residential customer by non-affiliated REPs. If a non-affiliated REP terminates service to an occupant in accordance with this section, the REP shall transfer that occupant to the affiliated REP using the procedures established by the independent organization in order to effectuate the termination of contract provision in §25.482(b) of this title (relating to Termination of Contract).]

[(d) Disconnection of residential and small non-residential customer by affiliated REP. If an affiliated REP disconnects service with the occupant, it shall comply with the requirements of §25.483 of this title (relating to Disconnection of Service).]

[(e) Termination of service to a large non-residential customer. If a REP terminates electric service to a large non-residential occupant in accordance with this section, the REP shall transfer that occupant to the provider of last resort.]

[(f) Prohibition on using move-out transactions. A REP may not submit a move-out transaction, as defined by ERCOT protocols, to effectuate the transfers under this section.]

§25.491. Record Retention and Reporting Requirements.

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

(c) Annual reports. On June 1 of each year, a REP shall report the information required by §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)) to the commission and the Office of Public Utility Counsel (OPUC) and the following additional information on a form approved by the commission for the 12-month period ending December 31 of the prior year:

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

(5) The number of complaints received by the REP from residential customers for the following categories by month, by nine-digit zip code and census tract:

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

(F) Collection and service termination, and disconnection, which shall encompass all complaints pertaining to the implementation of §25.480 of this title, [§25.482 of this title (relating to Termination of Service),] and §25.483 of this title (relating to Disconnection of Service).

(6) (No change.)

(d) (No change.)

[(e) This section is effective June 1, 2004.]

§25.493. Acquisition and Transfer of Customers from one Retail Electric Provider to Another.

(a) (No change.)

(b) Notice requirement. Any REP other than a provider of last resort (POLR) that will acquire customers from another REP due to acquisition, merger, bankruptcy, or any other similar reason, shall provide notice the notice required by subsection (c) or (d) of this section to every affected customer. The notice may be in a billing insert or separate mailing, at least 30 days prior to the transfer. If legal or regulatory constraints prevent the sending of advance notice, the notice shall be sent promptly after all legal and regulatory impediments have been removed. The POLR shall comply with the requirements of §25.43 of this title (relating to Provider of Last Resort (POLR)). Transferring customers from one REP to another does not require advance commission

approval, unless the transfer is due to abandonment of a REP [~~pursuant to §25.482(d) of this title (relating to Termination of Service)~~]. The acquiring REP shall also inform the commission or commission staff of the acquisition of customers.

(c) - (e) (No change.)

~~[(f) This section is effective June 1, 2004.]~~

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605903
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 936-7223

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16 TAC §25.482

(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and, in particular, §17.004 and §39.101, which direct the commission to implement customer protections for electric customers, and §39.106, which directs the commission to designate providers of last resort.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.001 and 39.106.

§25.482. Termination of Service.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605905
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 936-7223

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes new §25.130, relating to Advanced Metering, and amendments to §25.121, relating to Meter Requirements; §25.123, relating to Meter Readings; §25.311, relating to Competitive Metering Services; and §25.346, relating to Separation of Electric Utility Metering and Billing Service Costs and Activities. The proposed new section and amendments relate to the deployment and use of advanced meters, pursuant to Public Utility Regulatory Act (PURA), §39.107, as amended by House Bill 2129, 79th Legislature, Regular Session (2005). The proposed new section and amendments are competition rules subject to judicial review as specified in PURA, §39.001(e). Project Number 31418 is assigned to this proceeding.

Christine Wright, Electric Industry Oversight Division, has determined that, for each year of the first five-year period the proposed new section and amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Wright has determined that, for each year of the first five years the proposed new section and amendments are in effect, the public benefit anticipated as a result of enforcing the proposed new section and amendments will be, to the extent that advanced meters are deployed and used pursuant to the proposed new section and amendments, improvements in electric delivery service and new, beneficial electric services that will be provided through advanced meters. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed new section and amendments. There will be no economic costs to persons who are required to comply with the proposed new section and amendments, because deployment of advanced meters under the proposed new section is voluntary unless otherwise ordered by the commission. The principal purpose of the proposed new section and amendments is to implement the requirements of PURA, §39.107, as amended by House Bill 2129, 79th Legislature, Regular Session (2005) in a way that maximizes benefits and minimizes costs.

Ms. Wright has also determined that, for each year of the first five years the proposed sections are in effect, there should be no effect on a local economy and, therefore, no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code, §2001.022.

Comments on the proposed new section and amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, no later than Monday, December 18, 2006. Sixteen copies of comments to the proposed new section and amendments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted no later than Tuesday, January 16, 2007. Comments should be organized in a manner consistent with the organization of the proposed new section and amendments. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed new section and amendments. The commission will consider the costs and benefits in deciding whether to adopt the new section and amendments. All comments should refer to Project Number 31418.

In addition to comments on the draft sections, the commission staff also seeks comments on the following:

1. Is there a minimum threshold of technical capability of advanced meters that should be met in order to get cost recovery through the surcharge mechanism?

2. Should the limitation in proposed §25.130(j)(8) that a customer's demand exceed at least 100 kW be eliminated in or-

der to provide that all advanced meters within the scope of the rule would provide simultaneous, direct, password protected, read-only access to the customer's meter through a phone line, internet, or other technology? Is it acceptable to have information on a day-after basis, day-of basis, or instantaneous basis?

3. Regarding §25.130(k)(3), is the weighted-average cost of capital (WACC) the appropriate interest rate to use in setting the surcharge? If not, what rate should be used and how should it be established?

4. Should the commission approve an electric utility's initial deployment plan prior to an electric utility's deployment of AMS?

SUBCHAPTER F. METERING

16 TAC §§25.121, 25.123, 25.130

The proposed new section and amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.001 (Vernon 1998, Supplement 2006) (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA, §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA, §39.107, which directs the commission to approve utility surcharges for the deployment of advanced meters, authorizes the commission to adopt rules relating to the transfer of customer data, and authorizes the commission to approve non-discriminatory rates for metering service.

Cross Reference to Statutes: Public Utility Regulatory Act, §§14.001, 14.002, and 39.107.

§25.121. Meter Requirements.

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

(c) Standard type. All meters shall be of a standard type that meets industry standards. Advanced meters shall meet the standards in this section and §25.130 of this title (relating to Advanced Metering). Special meters used for investigation or experimental purposes are not required to conform to these standards.

(d) Location of meters.

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

(3) All meters installed after December 21, 1999,[~~the effective date of these rules~~] shall be located as set forth in this section, provided that, where installations are made to replace meters removed from service, this section shall not operate to require any change in meter locations which were established prior to this[~~the effective~~] date, unless the electric utility finds that the old location is no longer suitable or proper, or the customer desires that the location be changed.

(4) (No change.)

(5) If provisions of this section are inconsistent with §25.214 of this title (relating to Tariff for Retail Delivery Service), the provisions of the Tariff shall control this section.

(e) Accuracy requirements.

(1) No meter that violates the test calibration limits as set by the American National Standards Institute, Incorporated, shall be placed in service or left in service. Whenever on installation, periodic, or other tests, a meter is found to violate these limits, it shall be adjusted or replaced.

(2) (No change.)

(f) Notwithstanding any other commission rule, as a condition of receiving electric service or electric delivery service, the customer is deemed to have consented to the provision of meter data to the customer's electric utility, its retail electric provider, and the independent organization or regional transmission organization.

§25.123. Meter Readings.

(a) Meter unit indication. Each meter shall indicate clearly the kilowatt-hours or other units of service for which a charge is made to the customer.

(b) Reading of standard meters. As a matter of general practice, service meters shall be read at monthly intervals, and as nearly as possible on the corresponding day of each meter reading period, but may be read at other than monthly intervals if the circumstances warrant. The electric utility shall notify the customer of any changes to the customer's meter reading cycle.

(c) Customer-read program. For meters other than advanced meters, an electric utility in an area where retail competition has not been introduced, may use [~~If electric utility has~~] a customer-read program in which customers read their own meters and report their usage monthly. Such[~~, such~~] readings shall be considered an actual meter reading by the electric utility for billing purposes. However, an electric utility shall read the meters of customers on a customer-read program at least every six[~~12~~] months to verify the accuracy of the electric utility's records.

§25.130. Advanced Metering.

(a) Purpose. The purposes of this section are to authorize electric utilities to assess a nonbypassable surcharge to recover costs incurred for deploying advanced metering systems that are consistent with this section; increase the reliability of the regional electrical network; encourage dynamic pricing and demand response; enhance the efficiency of the deployment and operation of generation, transmission and distribution assets; and provide more choices for electric customers.

(b) Applicability. This section is applicable to all electric utilities, including transmission and distribution utilities, other than an electric utility that, pursuant to Public Utility Regulatory Act (PURA) §39.452(d)(1), is not subject to PURA §39.107; and to the Electric Reliability Council of Texas (ERCOT).

(c) Definitions.

(1) Advanced meter--any new or appropriately retrofitted meter that functions as part of an advanced metering system and that has the features specified in this section.

(2) Advanced Metering System (AMS)--a system, including advanced meters and the associated hardware, software, and communications devices, that collects time-differentiated energy usage and performs the functions and has the features specified in this section.

(3) Dynamic Pricing--retail pricing for electricity consumed that reflects the fact that power generation costs and the market price of energy vary during different times of the day or year.

(d) Deployment and use of advanced meters.

(1) Deployment and use of AMS by an electric utility is voluntary unless otherwise ordered by the commission. However, deployment and use of an AMS shall be consistent with this section, except to the extent that an AMS that was deployed prior to the effective date of this section cannot meet the requirements of this section without modifications.

(2) Each electric utility that intends to deploy an AMS shall file a notice of such deployment with the commission six months prior to deploying an AMS, or as soon as practicable after the effective date of this section, whichever is later. The notice shall include an affidavit signed by the electric utility that the AMS to be deployed by the electric utility meets the minimum requirements outlined in this section. In addition to the notice to being filed with the commission, each electric utility shall develop a detailed deployment plan six months prior to deploying an AMS, or as soon as practicable, after the effective date of this section, whichever is later. The deployment plan shall include a description of the technology to be deployed in the electric utility's service territory; a general timeline for deployment and for notifying Retail Electric Providers (REPs) and customers of advanced meter deployment and associated features; and the expected costs of deployment. Specific areas (county, zip code, or other geographical identification) scheduled for advanced meter deployment shall be identified by customer class, features to be provided, and projected quarterly installation date. The deployment plan shall not be filed with the commission, but will be maintained at the electric utility's offices. Any REP that wishes to review the electric utility's deployment plan may do so during normal business hours upon reasonable advanced notice to the electric utility and after executing a non-disclosure agreement with the electric utility.

(3) An electric utility's deployment of advanced meters shall not be unreasonably discriminatory.

(4) Each electric utility shall file deployment progress reports every six months following the filing of its deployment notice with the commission until deployment is complete.

(A) Progress reports shall include the following information:

(i) the number of advanced meters installed, listed by specific areas (county, zip code, or other geographic identification);

(ii) significant delays or deviation from the deployment plan and the reasons for the delay or deviation;

(iii) a description of any problems the electric utility has experienced with an AMS, with an explanation of how the problems are being addressed;

(iv) the number of advanced meters that have been replaced as a result of problems with the AMS;

(v) the number of times customer data was accessed by customers or customers' designated agents or REPs; and

(vi) the status of deployment of features identified in the plan and any changes in deployment of these features.

(5) Each electric utility shall make monthly status reports available to REPs that list the current number of advanced meters installed, listed by specific areas (county, zip code, or other geographic identification). These status reports shall be filed with the commission, and shall be made publicly available to REPs through the electric utility's website or other readily accessible means.

(6) An electric utility shall obtain commission approval before making any changes to its AMS that would impair REPs' ability to take advantage of the AMS features identified in the electric utility's deployment plan. This paragraph does not in any way preclude the electric utility from conducting its normal operations and maintenance with respect to the electric utility's transmission and distribution system and metering systems.

(e) Technology requirements. An electric utility shall not deploy an AMS that has not been successfully installed previously with at least 500 advanced meters in North America, Australia, Japan, or Western Europe, except for pilot programs.

(f) Pilot programs. An electric utility may deploy AMS with up to 5,000 meters that do not meet the requirements of subsection (g) of this section in a pilot program, to gather additional information on metering technologies, pricing, and management techniques, for studies, evaluations, and other reasons. A pilot program may be used to satisfy the requirement in subsection (e) of this section. An electric utility is not required to obtain commission approval for a pilot program.

(g) AMS features.

(1) An AMS shall provide or support the following minimum system features:

(A) automated or remote meter reading;

(B) two-way communications;

(C) dynamic pricing options;

(D) remote disconnection and reconnection capability, which shall be performed by the electric utility for premises that have experienced an unusually high number of disconnections and reconnections or move-in/move-out transactions;

(E) the capability to time-stamp meter data sent to the independent organization or regional transmission organization for purposes of wholesale settlement, consistent with time tolerance standards adopted by the independent organization or regional transmission organization;

(F) the capability to provide timely customer usage data to the REP so that the REP can monitor compliance with load management and demand response programs and protocols;

(G) the capability for the REP or customer's designated agent to provide signals relating to price, in order to effect demand response;

(H) the capability to provide 15-minute interval data to REPs, customers, and the independent organization or regional transmission organization, on a daily basis, consistent with data transfer and security standards adopted by the independent organization or regional transmission organization;

(I) storage of meter data that complies with nationally recognized non-proprietary standards such as in American National Standards Institute (ANSI) C12.19 tables;

(J) open standards architecture that complies with nationally recognized non-proprietary standards such as ANSI C12.22, including future revisions thereto, in order to allow electric utilities to collect standard information and identify the meters in the AMS in a standardized manner, irrespective of choice of communication technology, application level data security, or physical layer data security; and

(K) the ability to upgrade these minimum capabilities as technology advances and, in the electric utility's determination, become economically feasible.

(2) An electric utility shall offer, as discretionary services in its tariff, non-standard meters and meter features. The nonstandard meter features offered by the electric utility shall include pre-pay capability at the meter and meter reads by the electric utility more frequently than daily. In addition, an REP may require the electric utility to provide non-standard meters or features not specifically offered in the electric utility's tariff, so long as they are technically feasible and generally available in the market, and provided that the REP pays the differential cost. Upon request by an REP, an electric utility shall expe-

ditiously provide a report to the REP that includes an evaluation of the cost and a schedule for providing the nonstandard meters or features of interest to the REP. The REP shall pay a fee for this report. This fee shall be included in the electric utility's tariff. If an electric utility deploys non-standard meters or meter features not addressed in its tariff at the request of the REP, the electric utility shall expeditiously apply to amend its tariff to specifically include the non-standard meters or meter features that it deployed.

(3) An electric utility may petition the commission for a waiver of the requirements of paragraph (1) of this subsection for portions of its service area where it would be uneconomic or technically infeasible to implement particular system features. A waiver may be granted for an advanced meter system that meets, exceeds, or is an adequate substitute for the requirements in paragraph (1) of this subsection. The electric utility shall provide all relevant studies and cost-benefit analysis supporting its waiver request. An electric utility that has received a waiver shall provide, in the report required by subsection (d)(4) of this section, information to the commission concerning changes in the cost of deployment or savings to the electric utility that would make it economic or technically feasible to offer the system features in the affected portions of its service area.

(4) In areas where there is not a commission-approved independent organization, standards referred to in this section for time tolerance and data transfer and security may be approved by a regional transmission organization approved by the Federal Energy Regulatory Commission or, if there is no approved regional transmission organization, by the commission.

(5) An electric utility may add or enhance features provided by AMS, as technology evolves. The electric utility shall notify the commission and REPs of any such additions and enhancements at least three months in advance, with a description of the features, the deployment and notification plan, and the cost.

(h) Settlement. ERCOT shall use 15-minute meter information from advanced metering systems for retail settlement, not later than January 31, 2010.

(i) Tariff. All AMS features shall be described in the electric utility's tariff.

(j) Access to meter data.

(1) A REP shall include a disclosure clause in its service agreement with its customer that recognizes the REP's right, pursuant to §25.121(f) of this title (relating to Meter Requirements), to access to the customer's meter data. The REP shall include this clause in all service agreements and service agreement amendments entered into after the effective date of this section.

(2) An electric utility shall provide a customer, the customer's REP, and other entities authorized by the customer read-only access to the customer's advanced meter data, including meter data used to calculate charges for service, historical load data, and any other proprietary customer information. The access shall be convenient and secure, and the data shall be provided no later than the day after it was created.

(3) The requirement to provide access to the data begins when the electric utility has installed 2,000 advanced meters for residential and non-residential customers. If an electric utility has already installed 2,000 advanced meters upon the effective date of this section, the electric utility shall provide access to the data as soon as practicable.

(4) An electric utility shall use industry standards and methods for providing secure customer and REP access to the meter data. The electric utility shall have an independent security audit of the mechanism for customer and REP access to meter data conducted within one year of initiating such access and promptly report the results to the commission.

(5) The independent organization, regional transmission organization, or regional reliability entity shall have access to information that is required for wholesale settlement, load profiling, load research, and reliability purposes.

(6) A customer may authorize its data to be available to an entity other than its REP.

(7) The owner or management company of a multi-family property shall have access to a customer's meter data for any unit on the property, whether the unit is vacant or occupied, for the purpose of obtaining data for energy management purposes.

(8) If a customer's demand exceeds 100 kilowatts (kW), the customer and its REP shall have simultaneous, direct, password-protected, read-only access to the customer's meter, through a phone line, internet or other technology.

(9) If a customer's demand is less than or equal to 100 kW, the customer or its REP may request simultaneous, direct, password-protected, read-only access to the customer's meter, through a phone line, internet or other technology, and the electric utility shall specify the cost of this feature in the tariff.

(k) Cost recovery for deployment of AMS.

(1) The commission shall establish a nonbypassable surcharge for an electric utility to recover reasonable and necessary costs incurred in deploying AMS to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter. The surcharge shall not be established until after a detailed deployment plan is filed pursuant to subsection (d) of this section. In addition, the surcharge shall not recover more than the actual, fully allocated AMS costs. As indicated by the definition of AMS in subsection (c)(2) of this section, the costs for facilities that do not perform the functions and have the features specified in this section shall not be included in the surcharge provided for by this subsection unless a utility has received a waiver pursuant to subsection (g) (3) of this section. The costs of providing AMS services for a particular customer class shall be surcharged only to customers in that customer class, except that the surcharge shall not apply to customers that have advanced meters that were installed prior to the effective date of this section or to customers with interval demand recorder meters. The commission may update the surcharge.

(2) The AMS implementation costs that shall be included in the surcharge are limited to AMS capital costs that are actually incurred, reasonable and necessary, and fully allocated, and to carrying costs. The AMS implementation costs shall be reduced by the actual or expected net operating cost savings from AMS deployment, until the operating costs are reflected in base rates.

(3) The annualized carrying-cost rate to be applied to the unamortized balance of the AMS capital costs shall be the electric utility's authorized weighted-average cost of capital (WACC). In each subsequent rate proceeding in which the commission resets the electric utility's WACC, the carrying-charge rate that is applied to the unamortized balance of the utility's AMS costs shall be correspondingly adjusted to reflect the new authorized WACC.

(4) The surcharge shall recover in any 12-month period no more than one-third of the total expected deployment costs contained in the electric utility's deployment plan, or such lesser amount as the commission may determine. In addition, the surcharge shall recover

only actually incurred AMS capital costs that have been found by the commission to be reasonable and necessary.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605957
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 936-7223

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SUBCHAPTER M. COMPETITIVE METERING

16 TAC §25.311

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (Vernon 1998, Supplement 2006) (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.107, which directs the commission to approve utility surcharges for the deployment of advanced meters, authorizes the commission to adopt rules relating to the transfer of customer data, and authorizes the commission to approve non-discriminatory rates for metering service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.107.

§25.311. Competitive Metering Services.

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

(c) Meter ownership. A [~~Beginning January 1, 2004,~~ a] commercial or industrial retail customer may choose a meter owner. The meter owner may be, at the option of the retail customer:

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

(d) Data ownership. The current retail customer shall own all meter data related to the premise occupied by that customer, regardless of whether the meter owner is the customer, the owner of the premise, or a third party. A third-party owner of the meter shall have access to the meter data. To the extent that data integrity is not compromised, the current retail customer shall have the right to physical access to the meter to obtain such meter data when technically feasible. The current retail customer shall have the right and capability, including necessary security passwords, to assign access to meter data related to the premise occupied by that customer.

~~[(e) Transition period.]~~

~~[(1) Market readiness.]~~

~~[(A) ERCOT shall file with the commission quarterly updates on the operational readiness of support systems necessary for the commission to authorize an entity other than the TDU to provide metering services as described in paragraph (4) of this subsection.]~~

~~[(B) ERCOT shall file an annual status report on the implementation of competitive metering services on September 1 of each year. No later than 30 days after ERCOT's annual filing, interested parties may file comments on the status report.]~~

~~[(2) Pilot project. The commission may establish one or more pilot projects under which an entity other than the TDU may provide metering services as described in paragraph (4) of this subsection.]~~

~~[(A) Any request to establish a pilot project shall be filed with the commission, and shall include a full description of the proposed project, including date of commencement, geographic scope, an explanation of how the proposed project will operate under the then-current ERCOT protocols and procedures, and a cost-benefit analysis of the proposed project.]~~

~~[(B) No competitive metering pilot project shall begin before January 1, 2004.]~~

~~[(3) Utility ownership of meters. A TDU shall continue to provide metering services and own all settlement and TDU billing meters that are used for the measurement of electric energy to any customer that does not choose an alternative meter owner.]~~

~~[(4) Other metering services. Until otherwise authorized by the commission, a TDU shall continue to provide metering services relating to installation and removal, maintenance, testing and calibration, data collection, and data management, including the transfer of meter data to the settlement agent.]~~

(e) [~~(f)~~] Metering equipment.

(1) No later than 60 days after the effective date of this section, ERCOT shall develop a process to establish, and periodically revise, a list of meters that shall be considered qualifying competitive meters for the purposes of this section. Each qualifying competitive meter shall meet commission-approved standards and shall be capable of providing the data necessary for billing in accordance with the TDU's delivery tariff and for settlement in accordance with the settlement agent's protocols.

~~[(A) The first list of qualifying meters shall be adopted by ERCOT no later than 90 days after the effective date of this section.]~~

~~[(B) Each qualifying competitive meter shall meet commission-approved standards and shall be capable of providing the data necessary for billing in accordance with the TDU's delivery tariff and for settlement in accordance with the settlement agent's protocols.]~~

~~[(C) Each TDU data collection system shall be compatible with each meter on the list within 90 days of the release of the list.]~~

(2) Requests for installation or removal shall be made to the TDU pursuant to the TDU's tariff.

(f) [~~(g)~~] Conformance with metering standards.

(1) A meter that fails to meet commission-approved standards for accuracy shall not be placed in service or left in service. A meter found to violate these standards shall be adjusted or replaced in accordance with this subsection at the time the violation is discovered.

(2) Meters shall be adjusted as closely as practicable to the condition of zero error.

(3) If a meter owned by the TDU is found not to meet commission-approved standards for accuracy, the TDU shall install a replacement meter in accordance with its tariffs.

(4) If a meter that is not owned by the TDU is found not to meet commission-approved standards for accuracy, the TDU shall install a temporary replacement meter. The temporary replacement me-

ter shall be capable of providing the data necessary for billing in accordance with the TDU's tariff, and shall also provide settlement data in accordance with the settlement agent's protocols. The TDU shall notify the customer and the meter owner that the meter does not meet commission-approved standards for accuracy and shall take reasonable measures to safeguard the meter until the meter owner takes possession of it. The meter owner shall be responsible for the associated charges, in accordance with the TDU's tariff.

(g) [~~(h)~~] Testing of meters. Costs for meter tests requested by the customer, REP, competitive meter owner, or TDU shall be the responsibility of the requesting party [~~customer's REP~~] in accordance with the TDU's tariff, except that when a request is made to test a meter that is subsequently found not to meet commission-approved standards for accuracy, the cost of the meter test shall be the responsibility of the meter owner [~~requestor~~].

(1) Upon request for a meter test by a retail customer, a REP shall request that a meter be tested in accordance with the TDU's applicable tariff.

(2) A REP may request that a meter be tested in accordance with the TDU's applicable tariff.

(3) A meter owner other than the retail customer may request that a meter be tested in accordance with the TDU's applicable tariff.

(4) If the TDU suspects a meter malfunction, it shall promptly test the meter in accordance with its tariff.

(5) Following the completion of any meter test, the TDU shall promptly advise the requestor, and the retail customer's REP of the date of removal of the meter, the date of the test, the result of the test, and who made the test.

(h) [~~(i)~~] Use of meter data for settlement and TDU billing.

(1) Both the TDU and the REP [~~The TDU~~] shall have the right and capability, including necessary security passwords, to access meter data for the purpose of rendering a bill, complying with settlement rules of an independent organization, and [~~as well as~~] for load research and load profiling purposes. The TDU is responsible for the security of the data used for settlement and TDU billing and shall maintain the meter programming password capable of altering such billing parameters.

(2) No entity other than the TDU shall have the right, capability, or meter programming password to alter the data collected by the meter for the purpose of TDU billing.

(3) A TDU's requirements for load research shall not have the effect of limiting the type or frequency of meter data available to an end-use customer.

(i) [~~(j)~~] Competitive metering service credit. A [~~Within 90 days of the effective date of this rule, a~~] TDU shall file with the commission a tariff that provides a competitive metering service credit to the REP of a customer that selects a meter owner other than the TDU. Such tariff shall be accompanied by workpapers demonstrating the derivation of the credit.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605958

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 936-7223

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SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 1. UNBUNDLING

16 TAC §25.346

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (Vernon 1998, Supplement 2006) (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.107, which directs the commission to approve utility surcharges for the deployment of advanced meters, authorizes the commission to adopt rules relating to the transfer of customer data, and authorizes the commission to approve non-discriminatory rates for metering service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.107.

§25.346. Separation of Electric Utility Metering and Billing Service Costs and Activities.

(a) (No change.)

(b) Application. This section shall apply to electric utilities as defined in Public Utility Regulatory Act (PURA) §31.002 in areas where customer choice is in effect. [~~This section shall not apply to an electric utility under PURA §39.102(c) until the termination of its rate freeze period. This section shall not apply to an electric utility subject to PURA §39.402 until customer choice begins in the utility's service area.~~]

(c) - (f) (No change.)

(g) Separation of transmission and distribution utility metering system service activities.

(1) Prior to the introduction of customer choice, metering service shall be provided in accordance with Subchapter F of this Chapter (relating to Metering). An electric utility shall continue to provide metering services pursuant to commission rules and regulations, but shall not engage in the provision of competitive energy services as defined by §25.341 of this title and prescribed by §25.343 of this title (relating to Competitive Energy Services). [~~Metering services before the introduction of customer choice.~~]

[~~(A)~~] An electric utility shall continue to provide metering services pursuant to commission rules and regulations, but shall not engage in the provision of competitive energy services as defined by §25.341 of this title and prescribed by §25.343 of this title (relating to Competitive Energy Services).

[~~(B) An electric utility may continue to use metering equipment installed, operated, and maintained by the utility prior to the introduction of customer choice, but may not use the information gained from its provision of the meter or metering services as defined~~

in §25.341(3)(G) of this title except as permitted in §25.341(7) of this title.]

[(C) When requested by the end-use customer, an electric utility shall charge the end-use customer the incremental cost for the replacement of an end-use customer's meter with an advanced meter owned, operated, and maintained by the electric utility.]

(2) [Metering services on and after the introduction of customer choice until metering services become competitive.] On the introduction of customer choice in a service area, metering services as described by §25.341(17) of this title for the area shall continue to be provided by the transmission and distribution utility affiliate (or successor in interest) of the electric utility that was serving the area before the introduction of customer choice, but the transmission and distribution utility shall not engage in the provision of competitive energy services as defined by §25.341 of this title and prescribed by §25.343 of this title.

(A) Standard meter service shall be provided in accordance with this subparagraph. Advanced meter service shall be provided in accordance with §25.130 of this title (relating to Advanced Metering).

(i) - (iv) (No change.)

(B) [Meter reading.] Nothing in this section precludes the retail electric provider from accessing the transmission and distribution utility's standard meter for the purposes of determining an end-use customer's energy usage.

(C) [End-use customer meters.] Nothing in this section precludes the end-use customer or the retail electric provider from owning, installing, and maintaining metering equipment in addition to [on the customer-premise side of] the standard meter.

[(D) Advanced metering services.]

[(i) The transmission and distribution utility shall not provide any advanced metering equipment or service that is deemed a competitive energy service under §25.343 of this title.]

[(ii) A transmission and distribution utility may continue to use metering equipment installed, operated, and maintained by the transmission and distribution utility consistent with the effective date established under paragraph (1)(B) of this subsection, but may not use the data obtained from its provision of the meter or metering services, except as permitted in subchapter O of this chapter (relating to Unbundling and Market Power).]

[(iii) The installation of advanced metering equipment on the transmission and distribution utility's standard meter must be performed by transmission and distribution utility personnel or by contractors under the supervision of the utility.]

[(iv) For services relating to clause (iii) of this subparagraph, the transmission and distribution utility's charges to the retail electric provider for the installation and removal of any advanced metering equipment shall be reasonable and non-discriminatory and made pursuant to a commission-approved embedded cost based tariff. Except as otherwise provided in this section or by a commission order, the advanced metering equipment shall not be provided by the transmission and distribution utility.]

[(v) Advanced metering equipment provided to the transmission and distribution utility for installation onto the standard meter shall meet all current industry safety standards and performance codes consistent with §25.121 of this title (relating to Meter Requirements).]

[(vi) All advanced metering services and related costs shall be borne by the retail electric provider, except for charges for pulse metering equipment, installation and removal, which shall be borne by the entity executing the pulse metering equipment installation agreement.]

(h) (No change.)

(i) Electronic data interchange.

(1) [Standards.] All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall transmit data in accordance with standards and procedures adopted by the commission or the independent organization.

(2) [Settlement.] All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall abide by the settlement procedures adopted by the commission or the independent organization.

(3) [Costs.] Transmission and distribution utilities shall be allowed to recover such costs as prudently incurred in abiding by this subsection, to the extent not collected elsewhere, such as through the [Electric Reliability Council of Texas] administrative fee of an independent organization.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605959
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON COLLEGE READINESS

19 TAC §74.1001

The Texas Education Agency (TEA) proposes new §74.1001, concerning the college readiness vertical team. The proposed new section would implement the requirements of the Texas Education Code (TEC), Chapter 28, Courses of Study; Advancement, Subchapter A, Essential Knowledge and Skills; Curriculum, §28.008, Advancement of College Readiness in Curriculum, as added by House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006. Statute requires the commissioner of education by rule to establish in cooperation with the Texas Higher Education Coordinating Board a college readiness vertical team.

HB 1, 79th Texas Legislature, Third Called Session, 2006, amended the TEC, Chapter 28, by adding §28.008 requiring

the commissioner of education and the commissioner of higher education to establish vertical teams composed of public school educators and institution of higher education faculty. The legislation also requires the commissioner of education by rule to establish the composition and duties of the vertical teams in cooperation with the Texas Higher Education Coordinating Board. The primary purpose of the vertical team is to recommend college readiness standards and expectations that address what students must know and be able to do to succeed in entry-level courses offered at institutions of higher education.

Proposed new 19 TAC §74.1001, developed cooperatively with the Texas Higher Education Coordinating Board, would establish provisions for a college readiness vertical team, including the purpose, composition, appointment, and duties. The college readiness vertical team would be comprised of four subject-specific vertical teams, one each to address English language arts, mathematics, science, and social studies.

The TEC, §28.008(d) - (f), requires the State Board of Education (SBOE) to incorporate the college readiness standards into essential knowledge and skills established under the TEC, §28.002. The TEC, §28.008, authorizes the retention of all SBOE authority over required curriculum, and establishes a timeline for integration and implementation.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the new section is in effect there will be fiscal implications for state government as a result of enforcing or administering the new section. In fiscal year 2007, the total estimated expenditure is $1,332,188, as follows. The cost of $1.1 million in professional fees is estimated for conducting the business of the vertical team meetings; other operating expenses are estimated at $31,264; and personnel costs are estimated at $200,924. The estimated personnel costs cover four new full-time equivalent program specialist positions responsible for program implementation. In fiscal years 2008-2011, the personnel costs of $200,924 are estimated to continue for each year of the next four fiscal years. There are no fiscal implications anticipated for local government.

Dr. Barnes has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be the opportunity for students to succeed in post-secondary educational opportunities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

The public comment period on the proposal begins November 10, 2006, and ends December 10, 2006. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §28.008, which requires the commissioner of education by rule to establish, in cooperation with the Texas Higher Education Coordinating Board, the composition and duties of a college readiness vertical team.

The amendment implements the Texas Education Code, §28.008.

§74.1001. College Readiness Vertical Team.

(a) Purpose. In accordance with the Texas Education Code (TEC), §28.008, the purpose of a college readiness vertical team is to develop or establish standards and expectations designed to ensure that graduates of Texas high schools are able to perform college-level course work at institutions of higher education.

(b) Composition.

(1) The college readiness vertical team shall be comprised of four subject-specific vertical teams, one each to address English language arts, mathematics, science, and social studies.

(2) Each subject-specific vertical team shall be composed of a minimum of eight and a maximum of 20 members per team who represent:

(A) all levels of secondary public education;

(B) institutions of higher education;

(C) a balance between small and large districts;

(D) various geographic regions of the state; and

(E) the overall demographics of the state.

(3) A maximum of 60% of each subject-specific vertical team's membership shall be composed of faculty from institutions of higher education.

(4) Upon completion of the development of college readiness standards as required in the TEC, §28.008(b)(1), the subject-specific vertical teams shall be reconstituted to include a maximum of 60% secondary public education teachers employed full time in Texas public schools. The reconstituted teams shall complete duties as defined in the TEC, §28.008(b)(2) - (5).

(5) Representatives from each of the four subject-specific vertical teams shall form a leadership team for the purpose of alignment across English language arts, mathematics, science, and social studies.

(c) Appointment.

(1) The commissioner of education shall determine the criteria for selecting public education members for the college readiness vertical team.

(2) The commissioner of education shall solicit recommendations for possible appointees to the college readiness vertical team from the State Board of Education (SBOE), school districts, open-enrollment charter schools, the business community, and educational organizations in Texas. Recommendations may be accepted from any Texas resident. Nominations shall not be made by or accepted from any textbook publishers; authors; depositories; agents for textbook publishers, authors, or depositories; or any person who holds any official position with a textbook publisher, author, depository, or agent.

(3) The SBOE shall be notified of appointments made by the commissioner of education to the college readiness vertical team.

(4) Initial appointments to the college readiness vertical team shall be made no later than January 7, 2007, or as soon as practicable.

(5) Public education members of the college readiness vertical team may be removed or replaced at the discretion of the commissioner of education.

(d) Duties.

(1) The college readiness vertical team shall carry out the duties as defined in the TEC, §28.008(b).

(2) In accordance with the TEC, §28.008(f), the duties of the college readiness vertical team shall be concluded no later than September 1, 2011.

(3) Members of the subject-specific vertical teams may be required to be present at the SBOE meeting at which standards developed or established by the teams are presented or considered for approval.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605941
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 475-1497

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CHAPTER 153. SCHOOL DISTRICT PERSONNEL

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

19 TAC §153.1021

The Texas Education Agency (TEA) proposes an amendment to §153.1021, concerning recognition for creditable years of service. The section provides appropriate definitions and explains required documents, necessary credentials, and the service record. The rule details the provisions for creditable years of service, including recognized employing entities for service credit. The proposed amendment would update references and clarify accreditation requirements for Texas public or private colleges and universities that serve as entities eligible to recognize credit for professional personnel.

Effective February 1, 1998, the commissioner adopted 19 TAC §153.1021, Recognition of Creditable Years of Service, as authorized by the TEC, §21.403, 75th Texas Legislature, 1997. The provisions of law required the commissioner to adopt rules for determining the experience for which certain professional staff are to be given credit in placement on the state minimum salary schedule. The existing rule concerning placement on the salary schedule applies only to teachers, librarians, counselors, and nurses.

The proposed amendment to 19 TAC §153.1021, Recognition of Creditable Years of Service, would update and clarify existing provisions, as follows.

In subsection (a), relating to definitions, paragraph (5) would be modified to add the acronym for the State Board for Educator Certification (SBEC); paragraph (8) would be modified to include the appropriate certification examinations; and paragraph (19) would be modified to update reference to the Texas Department of State Health Services (formerly known as the Texas Department of Mental Health and Mental Retardation). These proposed changes would update the rule to include reference to any previous, current, or future appropriate certification examination and to incorporate a state agency name change.

In subsection (h), relating to requirements for entities recognized for professional personnel, paragraph (7)(A) would be modified to require that Texas public or private colleges and universities serving as entities eligible to recognize credit for professional personnel be accredited by the Southern Association of Colleges and Schools. This proposed change would state clearly in the rule a requirement that has been in practice since initial adoption. Subsequent paragraphs would be reordered accordingly.

Subsection (m), relating to teacher aides, would be modified to include reference to contractual year instead of school year. This proposed change would provide clarification to establish specific dates for certification purposes.

Raymond Glynn, acting associate commissioner for educator quality and standards, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Glynn has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be clarification of terminology and requirements relating to recognition of creditable years of service for school district personnel. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The public comment period on the proposal begins November 10, 2006, and ends December 10, 2006. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

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

The amendment implements the Texas Education Code, §21.403.

§153.1021. Recognition of Creditable Years of Service.

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

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

(5) Certificate--A document issued by the State Board for Educator Certification (SBEC) authorizing the holder to teach in the public elementary and secondary schools of Texas.

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

(8) Current valid certificate--A certificate that is or was valid at a given time, including the stipulation that after June 30, 1986,

a Texas certificate is valid only if the certified person has successfully passed any certification that was mandated by either the State Board of Education or the SBEC. [either the Texas Examination of Current Administrators and Teachers or the Examination for Certification of Educators in Texas.]

(9) - (18) (No change.)

(19) State school--A school that is funded by legislative action in the appropriations act. These schools include the Texas School for the Blind, the Texas School for the Deaf, and schools under the jurisdiction of the Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation) and the Texas Youth Commission.

(20) - (21) (No change.)

(b) - (g) (No change.)

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

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

(7) Texas public or private colleges or universities.

(A) Accreditation by the Southern Association of Colleges and Schools is required.

(B) [(A)] Officer Training Corps programs conducted by accredited colleges or universities must have been employed full-time on a faculty status level. Beginning in 1998-1999, service as an instructor in an agricultural extension service operated by an accredited college or university may be recognized for salary increment purposes as long as the person held a valid Texas teaching certificate at the time the service was rendered.

(C) [(B)] All college or university experience must be recorded on the teacher service record. A supporting letter or form must be attached to the teacher service record verifying that either the full-time or part-time employment was at faculty status or its equivalent and that the schedule of work and the pay constituted that of other similar faculty employees. It is the responsibility of the employing school district to secure verification of college or university experience.

(8) - (18) (No change.)

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

(m) Teacher aides. Beginning with the 2004 - 2005 contractual [school] year, a teacher aide who subsequently attains certification may count up to two years of full-time equivalency of direct student instruction for salary increment purposes. Such experience must be verified on the teacher service record form (FIN-115) or a similar form containing the same information.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605942
Cristina De La Fuente-Valadez
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Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 475-1497

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19 TAC §153.1022

The Texas Education Agency (TEA) proposes an amendment to §153.1022, concerning the minimum salary schedule for certain professional staff. The section establishes definitions of qualifying staff, details eligibility criteria for placement on the salary schedule, and explains base pay. Salaries are adjusted using a factor, defined as "FS" in Texas Education Code (TEC), §21.402(a), based on state assistance under TEC, §42.302. The proposed amendment would update the rule to modify the components and calculation of the minimum salary rates prescribed by the TEC, §21.402, as amended by House Bill (HB) 1, 79th Texas Legislature, Third Called Session.

The commissioner is authorized to adopt a minimum monthly salary schedule for certain professionals, including classroom teachers and full-time librarians, counselors, and nurses. The salary schedule is based on the employee's level of experience. In accordance with TEC, §21.402, enacted by Senate Bill 4, 76th Texas Legislature, 1999, 19 TAC §153.1022 was adopted to be effective January 2, 2000. The rule was last amended to be effective January 31, 2006, to incorporate a new element in the determination of "FS" and to specify salary rates applicable for the 2005 - 2006 and 2006 - 2007 school years.

In May 2006, the 79th Texas Legislature, Third Called Session, amended TEC, §21.402, providing for increases in the minimum monthly salary schedule for the 2006 - 2007 school year. The changes in statute increased the salary factor for each year of experience and included an additional $250 in increased pay for each full month of additional service. The proposed amendment to 19 TAC §153.1022 would update the rule in response to statutory changes, as follows.

Subsection (b) would be revised to make reference to base monthly salary rather than base pay and to address the 2006 - 2007 school year rather than the 1999 - 2001 biennium and would reflect the additional $250 per month. Additional revisions in subsection (b)(1) would also include the additional $250 per month and delete language applicable to 1998 - 1999. Subsection (b)(2) would also be revised to incorporate the same provisions for eligible counselors, nurses, and librarians for the 2006 - 2007 school year. Corresponding revisions are proposed in subsection (b)(3) and (4).

New language is proposed for subsection (c) to adopt a new salary factor in the determination of "FS" to correspond with changes made in TEC, §21.402(a).

Subsection (d) would be revised to delete reference to the 2005 - 2006 school year. In addition, the table set forth as Figure 19 TAC §153.1022(d) in subsection (d) would be updated to establish the new minimum monthly salary rates.

Raymond Glynn, acting associate commissioner for educator quality and standards, has determined that for the first five-year period the amendment is in effect there will be significant fiscal implications for state government as a result of enforcing or administering the amendment. The full cost of the mandated $2,500 pay raise for the fiscal year (FY) 2006 - 2007 was estimated at $821.3 million in the fiscal note for HB 1. The net cost to the state for the raise is offset by approximately $163.4 million because $500 of the raise represents a conversion to wages of supplemental compensation that was previously paid to these individuals to assist with health care costs. Additional costs to the state for Teacher Retirement System (TRS) on-behalf contributions for 2006 - 2007 are estimated at $49.5 million. Total net costs to the state for the pay raise, including the offset for the

wage conversion and the increased TRS on-behalf contributions are estimated at $707 million for FY 2007. The total net costs to the state for subsequent fiscal years are estimated as follows: $719 million in FY 2008; $733 million in FY 2009; $748 million in FY 2010; and $763 million in FY 2011. The cost of the pay raise and additional TRS on-behalf contributions for FY 2007 are covered by the current appropriations act.

There will be fiscal implications for local government. A total expenditure of $250,000 is estimated for local school districts due to the additional pay raise paid for by districts for 11- and 12-month employees. This estimate was calculated assuming only 15% of teachers will have extended contracts with the districts.

Mr. Glynn has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be clarification of the calculation of the salary adjustment factor that is based on state assistance and the establishment of increased minimum monthly salary rates for certain professional staff. There will be no effect on small businesses. There may be economic costs to persons required to comply with the proposed amendment related to the conversion of the $500 health supplement to wages. The health supplement may have been exempt from federal income taxes depending on the elections of individuals who received this benefit. Conversion of the supplement to wages may result in increased federal income taxes for individuals who had previously elected to use those funds for health care purposes.

The public comment period on the proposal begins November 10, 2006, and ends December 10, 2006. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §21.402, which authorizes the commissioner of education to adopt rules to govern the application of the minimum salary schedule for certain professional staff.

The amendment implements the Texas Education Code, §21.402.

§153.1022. Minimum Salary Schedule for Certain Professional Staff.

(a) Definitions and eligibility. The following definitions and eligibility criteria apply to the increases in the minimum salary schedule in accordance with Texas Education Code (TEC), Chapter 21.

(1) The staff positions that qualify for the salary increase include classroom teachers and full-time librarians, counselors, and nurses employed by public school districts and who are entitled to a minimum salary under TEC, §21.402.

(A) A classroom teacher is an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting pursuant to TEC, §5.001, focusing on the delivery of the Texas essential knowledge and skills and holds the relevant certificate issued by the State Board for Educator Certification (SBEC) under the provisions of TEC, Chapter 21, Subchapter B. Although non-instructional duties do not qualify as teaching, necessary functions related to the educator's instructional assignment such as instructional planning and transition between instructional periods should be applied to creditable classroom time.

(B) A school librarian is an educator who provides full-time library services and holds the relevant certificate issued by the SBEC under the provisions of TEC, Chapter 21, Subchapter B.

(C) A school counselor is an educator who provides full-time counseling and guidance services under the provisions of TEC, Chapter 33, Subchapter A, and holds the relevant certificate issued by the SBEC pursuant to the provisions of TEC, Chapter 21, Subchapter B.

(D) A school nurse is an educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

(2) An eligible educator who is employed by more than one district in a shared service arrangement or by a single district in more than one capacity among any of the eligible positions qualifies for the salary increase as long as the combined functions constitute full-time employment.

(3) Full-time means contracted employment for at least ten months (187 days) for 100% of the school day in accordance with definitions of school day in TEC, §25.082, employment contract in TEC, §21.002, and school year in TEC, §25.081.

(4) A local supplement is any amount of pay above the state minimum salary schedule for duties that are part of a teacher's classroom instructional assignment.

(5) Current placement on the salary schedule means a placement based on years of service recognized for salary increment purposes up to the current year.

(6) Salary schedule means a system of providing routine salary increases based upon an employee's total teaching experience and/or an employee's longevity in a school district.

(b) Base monthly salary [~~pay~~] for the 2006 - 2007 school year [~~1999-2001 biennium~~]. As long as employment is in the same position, eligible educators may not receive a minimum salary for the 2006 - 2007 school year [~~each year of the biennium~~] that is less than the salary that they would have received in 2006 - 2007 [~~1998-1999~~] at their current placement on the employing district's 2006 - 2007 [~~1998-1999~~] salary schedule and $250 per month .

(1) An educator eligible for the salary increase is entitled to a minimum salary in the 2006 - 2007 school year [~~1999-2000 and 2000-2001~~] equal to the greater of the salary corresponding to their current placement on the state salary schedule pursuant to TEC, §21.402(a), or the salary corresponding to their current placement on the employing district's 2006 - 2007 [~~1998-1999~~] salary schedule, plus $250 [~~$300~~] per month. If employed by the same district, the minimum must include any local and career ladder supplements the employee would have received in 2006 - 2007. [~~1998-1999. In addition to classroom teachers, this provision applies to eligible counselors, nurses, and librarians whose salary was based on placement on a salary schedule in 1998-1999.~~]

(2) Eligible counselors, nurses, and librarians are entitled to a minimum salary in the 2006 - 2007 school year equal to the greater of the salary corresponding to their current placement on the state salary schedule pursuant to TEC, §21.402(a), or the salary corresponding to their current placement on the employing district's 2006 - 2007 salary

schedule, plus $250 per month. [who were not on a salary schedule in 1998-1999 are entitled in 1999-2000 to the greater of the salary earned in 1998-1999 plus $300 per month or to the salary corresponding to their current placement on the salary schedule.] These educators are placed on the state schedule according to the same criteria that applies to teachers and librarians pursuant to §153.1021 of this title (relating to Recognition of Creditable Years of Service). [In 2000-2001, they are entitled to maintain the salary earned in 1999-2000 or to meet the minimum corresponding to their current placement on the salary schedule, whichever is greater.]

(3) A beginning teacher who has not previously been on the state salary schedule is entitled to any local supplement that would have been offered to a beginning teacher on the employing district's 2006 - 2007 [1998-1999] salary schedule.

(4) Educators who are eligible for the salary increase and who are employed for more than ten months are entitled to an additional $250 [$300] in increased pay for each full month of additional service.

(5) Teachers who are eligible for the salary increase but who are not employed full-time (work either less than 100% of the day or for a portion of the year) are entitled to a proportionate pay increase. For teachers working less than 100% of the day, the increase is proportionate to the percent of the day employed. For teachers employed less than a full year, the increase is valid only for the months employed.

(6) Nurses, librarians, and counselors who are employed for less than a full school year or who are placed in an eligible assignment for less than a full school year are entitled to a pay increase in proportion to the months employed in which they are eligible.

(c) Determination of "FS." "FS" is the amount, as determined by the commissioner under TEC, §21.402(b), of state and local funds per weighted student, including funds provided under TEC, §42.2516(b)(1)(B), but not funds provided under TEC, §42.2516(b)(1)(A), (b)(1)(C), (b)(2), or (b)(3), available to a district eligible to receive state assistance under TEC, §42.302, with a maintenance and operations tax rate per $100 of taxable value equal to the product of the state compression percentage, as determined under TEC, §42.2516, multiplied by $1.50, except that the amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by Chapter 1187, 77th Texas Legislature, 2001.

[(c) Determination of "FS." The value of "FS" in the formula contained in TEC, §21.402, shall be determined by dividing the sum of state and local shares of allotments under TEC, Chapter 42, Subchapters B, C, and F, plus the funds allocated under Rider 69 of the General Appropriations Act, as amended by House Bill 1, First Called Session, 79th Texas Legislature, 2005, by the weighted students in average daily attendance for the year. For this determination, the commissioner of education shall use projections of the total amount of allotments and the number of weighted students for the year. In accordance with TEC, §21.402(a), the commissioner shall project the revenues available under TEC, Chapter 42, Subchapter F, based on a guarantee level of $24.70 and a district enrichment tax rate (DTR) of $0.64.]

(d) Monthly minimum salary rates. The minimum monthly salary rates applicable for the [entire 2005- 2006 and] 2006 - 2007 school year [years] , in accordance with this section and TEC, §21.402, shall be as set forth in the table in this subsection. [For purposes of the 2005-2006 school year only, a district may make monthly payments based on the 2004-2005 minimum salary schedule for part of the school year, so long as total compensation paid to an eligible educator meets the minimum salary schedule for the 2005-2006 school year.]
Figure: 19 TAC §153.1022(d)

[Figure: 19 TAC §153.1022(d)]

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605943
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.6

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §211.6 pertaining to General Provisions. Section 211.6 specifically addresses the Committees of the Board. The Board of Nurse Examiners is currently under "Sunset" review. In September 2006, the Staff of the Texas Sunset Advisory Commission recommended in its report that the Board adopt "rules regarding the purpose, structure, and use of its advisory committees, including: the purpose, role, responsibility, and goal of the committees; size and quorum requirements of the committees; composition and representation provisions of the committees; qualifications of the members, such as experience or geographic location; appointment procedures for the committees; terms of service; training requirements, if needed; the method the Board will use to receive public input on issues acted upon by the advisory committees; and the requirement that the Board comply with the requirements of the Open Meetings Act."

The proposed amendments to §211.6 will comply with chapter 2110 of the Government Code pertaining to State Agency Advisory Committees. The main effect on the Board's existing practice is the "liaison" role of the Board members. Board members have served as chairpersons of some of the standing committees, but this rule amendment will revert their roles to "liaison" status. The organizations who comprise committee membership are substantially the same.

Katherine Thomas, executive director, has determined that for the first five-year period the proposed amendments are adopted there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are adopted, the public benefit will be that the amendments will provide greater consistency with chapter 2110 of the Government Code. There will not be any foreseeable effect on small businesses. There are no anticipated costs to affected individuals as a result of the implementation of this proposed amendment.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

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

§211.6. Committees of the Board.

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

(c) Education Liaison. The three board members representing nursing educational programs shall serve as advisory to the staff on matters pertaining to faculty waivers, proposed curriculum revisions and other issues that may arise between regular board meetings. The recommendations of the liaison members are presented to the board at the next regular meeting for consideration. [~~ratification.~~]

(d) Advanced Practice Liaison. Three members shall be designated by the president to serve as advisory to the staff on matters pertaining to advanced practitioner waivers and other issues that may arise between regular board meetings. The recommendation of the liaison members are presented to the board at the next regular meeting for consideration. [~~ratification.~~]

(e) (No change.)

(f) Advisory Committees. The president may appoint, with the authorization of the board, advisory committees for the performance of such activities as may be appropriate or required by law.

(1) The board has established the following committees that advise the board on a continuous basis or as charged by the Board:

(A) the Advanced Practice Nursing Advisory Committee (APNAC) advises the Board on practice issues and regulations that have or may have an impact on advanced practice nursing. The APNAC is comprised of representatives from the following:

(i) Texas Association of Nurse Anesthetists (TANA);

(ii) Coalition for Nurses in Advanced Practice (CNAP);

(iii) Texas Nurse Practitioners (TNP);

(iv) Consortium of Texas Certified Nurse-Midwives (CTCNM);

(v) Texas Clinical Nurse Specialists (TXCNS);

(vi) Texas Organization of Nurse Executives (TONE);

(vii) Texas Nurses Association (TNA);

(viii) CRNA Educator;

(ix) CNS Education;

(x) CNM Education;

(xi) NP Educator; and

(xii) other members approved by the Board.

(B) the Advisory Committee on Education (ACE) advises the Board on education and practice issues that have or may have an impact on the regulation of nursing education in Texas. The ACE is comprised of representatives from the following:

(i) Licensed Vocational Nurses Association of Texas (LVNAT);

(ii) Texas Association of Vocational Nurse Educators (TAVNE);

(iii) Texas Organization of Baccalaureate and Graduate Nursing Education (TOBGNE);

(iv) Texas Organization of Associate Degree Nursing (TOADN);

(v) Texas League for Vocational Nursing (TLVN);

(vi) Texas Organization of Nurse Executives (TONE);

(vii) Texas Nurses Association (TNA);

(viii) Texas Primary Care Educators;

(ix) Texas Association of Deans and Directors Professional Nursing Programs (TADDPNS);

(x) various educators in Texas nursing programs;

(xi) interested state agencies; and

(xii) other members approved by the Board.

(C) the Nursing Practice Advisory Committee (NPAC) reviews and analyzes issues that affect the practice of nursing. The NPAC is comprised of representatives from the following:

(i) Licensed Vocational Nurses Association of Texas (LVNAT);

(ii) Texas Association of Vocational Nurse Educators (TAVNE);

(iii) Texas League for Vocational Nursing (TLVN);

(iv) Texas Organization of Nurse Executives (TONE);

(v) Texas Nurses Association (TNA);

(vi) Texas School Nurses Organization (TSNO);

(vii) Texas Department of Aging and Disability Services (DADS);

(viii) Texas Association for Home Care (TAHC);

(ix) Texas Department of State Health Services (DSHS);

(x) Texas Association of Homes and Services for the Aging (TAHSA);

(xi) Texas Hospital Association (THA); and

(xii) other members approved by the Board.

(2) The Board may amend the committee memberships as needed.

(3) A board member or members appointed by the President of the board or the board may serve as a liaison(s) to a committee and report to the Board the recommendations of the committee for consideration by the Board.

(4) Each committee shall select from among its members a presiding officer who shall report to the agency or Board as needed.

(5) Each committee's work and usefulness shall be evaluated annually.

(6) The committees will provide notice of meetings, as feasible, on the Secretary of State's web site to allow the public an opportunity to participate.

(7) The Executive Director shall appoint staff to support the committee.

(8) The committee may consult with the board liaison(s) to authorize the committee to investigate identified topics or issues pending the development and communication of a formal charge by the Board.

(9) Committee members will be expected to attend meetings. The chairperson has the discretion to dismiss a member who does not regularly attend.

(10) Advisory committees chairs may invite individuals as expert resources to participate in committee discussions and deliberations. Invited experts serve as *ad hoc* members and do not have voting privileges.

(11) The committees will meet on a schedule established by the chair of each committee.

(12) The decisions of the committee are advisory only.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605908
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 305-6823

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CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.28, §213.33

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §213.28 and §213.33 pertaining to Practice and Procedure. Section 213.28 and §213.33 specifically address Licensure of Persons with Criminal Convictions and Factors Considered for Imposition of Penalties/Sanctions and/or Fines, respectively. These proposed amendments were reviewed by the Board's Eligibility and Disciplinary Task Force.

In September 2006, the Staff of the Texas Sunset Advisory Commission recommended in its report that the Board more clearly identify which crimes relate to the practice of nursing. The proposed amendments to §213.28 incorporate this recommendation into the Board's rules.

The Board evaluated the crimes that other professions have identified as affecting their professions and the rationale provided by those professions. The Board contends that due to the nature of nursing, the crimes that affect nursing are broad. The practice of nursing is in essence the "front line" of health care provision. The scope of the nursing profession allows nurses to have unfettered access to people and their property more than any other profession. Nurses attend to people at their most vulnerable state and provide care to the most vulnerable individuals in our society the elderly, children, the mentally ill, sedated and anesthetized patients, patients whose mental or cognitive ability is compromised and patients who are disabled and immobilized. The provision of care can be in private homes and home-like settings without direct or, at times, without any supervision. Because of this scope and level of trust required of a nurse, he/she must possess professional character and integrity. The scope and nature of nursing require that nurses not commit crimes against persons, not commit crimes against property, be of sound mind and not under the influence of mood-altering substances, be truthful and honest, and be accountable for their actions. For these reasons, a wide variety of criminal acts affect the practice of nursing. To address these issues and the concerns of the Sunset Advisory Committee, the Board proposes amendments to 22 Texas Administrative Code §213.28.

The practice of nursing requires professional character and integrity. Due to the necessity of these qualities, the Board or the Executive Director may request that nurses under investigation or nurse applicants with eligibility issues undergo a psychiatric/psychological evaluation or a forensic psychological evaluation as prescribed by the Board to assess whether the individual may pose a risk to the public health and safety of the public as a nurse. The evaluation may offer mitigating or aggravating information to the investigation of a nurse or nurse applicant.

The proposed amendment to §213.33 relates to a psychological/psychiatric evaluation to determine mental fitness and a more specialized evaluation that addresses the criminal element of unprofessional conduct. The underlying issues may deal with honesty, chemical dependency, and/or fitness to practice. The board has utilized the forensic evaluation for several years, so the amendment is for the purpose of placing this practice in §213.33, Factors Considered for Imposition of Penalties/Sanctions and/or Fines, addressing risk assessment evaluation.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be that the evaluations will provide the Board with an expert opinion on the ability of an individual to be a safe practitioner and will apprise the individuals who desire to practice nursing in this State with the Board's perception of the crimes that affect the nursing practice. There will not be any foreseeable effect on small businesses. The anticipated costs to affected individuals as a result of the implementation of the proposed amendments will be the cost of obtaining an evaluation.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

Texas Occupations Code §301.452 and §301.4535 are affected by these proposed amendments.

§213.28. Licensure of Persons with Criminal Offenses [~~Convictions~~].

(a) This section sets out the considerations and criteria on the eligibility of persons with criminal offenses [~~convictions~~] to obtain a license as a registered or vocational nurse or those already licensed who

renew their license. The Board may refuse to approve persons to take the licensure examination, may refuse to issue or renew a license or certificate of registration, or may refuse to issue a temporary permit to any individual that has been convicted of or received a deferred disposition for a felony, a misdemeanor involving moral turpitude, or engaged in conduct resulting in the revocation of probation [~~imposed pursuant to such a conviction~~].

(b) The practice of nursing involves clients, their families, significant others and the public in diverse settings. The registered and vocational nurse practices in an autonomous role with individuals who are physically, emotionally and financially vulnerable. The nurse has access to personal information about all aspects of a person's life, resources and relationships. Therefore, criminal behavior whether violent or non-violent, directed against persons, property or public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing. The Board considers the following categories of criminal conduct to relate to and affect the practice of nursing:

(1) offenses against the person similar to those outlined in Title 5 of the Texas Penal Code because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may be subject to harm by similar criminal behavior;

(C) nurses are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients who are vulnerable to exploitation both physically and emotionally;

(D) nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability; and

(E) nurses who commit these crimes outside the workplace may raise questions as to whether that same misconduct will be repeated in the workplace and raises serious questions regarding the individual's ability to provide safe, competent care to patients.

(2) offenses against property, e.g., robbery, burglary and theft, etc., because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may provide easy opportunity to be victimized;

(C) nurses have access to persons who frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility with no security to prevent theft or exploitation;

(D) nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse;

(E) nurses frequently provide care autonomously without direct supervision and may have access to and opportunity to misappropriate property; and

(F) nurses who commit these crimes outside the workplace may raise questions as to whether that same misconduct will be repeated in the workplace and, therefore, place patients' property at risk.

(3) offenses involving fraud or deception because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(C) nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability;

(D) nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct;

(E) the nurse-patient relationship is of a dependent nature; and

(F) nurses who commit these crimes outside the workplace may raise questions as to whether that same misconduct will be repeated in the workplace and, therefore, place patients at risk.

(4) offenses involving lying and falsification because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(C) nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct;

(D) honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care;

(E) falsification of documents regarding patient care, incomplete or inaccurate documentation of patient care, failure to provide the care documented, or other acts of deception raise serious concerns whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future;

(F) falsification of employment applications and failing to answer specific questions that would have affected the decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity;

(G) falsification of documents or deception/lying outside of the workplace, including falsification of an application for licensure to the Board, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing; and

(H) a crime of lying or falsification raises concern that the person may engage in similar conduct while practicing nursing and place patients at risk.

(5) offenses involving the delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug, or mood-altering substance because:

(A) nurses have access to persons who are vulnerable by virtue of illness or injury;

(B) nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(C) nurses provide care to critical care, geriatric, and pediatric patients who are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition;

(D) nurses are able to provide care in private homes and home-like setting without supervision;

(E) nurses who are chemically dependent or who abuse drugs or alcohol may have impaired judgment while caring for patients and are at risk for harming patients; and

(F) an offense regarding delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug or mood altering drug may raise questions as to whether that same misconduct will be repeated in the workplace

(c) In considering whether a criminal offense [~~conviction~~] renders the individual ineligible for licensure or renewal of licensure as a registered or vocational nurse, the Board shall consider:

(1) - (8) (No change.)

(d) In addition to the factors that may be considered under subsection (c) of this section, the Board, in determining the present fitness of a person who has been convicted of or received a deferred order for a crime, shall consider:

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

(e) It shall be the responsibility of the applicant, to the extent possible, to obtain and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act. The applicant shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted or received a deferred order.

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

(i) The board shall revoke a license or authorization to practice as an advanced practice nurse upon the imprisonment of the licensee following a felony conviction or deferred adjudication, or revocation of felony community supervision, parole, or mandatory supervision.

(j) The board shall revoke or deny a license or authorization to practice as an advanced practice nurse for the crimes listed in Texas Occupations Code §301.4535.

§213.33. Factors Considered for Imposition of Penalties/Sanctions and/or Fines.

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

(e) When determining evidence of present fitness to practice, the Board or Executive Director may request an evaluation by a psychologist or psychiatrist, who is licensed by the Texas State Board of Examiners of Psychologists or the Texas Medical Board, respectively. The evaluator must be familiar with the duties appropriate to the nursing profession. The evaluation must be conducted pursuant to professionally recognized standards and methods. The evaluation must include the utilization of objective tests and instruments which at a minimum are designed to test the psychological stability and veracity of the applicant or licensee. The applicant or licensee subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board.

(f) When determining evidence of present fitness to practice by a licensee or applicant for licensure:

(1) the Board or Executive Director may request an individual risk assessment conducted by a Board-approved forensic psychologist or psychiatrist who:

(A) evaluates the criminal history of a person; and

(B) seeks to predict:

(i) the likelihood that the person will engage in criminal activity that may result in the person receiving a second or subsequent reportable adjudication or conviction; and

(ii) the continuing danger, if any, that the person poses to the community.

(C) is familiar with the duties appropriate to the nursing profession.

(D) conducts the evaluation pursuant to professionally recognized standards and methods; and

(E) utilizes objective tests and instruments that, at a minimum, are designed to test the psychological stability, fitness to practice, professional character, and/or veracity of the nurse applicant or licensee.

(2) The applicant or licensee subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board.

(3) The applicant or licensee should be provided a copy of the evaluation upon completion by the evaluator, if not, the Board will provide the individual a copy.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605915
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 305-6823

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CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §214.7

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §214.7 pertaining to Vocational

Nursing Education. Section 214.7 specifically addresses Faculty Qualifications and Faculty Organization. The proposed amendment is pertinent to faculty waivers. Concurrent with this proposal, the Board is proposing an amendment to §215.7 which addresses faculty waivers in Professional Nursing Education.

In September 2006, the Staff of the Texas Sunset Advisory Commission recommended in its report that the Board adopt "its current requirements for waivers of faculty requirements into Board rule . . . and the Board would no longer need to issue waivers." In compliance with this recommendation, the Board proposes amendments to the professional and vocational nursing education rules incorporating the waiver guidelines into rule. Though the education programs would no longer be required to submit a waiver petition, the proposed amendment requires that programs notify the Board with a notarized statement that they meet both the minimum criteria for the program and for the prospective faculty member as delineated in the rule. Board approval, however, will continue to be required if the program's NCLEX pass rate is too low, or too many faculty member have not met the qualifications required by the Board.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are adopted there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments

Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are adopted, the public benefit will be that the amendments will allow nursing education programs a more convenient process to temporarily fill a faculty position when a qualified faculty member is not available to teach. There will not be any foreseeable effect on small businesses. There are no anticipated costs to affected individuals as a result of the implementation of this proposed amendment.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The proposed amendments are pursuant to the authority of Texas Occupations Code §301.157 and §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

§214.7. Faculty Qualifications and Faculty Organization

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

(c) Faculty Qualifications and Responsibilities.

(1) (No change.)

(2) In fully approved programs, if an individual to be appointed as faculty member does not meet the requirements for faculty as specified in subsection (c) of this section, the director or coordinator is permitted to waive [~~petition for a waiver of~~] the Board's requirements, if the program and prospective faculty member meet the following criteria and after notification to the Board of the intent to waive the Board's faculty requirements for a temporary time period not to exceed one year: [~~according to Board guidelines, prior to the appointment of said individual.~~]

(A) minimum program criteria

(i) program's NCLEX-PN Examination pass rate for the preceding exam year was 80% or above.

(ii) total number of faculty waivers at program shall not exceed 10% of the total number of nursing faculty.

(iii) waiver is valid for up to one year and shall not be extended without Board approval.

(B) minimum criteria for prospective faculty member

(i) holds a current license or privilege to practice as a vocational or registered nurse in the State of Texas;

(ii) has been actively employed in nursing for at least two years in the last three years;

(iii) if not actively employed in nursing for the past three (3) years, the prospective faculty's advanced preparation in nursing, nursing education, and nursing administration shall be considered; and

(iv) prior relevant nursing employment.

(C) when the program does not meet the minimum program criteria or the prospective faculty member does not meet the minimum criteria for a faculty member, a petition for a waiver shall be submitted to the Board and be reviewed by the members of the Education Liaison Committee (ELC) for recommendation regarding approval and referred to the full Board for ratification.

(D) a waiver is valid for up to one year.

(E) the director or coordinator shall submit a sworn (notarized) notification of waiver to the Board.

(F) if an extension of the waiver is needed, the director or coordinator shall petition the Board for an extension of the original waiver.

(3) - (8) (No change.)

(d) (No change.)

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605909
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 305-6823

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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.7

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §215.7 pertaining to Professional Nursing Education. Section 215.7, specifically addresses Faculty Qualifications and Faculty Organization. The proposed amendments are pertinent to faculty waivers. Concurrent with this proposal, the Board is proposing an amendment to §214.7 which addresses faculty waivers in Vocational Nursing Education.

In September 2006, the Staff of the Texas Sunset Advisory Commission recommended in its report that the Board adopt "its current requirements for waivers of faculty requirements into Board rule . . . and the Board would no longer need to issue waivers." In compliance with this recommendation, the Board proposes amendments to the professional and vocational nursing education rules incorporating the waiver guidelines into rule. Though the education programs would no longer be required to submit a waiver petition, the proposed amendment requires that programs notify the Board with a notarized statement that they meet both the minimum criteria for the program and for the prospective faculty member as delineated in the rule. Board approval, however, will continue to be required if the program's NCLEX pass rate is too low, or too many faculty member have not met the qualifications required by the Board.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be that the amendments will allow nursing education programs a more convenient process to temporarily fill a faculty position when a qualified faculty member is not available to teach. There will not be any foreseeable effect on small businesses. There are no anticipated costs to affected individuals as a result of the implementation of this proposed amendments.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.157 and §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

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

§215.7. Faculty Qualifications and Faculty Organization.

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

(c) Faculty Qualifications and Responsibilities.

(1) Documentation of faculty qualifications shall be included in the official files of the programs. Each nurse faculty member shall:

(A) - (D) (No change.)

(E) In fully approved programs, if an individual to be appointed as faculty member does not meet the requirements for faculty as specified in this subsection, the dean or director is permitted to waive [~~petition for a waiver of~~] the Board's requirements, if the program and prospective faculty member meet the following criteria and after notification to the Board of the intent to waive the Board's faculty requirements for a temporary time period not to exceed one year: [~~according to Board guidelines, prior to the appointment of said individual.~~]

(i) minimum program criteria:

(I) program's NCLEX-RN Examination pass rate for the preceding exam year was 80% or above;

(II) total number of faculty waivers at program shall not exceed 10% of the total number of nursing faculty; and

(ii) minimum criteria for prospective faculty member:

(I) holds a current license or privilege to practice as a registered nurse in the State of Texas;

(II) has at least two years in the last four years of nursing practice experience in the anticipated subject area of teaching responsibility;

(III) has earned a bachelor's degree in nursing or completed, as part of a nursing education program culminating in a master's or doctorate degree in nursing, the course work equivalent to the course work required for a bachelor's degree in nursing; and either

(-a-) is currently enrolled in a master's nursing education program and has earned a minimum of 50% of the required credits toward the master's degree in nursing, excluding thesis or professional paper; or

(-b-) holds a master's degree in another field and has a documented plan to complete, within a designated time frame, the required number of graduate level nursing credits appropriate to the anticipated subject area of teaching responsibility, 6 graduate level nursing credits to teach in a diploma or associate degree nursing education program or 12 graduate level nursing credits to teach in a baccalaureate degree or entry-level master's degree in nursing education program.

(iii) when the program does not meet the minimum program criteria or the prospective faculty member does not meet the minimum criteria for a faculty member:

(I) a petition for a waiver shall be submitted to the Board and be reviewed by the members of the Education Liaison Committee (ELC) for recommendation regarding approval and referred to the full Board for ratification; or

(II) a petition for an emergency waiver may be submitted to the Board staff for approval when a vacancy occurs because a faculty member fails to report as planned, i.e., sudden illness or death of a faculty member, or there is an unexpected resignation, or qualified applicants/prospective faculty are not available.

(iv) a waiver is valid for up to one year.

(v) the director or coordinator shall submit a sworn (notarized) notification of waiver to the Board.

(vi) if an extension of the waiver is needed, the director or coordinator shall petition the Board for an extension of the original waiver.

(F) (No change.)

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

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

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605910
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 305-6823

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §97.91, concerning the delegation of authority to give informed consent for immunizations of a minor, and repeal of §97.92, concerning recommendations for documentation of reason(s) parent, managing conservator, guardian, or other person could not be contacted; amendments to §§97.151 - 97.153, 97.155, 97.156 and new 97.154, concerning the process by which physicians in the state are authorized to administer yellow fever vaccine for persons who travel outside the United States.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption every 4 years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Section 97.91 and §97.92 have been reviewed and the department has determined that reasons for adopting §97.91 continue to exist because a rule on this subject is needed. However, §97.92 is proposed for repeal due to redundant language.

Section 97.91 provides that certain information must be obtained prior to immunizations of a minor when the parent/legal guardian is not present and another adult purports to have consent of that parent/legal guardian. In addition, the proposed amendment provides that immunizations may also be administered as provided in Family Code, §32.101. The proposed amendments clarify these requirements, and include a cross-reference to the Family Code.

Since Family Code, §32.101, provides requirements related to who shall be allowed to grant consent to immunize a child (i.e., parent/legal guardian) and who shall be allowed to grant consent in the event that parent/legal guardian is not available, the agency proposes that §97.92 be repealed in its entirety in order to provide clarity to the public concerning who may provide consent to immunize a child under various circumstances. The Family Code provision speaks to the scenarios which §97.92 attempts to address; therefore, the department proposes repealing §97.92 as redundant.

Government Code, §2001.039, requires that each state agency review and consider for readoption every 4 years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Sections 97.151 - 97.153, 97.155, 97.156 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. However, new §97.154 is proposed so that there is a section which consolidates the criteria for operating as a vaccination center, and clarifies those criteria.

Proposed amendments to §§97.151 - 97.153, 97.155, 97.156 and new 97.154, concern the process by which physicians in the state are authorized to administer yellow fever vaccine for persons who travel outside the United States. The department provides this authorization by issuing Uniform Stamps to designated physicians. Sections 97.151 - 97.156 cover the criteria by which the department issues the Uniform Stamps to physicians, and processes for denial, revocation, suspension, or non-renewal.

In the 4-year review of these rules, the amendments to §§97.151 - 97.153, 97.155 and 97.156 update the agency, division, section, and branch names, plus, clarify language, simplify processes, reorder text, and more closely follow federal guidelines. After conducting a cost analysis, the branch determined that the existing $25 fees for Uniform Stamp application, renewal, and replacement were not sufficient for the department to recover its costs. The Uniform Stamp application, renewal, and replacement fees are increased for a reasonable recovery of the department's costs. However, all fees remain waived for public health departments, public health districts, and public health regions.

The department consulted with the Health Service Regions, Texas Association of Local Health Officials, the department's Infectious Disease Control Unit, Texas Academy of Family Physicians, Texas Medical Association, and the current directory of authorized yellow fever vaccine providers during the rule development process.

SECTION-BY-SECTION SUMMARY

Section 97.91(a) is amended to include the phrase "parent/legal guardian is not present and another adult purports to have consent of that parent/legal guardian" as clarifying language. Language concerning contacting a "parent/guardian" is proposed to be deleted because it causes confusion and is not necessary.

In §97.91, subsections (b), (c)(1), and (d) are amended to include "parent/legal guardian" as clarifying language.

Section 97.91(e) is added to include "immunizations may also be administered as provided in Family Code, §32.101" as a cross-reference to an existing statutory provision which speaks to the situations that §97.92 attempts to address. Section 97.92 is, therefore, proposed for repeal as redundant language.

Amendments to §97.151 update the agency, division, section, and branch names, plus, provide consistency in terminologies. The amendments to §97.152 update agency names and terminologies. Amendments to §97.153 simplify the process by deleting current language which requires administration of 20 or more doses of yellow fever vaccine annually for Uniform Stamp eligibility, plus, clarify language for the Uniform Stamp's issuance and responsibilities. New language that physicians are encouraged, but not required, to report cases of febrile illness potentially caused by yellow fever vaccination to the CDC/FDA Vaccine Adverse Events reporting System (VAERS) is added. These amendments more closely follow federal guidelines, which are referenced in the section. Also, the Uniform Stamp application, renewal, and replacement processes and fees are updated. New §97.154 reorders the criteria for operating a vaccination center into one section and clarifies those requirements. The amendments to §97.155 update language for consistent terminology. The amendments to §97.156 update division, branch and department names, clarify that renewals are also encompassed in subsection (a), plus, subsection (b) is clarified to state that hearings, when available, occur if they are requested.

FISCAL NOTE

Casey S. Blass, Section Director, Disease Prevention and Intervention Section, has determined that for each year of the first five years that §97.91 will be in effect, if future funds are appropriated at current levels, there will be no additional costs to state

or local government as a result of enforcing or administering the section as proposed.

Mr. Blass has also determined that for each year of the first five years that §97.92 will no longer be in effect, there will be no additional costs to state or local government as a result of the repeal of the section.

Casey Blass, Section Director, Disease Prevention and Intervention Section, has determined that for each calendar year of the first five years that §§97.151 - 97.156 are in effect, there will be fiscal implications to the state as a result of administering the sections as proposed. The effect on state government will be an increase in revenue due to the increased Uniform Stamp fees. The Uniform Stamp application, renewal, and replacement fees are increased for a reasonable recovery of the department's costs. There will be no fiscal implications to local governments as a result of enforcing or administering the sections as proposed. The fees will remain waived for public health departments, public health districts, and public health regions.

SMALL AND MICRO-BUSINESS IMPACT

Mr. Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with §97.91 as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

Mr. Blass has also has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because §97.92 is no longer necessary, and business practices will not be altered in order to comply with the proposed repeal of the section. There will be no impact on local employment.

Mr. Blass has determined that the price increase of the stamp is not expected to have a significant impact on small and micro-businesses that comply with §§97.151 - 97.156 as proposed, and is necessary to cover the costs incurred by the department; furthermore, the possible alteration of small and micro-business procedures should have a positive impact on those small and micro-businesses as a result of improved efficiency. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Blass has determined that for each year of the first five years that the amendments to §97.91 and the repeal of §97.92 are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections as proposed is to provide clarity concerning the delegation of authority to give informed consent for immunizations of a minor when a parent/legal guardian is not present and another adult purports to have consent of that parent/legal guardian.

In addition, Mr. Blass has also determined that for each year of the first five years that §§97.151 - 97.156 are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to generate funding to operate the program to ensure the safety of the public, and to simplify and clarify processes.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on §97.91 and §97.92 may be submitted to Tim Hawkins, Disease Prevention and Intervention Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 3394, or (800) 252-9152. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

Comments on amendments to §§97.151 - 97.153, 97.155, 97.156 and new 97.154, may be submitted to Victoria Brice, Disease Prevention and Intervention Section, Division of Prevention and Preparedness, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6658 or by email to Victoria.Brice@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER C. CONSENT FOR IMMUNIZATION

25 TAC §97.91

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapter 531; Education Code, §§38.001 and 51.933; and Human Resource Code, §42.043.

§97.91. Delegation of Authority to Give Informed Consent for Immunizations of a Minor.

(a) Certain information must be obtained prior to immunizations of a minor when the parent/legal guardian is not present and another adult purports to have consent of that parent/legal guardian. [~~parent/guardian can be contacted but another adult is giving consent.~~]

(b) The information may be hand written or typed and should be completed on each minor for each clinic visit when an adult other than the parent/legal guardian [~~parent/guardian~~] is providing consent for the immunizations.

(c) The delegation of authority to consent for immunization of a minor shall include the following information:

(1) the signature of parent, managing conservator, legal guardian, or other person authorized to give consent;

(2) the name and birthdate of minor;

(3) the name of the adult giving consent for immunizations of the minor; and

(4) the relationship of the adult to the minor for whom they are giving consent.

(d) The delegation of authority statement must contain the information in subsection (c) of this section and could resemble the following.
Figure: 25 TAC §97.91(d)
[~~Figure: 25 TAC §97.91(d)~~]

(e) Immunizations may also be administered as provided in Family Code, §32.101.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605900
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 458-7111 x6972

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25 TAC §97.92

(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 Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects Health and Safety Code, Chapters 81 and 1001; Government Code, Chapter 531; Education Code, §38.001 and §51.933; and Human Resource Code, §42.043.

§97.92. Recommendations for Documentation of Reason(s) Parent, Managing Conservator, Guardian, or Other Person Could Not Be Contacted.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605901
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. VACCINATION STAMPS

25 TAC §§97.151 - 97.156

STATUTORY AUTHORITY

The amendments and new rule are authorized by Health and Safety Code, §81.021; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments and new rule affect Health and Safety Code, Chapters 81 and 1001; Government Code, Chapter 531; Education Code, §38.001 and §51.933; and Human Resource Code, §42.043.

§97.151. Purpose and Scope.

The U.S. Public Health Service has designated the Department of State Health Services [~~Texas Department of Health~~] as the governmental entity in the State of Texas which is responsible for determining which physicians in the state are authorized to administer yellow fever vaccine for persons who travel outside the United States. The department provides this authorization by issuing Uniform Stamps [~~vaccination stamps~~] to designated physicians. These sections cover the criteria by which the department issues the Uniform Stamp and the criteria for designating and operating a Vaccination Center [~~yellow fever vaccination stamp to physicians~~].

§97.152. Definitions.

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

(1) Department--The Department of State Health Services [~~Texas Department of Health~~], 1100 West 49th Street, Austin, Texas 78756.

(2) Branch [~~Division~~]--The Immunization Branch, Disease Prevention and Intervention Section, Department of State Health Services [~~Division, Bureau of Immunization and Pharmacy Support, Texas Department of Health~~].

(3) Physician--A physician licensed to practice medicine in the State of Texas.

(4) Vaccination Center [~~Site~~]--The location where a physician is authorized to administer yellow fever vaccine.

(5) Uniform Stamp [~~Yellow fever vaccination stamp~~]--A [~~vaccination~~] stamp issued by the branch [~~department~~] to a physician for use in validating certificates of yellow fever vaccination [~~authorizing him or her to purchase and administer yellow fever vaccine~~] for persons who travel outside the United States.

§97.153. Criteria for Issuing Uniform [~~Yellow Fever~~] Stamps to Physicians.

Uniform Stamps may be issued to physicians holding a current Texas medical license, for use only at the specific vaccination center designated on the application. If a physician practices at more than one vaccination center, a separate application for each is required.

(1) Physicians may apply for the Uniform Stamp by sending an application form to the branch. Application forms may be obtained from the branch or online at www.immunizetexas.com.

(2) Physicians are authorized to use the Uniform Stamp solely for the purpose of validating administration of yellow fever vaccine on vaccination certificates issued at the approved vaccination center indicated on their application.

(3) Physicians are authorized to use only the Uniform Stamp assigned to them. Uniform Stamps may not be assigned, loaned, or given to another person or physician except those working under supervision of the physician holding the stamp. The physician will at all times be responsible for the Uniform Stamp.

(4) A physician shall report immediately to the branch any loss or theft of the Uniform Stamp.

(5) Physicians are encouraged to report cases of febrile illness potentially caused by yellow fever vaccination to the CDC/FDA Vaccine Adverse Events Reporting System (VAERS).

(6) U.S. Public Health Services (PHS) requirements. The PHS requirements are found, as follows:

(A) Code of Federal Regulations, Title 42-Public Health, Part 71-Foreign Quarantine, §71.3, Designation of Yellow Fever Vaccination Centers; Validation Stamps; and

(B) PHS publications entitled, Division or Quarantine Circular No.106; Advisory Memorandum No.66; and Advisory Memorandum No.72.

(C) The department adopts the PHS requirements listed in subparagraphs (A) and (B) of this paragraph by reference. Physicians shall administer yellow fever vaccines in accordance with PHS requirements as incorporated. Copies of the requirements are available upon request from the Immunization Branch, Department of State Health Services, 1100 West 49th Street, Austin, Texas.

(7) Charges for the Uniform Stamp:

(A) New Applicant Fee. Each new applicant is required to submit a fee of $68 by personal check, cashier's check, or money order along with the completed application. If the branch denies the application, the branch will return the $68 to the physician.

(B) Annual Renewal Fee. In January of each year, each physician holding a Uniform Stamp is required to pay an annual fee of $38. The physician shall submit the $38 by personal check, cashier's check, or money order to the branch with the agency's Annual Renewal Form. If the branch denies the renewal, the branch will return the $38 to the physician.

(C) Stamp Replacement Fee. A fee of $50 will be required for issuing replacement Uniform Stamps in the event the original is lost or stolen.

(D) All fees will be waived for public health departments, public health districts, and public health regions.

[~~(a) Previous stamp holders.~~]

[~~(1) Physicians who have administered 20 or more doses of yellow fever vaccine for one year prior to the effective date of this section are authorized to receive a new yellow fever vaccination stamp. Physicians may apply for the stamp by sending an application form to the division in accordance with the requirements of subsection (d) of this section. Physicians shall return their old stamps to the division upon receipt of the new stamp.~~]

[~~(2) Physicians who have administered less than 20 doses of yellow fever vaccine for one year preceding the effective date of this section are required to return their old stamps to the division within 60 days after the effective date of this section. These physicians may be authorized to receive new stamps only for valid cause. The division will determine valid cause on an individual basis. The criteria which the division will use to determine valid cause are as follows.~~]

[~~(A) The number of doses of yellow fever vaccine administered on an annual basis. Physicians who administer less than 20 doses of yellow fever vaccine will be requested to relinquish their yellow fever vaccination stamp.~~]

[~~(B) The requirement to administer 20 doses of yellow fever on an annual basis may be waived if the stamp is issued to a physician who provides the vaccine in an underserved geographical area.~~]

[~~(b) Authorized use of a yellow fever vaccination stamp. Physicians may use the stamp only for the purposes of administering vaccines and validating immunization certificates.~~]

[~~(c) U.S. Public Health Services (PHS) requirements. Physicians shall administer yellow fever vaccines in accordance with the vaccine manufacturer and PHS requirements.~~]

[~~(1) The PHS requirements are found, as follows:~~]

[~~(A) 42 Code of Federal Regulations, Part 71, Foreign Quarantine, §71.3, Designation of Yellow Fever Vaccination Centers; Validation Stamps, issued on January 11, 1985; and~~]

[~~(B) PHS publications entitled, "Division of Quarantine Circular No. 106,' revised on January 7, 1983; Advisory Memorandum No. 66, issued on January 7, 1983; and Advisory Memorandum No. 72, issued on October 5, 1984.~~]

[~~(2) The department adopts the PHS requirements listed in paragraph (1)(A) and (B) of this subsection by reference. Copies of the requirements may be reviewed during regular working hours at the Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas.~~]

[~~(d) Application for yellow fever vaccination stamp. In order to receive a yellow fever vaccination stamp, a physician shall submit a completed application form to the division. Copies of the application forms may be obtained from the division.~~]

[~~(e) Site for use of the yellow fever vaccination stamp. A physician shall use the yellow fever vaccination stamp only at the site where the yellow fever vaccine is delivered. If the physician chooses to administer the vaccine at a site other than that designated on the current application request, prior approval must be obtained from the division stating the reason for vaccine administration at a non-designated site and the means for ensuring that appropriate temperatures are maintained and documented during transit of the vaccine. If a physician chooses to administer yellow fever vaccine at a non-designated site more than twice in a 12-month period, an application for permission to~~

administer the vaccine at that site shall be filed with the division. The physician to whom the yellow fever vaccination stamp has been issued is not authorized to administer yellow fever vaccine on board ship or aircraft.]

[(f) Physician record keeping. The physician to whom the yellow fever stamp is issued is responsible for maintaining the following information:]

[(1) name, address, birthdate, sex, race, and occupation of the vaccine recipient;]

[(2) reason for vaccinating the vaccine recipient;]

[(3) destinations of the vaccine recipient;]

[(4) time, date, and address of vaccine administration; and]

[(5) lot number and expiration date of the vaccine.]

[(g) Charges for the stamp.]

[(1) In January of each year, each physician is required to pay an annual charge of $25 to cover the cost to the department in issuing and renewing stamps. The physician shall submit the $25 by personal check, cashier's check, or money order to the division with the application form. If the division denies the application, the division will return the $25 to the physician.]

[(2) The $25 charge will be waived for public health departments, public health districts, and public health regions.]

[(h) Non-assignability of stamps. A physician may not assign, loan, or give the stamp to another person.]

[(i) Loss or theft of stamps. A physician shall report immediately to the division any loss or theft of the stamp.]

[(j) Annual report. In January of each year, a physician shall report to the division the number of doses of yellow fever vaccine administered during the preceding year. Reporting forms are available from the division.]

[(k) Local health requirements. Local health departments and public health districts may choose to require additional measures for yellow fever vaccinations occurring within their jurisdictions.]

§97.154. Criteria for Operating as a Vaccination Center.

Designation as a vaccination center is made upon completion of an application and presentation of evidence satisfactory to the Branch that the applicant has adequate facilities and professionally trained personnel for the handling, storage, and administration of safe and effective yellow fever vaccine.

(1) A physician shall use the Uniform Stamp only at the vaccination center where the yellow fever vaccine is delivered and the vaccine may not be redistributed. The physician to whom the Uniform Stamp has been issued is not authorized to administer yellow fever vaccine on board ship or aircraft.

(2) Physicians shall administer yellow fever vaccine in accordance with the vaccine manufacturers' recommendations for safe and effective use of yellow fever vaccine, as long as such recommendations do not conflict with §97.153(6)(C) of this title (relating to Criteria for Issuing Uniform Stamps to Physicians) or other requirements of §§97.151 - 97.156 of this title.

(3) Annual report. Each physician holding a Uniform Stamp shall establish the need for continuing possession of the Uniform Stamp by completing and returning an annual renewal form along with the annual renewal fee. The annual renewal form is available from the Branch or on line at www.immunizetexas.com.

(A) If the annual renewal form is not received by the Branch within the timeframe stated on the form, designation as an authorized vaccination center may be removed and the physician will be required to return their Uniform Stamp.

(B) If the physician no longer wishes to retain their Uniform Stamp, the stamp must be returned to the Branch.

(4) Local health requirements. Local health departments and public health districts may choose to require additional measures for yellow fever vaccinations occurring within their jurisdictions.

§97.155. Format of the Uniform Stamp [Yellow Fever Vaccination Stamp].

The format of the Uniform Stamps [yellow fever vaccination stamps] will be according to federal guidelines Division of Quarantine Circular No. 106, which is adopted by reference in §97.153 of this title (relating to Criteria for Issuing Uniform Stamps [Yellow Fever Stamps] to Physicians).

§97.156. Denial, Suspension, or Revocation of Stamp.

(a) The branch [division] may deny an application for a stamp or suspend or revoke an existing stamp or not renew a stamp if the applicant or holder fails to comply with the requirements of these sections. The applicant or holder has the opportunity to request a hearing on any of these actions in accordance with department fair hearing rules, §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(b) The branch [department] will not suspend or revoke a stamp without a prior hearing, except if the branch [division] determines that immediate suspension or revocation is necessary because of imminent threat to public health.[; the division may suspend or revoke the stamp and offer the holder the opportunity for a post-action hearing.]

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605902
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 458-7111 x6972

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CHAPTER 339. TOXICOLOGY
SUBCHAPTER A. VETERANS AGENT ORANGE ASSISTANCE PROGRAM

25 TAC §§339.1 - 339.6

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

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§339.1 - 339.6, concerning the Veterans Agent Orange Assistance Program.

BACKGROUND AND PURPOSE

House Bill 2129, 67th Legislature, Regular Session, 1981, created the Texas Veterans Agent Orange Assistance Program. It was amended by Senate Bill 370, 68th Legislature, Regular Session, 1983. This legislation is codified as Health and Safety Code, Chapter 83. The purpose of the program was to assist Texas veterans of the Vietnam conflict who may have been exposed to Agent Orange, an herbicide used as a defoliant in Vietnam from 1965-1971 by U.S. military forces, and suspected of creating long-term health problems to those exposed. Legacy agency, Texas Department of Health, Bureau of Epidemiology, administered the Agent Orange program and investigated the cause and effect relationships between the exposure of Vietnam veterans to herbicides, chemical defoliants, or other causative agents and the emergence of health problems.

The repeal of the rules is based on Health and Safety Code, §83.010, Termination of Program and Duties. The Texas Legislature did not continue funding for the Agent Orange program; therefore, the program was phased out as of August 31, 1985. The original legislation provided that programs required by Health and Safety Code, Chapter 83 could be discontinued if "an agency of the federal government is performing the referral and screening functions required" under this law. The Veteran's Administration has long provided these services, so this program is no longer required by law.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 339.1 - 339.6 have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

SECTION-BY-SECTION SUMMARY

The repeal of §§339.1 - 339.6 is necessary because the Veteran's Administration now administers the program.

FISCAL NOTE

Casey S. Blass, Director, Disease Prevention and Intervention Section, has determined that for each year of the first five-year period that the sections are no longer in effect, there will be no fiscal implications to state or local governments as a result of the repeal of these sections.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because the rules are no longer necessary and business practices will not be altered in order to comply with the proposed repeal of the sections. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Blass has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of the repeal is to reflect that the Veteran's Administration is responsible for the administration of the program.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be directed to John F. Villanacci, Ph.D., NREMT-I, Manager, Environmental and Injury Epidemiology and Toxicology Branch, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199, or by email to john.villanacci@dshs.state.tx.us (please include the words "Agent Orange" in the subject line). Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed repeals are authorized under Health and Safety Code, §83.010, Termination of Program and Duties; and Government Code §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapters 83 and 1001; and Government Code, Chapter 531.

§339.1. Introduction.

§339.2. Definitions.

§339.3. General Description of Program.

§339.4. Confidentiality and Consent.

§339.5. Role of the Attorney General of Texas.

§339.6. Physician and Hospital Immunity from Liability.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605896
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 458-7111 x6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.33

The General Land Office (GLO) proposes amendments to §15.33 relating to Certification Status of Nueces County Dune Protection and Beach Access Plan (Plan). The GLO proposes an amendment to §15.33 to the certification status of the Plan, adopted on August 25, 1995, and amended by order of the Commissioners' Court of Nueces County, Texas (County), on October 23, 1996 (1996 Plan). The amendment to §15.33 adds a new subsection (f) to certify as consistent with state law the amendments to the Nueces County Plan that were adopted by the Nueces County Commissioners' Court on December 7, 2005 (2005 Plan Amendments). In addition, a new subsection (g) is added to certify as consistent with state law a variance from the requirements of 31 TAC §12.6(f)(3) in the County's Plan that allows a permittee to alter or pave the ground in the area between 350 feet and 200 feet landward of the vegetation line for recreational amenities such as pools separate from habitable structures, so long as residential or commercial structures are located at least 350 feet landward from the line of vegetation and the applicant demonstrates that every attempt has been made to minimize the use of impervious surfaces in the area between 350 feet and 200 feet landward of the vegetation line. The 1996 Plan may be viewed on the County's web site at: http://www.co.nueces.tx.us/pw/dunes/beachmanagement.asp. Copies of the local government dune protection and beach access plan and any amendments to those plans are available from Nueces County Department of Public Works, 901 Leopard St., Suite 103, Corpus Christi, Texas 78401-3697, phone number (361) 888-0490, and from the General Land Office's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 through 15.12, 15.21 through 15.36), a local government with jurisdiction over Gulf Coast beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification. 31 TAC §15.3(o). The GLO reviews a local beach access and dune protection plan and, if appropriate, certifies that the plan is consistent with state law by adoption or amendment of a rule as authorized in Texas Natural Resources Code §§61.011(d)(5) and 61.015(b). The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO. 31 TAC §15.3(o)(4).

Nueces County is a coastal county consisting of areas bordering Redfish Bay, Corpus Christi Bay, and the Laguna Madre. The County also borders the Gulf of Mexico to the southeast, extending from the southernmost boundary of Aransas County south to the northernmost boundary of Kleberg County. The County includes barrier islands consisting of a portion of North Padre Island accessible from the east via the John F. Kennedy Causeway (Park Road 22) and Mustang Island, which is accessible from the east via ferry at Port Aransas.

The Gulf beaches and adjacent areas governed by the Plan are those unincorporated areas within the County and the Gulf beaches within the corporate limits of the City of Corpus Christi with respect to administration of the Dune Protection Act. The County has delegated authority to the City of Port Aransas for administration of the Dune Protection Act pursuant to Texas Natural Resources Code §63.011(a), but has not delegated such authority to the City of Corpus Christi. With respect to administration of the Open Beaches Act, the Gulf beaches within the corporate limits of the City of Corpus Christi are governed by the City of Corpus Christi Dune Protection and Beach Access Plan (City's Plan), certified as consistent with state law in 31 TAC §15.31. The Gulf beaches within the corporate limits of the City of Port Aransas are governed by the City of Port Aransas Dune Protection and Beach Access Plan, certified as consistent with state law in 31 TAC §15.24.

THE 2005 NUECES COUNTY PLAN

On December 7, 2005, the Commissioners' Court of Nueces County adopted amendments to the 1996 Plan and submitted those amendments to the GLO with a request for certification. The amended plan included, among other changes, amendments relating to the Designation of Access Ways, Parking Areas, and Beaches Closed to Motor Vehicles. A detailed designation of the beach access ways can be found in Section VI(B)(1) of the proposed Plan as amended. It also included amended provisions concerning dune protection permit application fees, provisions establishing a building set-back line, amendments to traffic regulations, and changes in criminal penalties for prohibitions against littering.

The proposed changes to Section II (J) of the Plan allow the County Commissioners' Court to establish reasonable fees for dune protection permit applications. The amendment removes language that established the specific amounts for the fees in the Plan. This proposed plan amendment is consistent with state law. Texas Natural Resources Code §63.053 specifically authorizes the commissioners' court to require a reasonable fee to accompany an application for a dune protection permit. Review and approval by the GLO of the reasonableness of fees charged for dune protection permit applications is not required by the Dune Protection Act or the Beach/Dune Rules.

The County proposed changes to Section VII of its Plan relating to Beach Traffic Orders to provide that traffic regulations adopted in the Plan apply only to Gulf beaches within County parks and County property. This proposed plan amendment is consistent with state law. Texas Natural Resources Code §61.122(a) specifically authorizes the commissioners' court of a county bordering on the Gulf of Mexico or its tidewater limits, to regulate motor vehicle traffic on any beach within the boundaries of the county. The limitation of traffic regulations to County-owned parks and property does not impair the existing right of the public to use and have access to and from the public beach.

The County proposed changes to Section XI of its Plan to increase the penalty for violation of the prohibition against littering in Section VI (F) of the Plan by doubling the fines. For a first offense, a fine of $100 to $200 is authorized. For a second offense, a fine of $200 to $400 is authorized. For a third or subsequent offense, a fine of $400 to $1,000 is authorized. This proposed plan amendment is consistent with state law. Texas

Natural Resources Code §61.122(a) specifically authorizes the commissioners' court of a county bordering on the Gulf of Mexico or its tidewater limits, to prohibit littering of any beach within the boundaries of the county and to define the term "littering."

The County also proposed changes to Section III (I) of the Plan concerning General Erosion and Flood Protection Requirements. Specifically, the County proposed to add new subsection "i" to require residential and commercial structures permitted after May, 2000, to be located at least 350 feet landward of the vegetation line unless no practicable development alternatives are possible. The amendment also added new subsection "j" to restrict development permitted after May, 2000, in the area between 350 feet and 200 feet landward of the vegetation line to recreational amenities such as pools and picnic areas. In any case, applicants must demonstrate that every attempt has been made to minimize use of impervious surfaces in this zone.

The new requirement that residential and commercial structures be located at least 350 feet landward of the line of vegetation imposes a stricter standard than that required by the Open Beaches Act (OBA), Texas Natural Resources Code §§61.001 - 61.026; the DPA; and the Beach/Dune Rules. Local governments are permitted to adopt standards that meet or exceed the requirements of state law. Therefore, the provisions of new subsection "i" may be certified as consistent with the OBA, the DPA, and the Beach/Dune Rules.

However, §15.6(f)(3) of the Beach/Dune Rules concerning construction in eroding areas allows a permittee to alter or pave only the ground within the footprint of the habitable structure only if the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet from the line or vegetation or landward of an eroding area boundary established in the local beach/dune plan. The definition of "habitable structure perimeter or footprint" at §15.2(37) of the Beach/Dune Rules specifically excludes ground-level paving, landscaping, open recreational facilities (for example pools and tennis courts), or other similar features. To the extent that new subsection "j" allows a permittee in an eroding area to alter or pave the ground in the area between 350 feet and 200 feet landward of the vegetation line for recreational amenities such as pools and picnic tables outside the footprint of a habitable structure it is not consistent with §15.6(f)(3) of the Beach/Dune Rules.

VARIANCE

A local government requesting certification of a plan or plan amendment that includes a variance of any requirement or prohibition in the GLO's Beach/Dune Rules must submit to the GLO a reasoned justification demonstrating how the variance provides equal or better protection of dunes, dune vegetation, and public access to and use of the public beach than is provided by the Beach/Dune Rules. 31 TAC §15.3(o)(6).

The GLO conducted several field inspections of critical dune areas in the County and considered the Memorandum of Response dated July 26, 2006, from Nueces County Judge Terry Shamsie to the GLO in support of its 2005 Plan Amendment authorizing the construction of recreational amenities separate from habitable structures between 350 feet and 200 feet landward of the vegetation line. The reasoned justification submitted by the County suggests that it provides an equal or better level of protection of dunes, dune vegetation, and public access to and use of the beach in that: (1) the County has in place a more stringent standard, 350 feet landward of the line of vegetation for all construction, than is mandated by the Beach/Dune Rules; (2) much of the construction that would be allowed seaward of the 350' line are small structures such as pools, decks and gazebos; (3) each applicant would be evaluated on a case-by-case basis and would have to demonstrate an attempt to avoid or minimize the amount of impervious surface, thereby minimizing impacts to critical dunes, dune vegetation and dune hydrology; (4) most pools and back yard amenities would have some type of irrigation system to encourage vegetative growth thereby reducing maintenance from wind blown sand; and (5) these types of allowable structures would not be exempt from mitigation requirements. The primary dune complex on Mustang and North Padre Islands extends as far landward as 350 feet from the line of vegetation, and Nueces County represented that the protection of the primary dune complex is critical to the success of their dune protection efforts.

The reasoned justification submitted by the County in support of its request for approval of Plan amendments in new subsection "j" that allows a permittee to alter or pave the ground in the area between 350 feet and 200 feet landward of the vegetation line for recreational amenities such as pools separate from habitable structures suggests that the 2005 Plan Amendments provide an equal or better level of protection of dunes, dune vegetation, and public access to and use of the beach. The variance affords an appropriate level of protection for the natural beach/dune system and limits the application to a case-by-case determination with the protection of the beach/dune system, including appropriate mitigation procedures.

Accordingly, the GLO proposes to certify as consistent with state law the County's 2005 Plan Amendment with a variance from the provisions of §15.6(f)(3) of the Beach/Dune Rules that allows a permittee to alter or pave the ground in the area between 350 feet and 200 feet landward of the vegetation line for recreational amenities such as pools separate from habitable structures, so long as residential or commercial structures are located at least 350 feet landward from the line of vegetation and the applicant demonstrates that every attempt has been made to minimize the use of impervious surfaces in the area between 350 feet and 200 feet landward of the vegetation line.

Although the provisions of new subsections "i" and "j" address the first two steps of the dune mitigation sequence established in §15.4(f) of the Beach/Dune Rules (avoidance of impacts or minimization of impacts by limiting its degree or magnitude), they do not otherwise exempt a permit applicant from compliance with compensatory mitigation requirements for unavoidable adverse effects on dunes and dune vegetation.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Sam Webb, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state government as a result of enforcing or administering the amended or new sections. There will be no fiscal impact on the local government as a result of enforcing or administering the amended sections. The 2005 Plan changes authorizing the County to establish reasonable fees for dune protection permit applications will not directly result in any increased revenue. In the event that the County changes the fee it is assumed that any increase in revenue will be offset by a corresponding increase in cost of administration of dune protection permits. It is further assumed that the increased fines for littering authorized by the change will result in a corresponding decrease in the incidence of violations resulting in no net increase in revenue.

Mr. Sam Webb, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that the proposed rule changes will not have an effect on the costs of compliance for individuals and small or large businesses. As previously noted, the Plan amendment does not directly result in an increase in application fees. With respect to the 350 foot building set-back line, there will be no significant increase in the cost of compliance inasmuch as the County had previously implemented a voluntary 350 foot building set-back line in May, 2000, which has been generally observed by individuals and developers.

The GLO has determined a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

PUBLIC BENEFIT

Mr. Sam Webb has determined the public will benefit from the 2005 Plan amendment concerning dune protection permit application fees in that removal of language setting specific amounts in the Plan will allow the County to respond more efficiently to changes in the cost of administering the permits and ensure that such administrative costs are borne by developers and not the general public. The public benefit resulting from the Plan amendment concerning the 350 foot building set-back line will be that the provisions provide better protection for critical dunes that serve to protect natural resources and public infrastructure, including storm evacuation routes. In addition, the Plan amendment protects the public's right to access and use the public beach by reducing the likelihood that structures will become located on the public beach due to erosion. The public will benefit from the Plan changes relating to access ways and traffic orders in that the changes provide clarification to the public. Finally, the increase in authorized penalties for littering will provide a better deterrence against violations.

CONSISTENCY WITH CMP

The proposal to amend §15.33 concerning Certification Status of Nueces County Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the CMP. The Land Office has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.26, relating to Policies for Construction in the Beach/Dune System, and §501.27, relating to Policies for Development in Coastal Hazard Areas. The proposed actions are consistent with the Land Office's Beach/Dune Rules that the Council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed rule during the comment period.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed amendments to determine whether Texas Government Code, Chapter 2007, is applicable and a detailed takings impact assessment required. The GLO has determined the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law.

PUBLIC COMMENT REQUEST

Written comments may be submitted to Ms. Deborah Cantu, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, TX 78711-2873; facsimile number (512) 463-6311; email address deborah.cantu@glo.state.tx.us. Comments must be received no later than 5:00 p.m., 30 (thirty) days after the proposed amendments are published. Copies of the local government dune protection and beach access plans and any amendments to those plans are available from the Nueces County Department of Public Works, 901 Leopard St., Suite 103, Corpus Christi, Texas 78401-3697, phone number (361) 888-0490 and from the General Land Office's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c), and 61.070, which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law. In addition, Texas Natural Resources Code §63.121 provides the Texas General Land Office with authority to adopt rules for protection of critical dune areas.

Texas Natural Resources Code §§61.011, 61.015, 61.022, 61.070, AND 63.121 are affected by the proposed amendments.

§15.33. Certification Status of Nueces County Dune Protection and Beach Access Plan.

(a) Nueces County has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The county's plan was adopted on March 25, 1992 and amended on October 23, 1996.

(b) The General Land Office certifies that the dune protection portion of the La Concha master plan adopted by the Nueces County Commissioners Court on March 20, 1996, is consistent with state law.

(c) The General Land Office certifies that the dune protection portion of the Palms at Waters Edge master plan adopted by the Nueces County Commissioners Court on December 27, 1996, is consistent with state law.

(d) The General Land Office certifies that the dune protection section of the Mustang Island Episcopal Conference Center master plan adopted by the Nueces County Commissioner's Court on January 31, 2000 is consistent with state law.

(e) The General Land Office certifies as consistent with state law the amendment to Nueces County plan that was adopted by the Nueces County Commissioners Court on March 16, 2005, Order No. 20050032. The order amended the plan to increase the beach user fees imposed for parking on the beach in fee areas designated in the plan.

(f) The General Land Office certifies as consistent with state law the amendments to the Nueces County plan that were adopted by the Nueces County Commissioners Court on December 7, 2005.

(g) The General Land Office certifies as consistent with state law the following variances from §15.6(f)(3) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards) in the County's plan. The plan establishes special erosion and flood protection requirements for dune protection permits providing that a permittee shall:

(1) locate residential and commercial structures permitted after May, 2000, at least 350 feet landward of the vegetation line unless no practicable development alternatives are possible; and

(2) restrict development permitted after May, 2000, in the area between 350 feet and 200 feet landward of the vegetation line to recreational amenities such as pools and picnic areas. In any case, applicants must demonstrate that every attempt has been made to minimize use of impervious surfaces in this zone.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605968
Trace L. Finley
Policy Director
General Land Office
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 305-8598

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §§23.4, 23.5, 23.7, 23.8

As part of the rule review being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to 34 TAC §§23.4, 23.5, 23.7, and 23.8 of Chapter 23 concerning administrative procedures. The original notice of intention to review Chapter 23 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 23 is published elsewhere in this issue of the *Texas Register*. As part of the rule review, TRS has assessed §§23.4, 23.5, 23.7, and 23.8 and determined the reasons for initially adopting them continue to exist, with the proposed changes described in this notice.

Section 23.4 concerns public participation in the adoption of rules. The rule describes how the public may initiate the rulemaking process. The opportunity to initiate rulemaking is required by state law and, therefore, the reason for adopting the rule continues to exist. One change is proposed to the rule in subsection (d) to increase flexibility in the amount of time allowed for public comment when a petition for rulemaking is received. Section 2001.029 of the Government Code requires that the public be given a reasonable opportunity to comment on a proposed rule but does not specify a number of days.

Section 23.5 concerns nominations for appointment to the Board. The nomination process is set out in state law in more general terms; therefore, the reason for adopting the rule continues to exist because the rule describes the nomination process in greater detail necessary for administration. The proposed changes would clarify terms used in the rule to refer to retirees participating in the nominating process as well as clarifying terms used in referring to positions on the TRS Board of Trustees. The changes also update the dates of the terms for the Board positions.

Section 23.7 concerns the Code of Ethics for Consultants, Agents, Financial Providers and Brokers. State law requires TRS to enforce an ethics policy and to adopt by rule standards of conduct for consultants and advisors; therefore, the reason for adopting the rule continues to exist. The rule requires compliance with the Code of Ethics and adopts it by reference as part of the rule. The proposed amendment would update the date of the document adopted by reference and add a notice that this document may be found on the TRS Web site.

Section 23.8 concerns expenditure reporting by consultants, agents, financial providers and brokers. State law requires TRS to require by rule the filing of an expenditure report; therefore, the reason for adopting the rule continues to exist. The rule requires the filing of reports showing expenditures made on behalf of TRS trustees or employees. The proposed amendment would add a notice that this document may be found on the TRS Web site.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register*, TRS has determined that the reasons for adopting 34 TAC §23.1 (relating to complaints) continue to exist and proposes to readopt that rule without changes.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed amended rules would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each section will be to provide the public reasonable opportunity to participate in TRS's rulemaking process and to update the texts of the rules in conformity with

current law and conditions. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: The amendments are proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The proposed amendments affect the following statutes in the Government Code - §825.002, which provides for the nomination of persons for appointment to the TRS board; §825.115, which makes TRS subject to the administrative procedure law, Chapter 2001 of the Government Code; §825.212, which provides for the adoption and enforcement of an ethics policy for employees, consultants, and advisors of the retirement system and requires the filing of reports showing expenditures made on behalf of TRS trustees or employees; §2001.021, providing for an interested person to petition TRS for the adoption of a rule; and §2001.029, providing all interested persons a reasonable opportunity to comment on a proposed rule before TRS adopts it.

§23.4. Public Participation in Adoption of Rules.

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

(d) All interested persons shall be given a reasonable opportunity to submit oral or [~~Oral and~~] written data, views, or [~~and~~] arguments on a proposed rule to TRS [~~may be submitted informally to the executive director by informal conference or correspondence within 20 days~~] after publication of notice of the proposed rule in the Texas Register.

(e) - (g) (No change.)

§23.5. Nomination for Appointment to the Board of Trustees.

(a) During any calendar year in which the term of office of a public school district member, institution of higher education member, or retiree [~~retired teacher~~] member of the board of trustees of the Teacher Retirement System of Texas (TRS) expires, TRS [~~the Teacher Retirement System of Texas (TRS)~~] will conduct an election between March 15 and April 30 to select the nominees to be considered by the governor for appointment to the position.

(b) Public school district members of the system who are currently employed by a public school district may have their names listed on the official ballot as candidates for nomination to a public school district position by filing an official petition bearing the signature, printed or typed name, first five digits of the member's current residential zip code, and last four digits of the member's Social Security number of 250 members of the retirement system whose most recent credited service is or was performed for a public school district. Institution of higher education members of the system who are currently employed by an institution of higher education may have their names listed on the official ballot as candidates for nomination to the institution of higher education position by filing an official petition bearing the signature, printed or typed name, first five digits of the member's current residential zip code, and last four digits of the member's Social Security number of 250 members whose most recent credited service is or was performed for an institution of higher education. Retirees [~~Retired members~~] may have their names listed on the official ballot as candidates for nomination to the retiree [~~retired member~~] position by filing an official petition bearing the signature, printed or typed name, first five digits of the retiree's current residential zip code, and last four digits of the retiree's Social Security number of 250 retirees of the system. Official petition forms shall be available from the Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Official petitions must be filed by January 15 of the calendar year in which the election is to be held. A qualified public school district member, institution of higher education member, or retiree may sign more than one candidate's petition as long as they are eligible to vote in the election of the candidate or candidates for whom they are signing.

(c) (No change.)

(d) When a vacancy in [~~of~~] a public school district position [~~member~~], institution of higher education position [~~member~~], or retiree position [~~retired member~~] occurs for a reason other than the expiration of a term of office, the board of trustees may conduct an election at any time they determine appropriate. The board of trustees shall establish deadlines for filing petitions, the date of mailing ballots, the date for returning ballots, and any other necessary details related to the election process.

(e) (No change.)

(f) Terms of board members [~~Board Members~~] run for six years and [~~shall~~] expire August 31. Terms expire on the following dates and every six years thereafter:

(1) Public school district appointment, Place One, August 31, 2007 [~~2001~~].

(2) Gubernatorial appointment, Place One, August 31, 2007 [~~2001~~].

(3) State Board of Education appointment, Place One, August 31, 2007 [~~2001~~].

(4) Public School district appointment, Place Two, August 31, 2009 [~~2003~~].

(5) Gubernatorial appointment, Place Two, August 31, 2009 [~~2003~~].

(6) State Board of Education appointment, Place Two, August 31, 2009 [~~2003~~].

(7) Higher Education appointment, August 31, 2005 [~~1999~~].

(8) Retiree appointment, August 31, 2005 [~~1999~~].

(9) Gubernatorial appointment, Place Three, August 31, 2005 [~~1999~~].

(g) (No change.)

§23.7. Code of Ethics for Consultants, Agents, Financial Providers [~~Provider~~] and Brokers.

Any Consultant, Agent, or Financial Provider doing business with the Teacher Retirement System of Texas (TRS), or Broker approved to do business with TRS, must comply with TRS's Code of Ethics for Consultants, Agents, Financial Providers and Brokers (the "Code of Ethics") as amended from time to time. TRS adopts by reference the Code of Ethics most recently amended on March 9, 2006 [~~to be effective January 1, 2004~~]. Capitalized words appearing in this section have the same meaning assigned to them in the Code of Ethics. Copies of the Code of Ethics are available from TRS at 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400. Also, a copy of the Code of Ethics can be found in and printed from the TRS Web site, www.trs.state.tx.us, in the information regarding TRS Ethics.

§23.8. Expenditure Reporting by Consultants, Agents, Financial Providers and Brokers.

Consultants, Agents, and Financial Providers doing business with the Teacher Retirement System of Texas (TRS), and Brokers approved to do business with TRS, must report expenditures made on behalf of any one trustee or employee of TRS. The reports must be filed no later than April 15 of each year with the Executive Director and must comply with the Expenditure Reporting Memorandum as amended from time to time. TRS adopts by reference the Expenditure Reporting Memorandum and the Expenditure Reporting Form for Contractors as most recently amended to be effective January 1, 2004. Capitalized words appearing in this section have the same meaning assigned to them in the Code of Ethics for Consultants, Agents, Financial Providers and Brokers, as amended from time to time. Copies of the memorandum and the form are available from TRS at 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400. Also, copies of these two forms can be found in and printed from the TRS Web site, www.trs.state.tx.us, in the information regarding TRS Ethics.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605926
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

34 TAC §25.1

As part of the rule review of 34 TAC Chapter 25 relating to membership credit being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to §25.1. The original notice of intention to review Chapter 25 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 25 is published elsewhere in this issue of the *Texas Register*. TRS has assessed §25.1 and determined the reasons for initially adopting the section continue to exist, with the changes described in this notice. Explanation of the proposal is set out below.

Section 25.1 concerns full-time service. The rule describes what service is considered full-time service eligible for membership. State law requires membership for all employees of the public school system and defines the word "employee" for purposes of TRS membership eligibility. The proposed amendments clarify and more specifically describe the requirements for a position to be considered full-time service. The proposed amendments also describe in greater detail the requirements of regular employment, which is service eligible for membership, and distinguish it from temporary employment, which is not eligible. Further, the proposed section would clarify and more specifically describe the eligibility requirement that a rate of compensation must be comparable to the rate of compensation for other persons employed in similar positions. The proposed rule has also been re-organized into more than one subsection to make it easier to use.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there may be fiscal implications for state or local government as a result of enforcing or administering the amended section. A public education employer may determine, under the clarifications, that some individuals reported as TRS members are not eligible for membership or that others who have not been reported as TRS members are eligible and thus are required to be reported. The proper determination of eligibility status may result in a fiscal cost due to the application of certain contribution requirements for the employer, such as employer contributions during the first 90 days of employment of a new employee or employer contributions for salaries above the statutory minimum with respect to the retirement plan, as well as employer contributions to TRS-Care. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed section would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing the section will be to update the rules to provide clarifications necessary following statutory changes, to describe in greater detail applicable processes or standards, and to reorganize the section for readability and ease of reference. There is an anticipated economic cost to persons who are required to comply with the proposed section. Specifically, a person who is required to be reported but was not previously reported is required to make member contributions at the rate of 6.4% of creditable compensation, as well as active employee contributions to TRS-ActiveCare at the rate of 0.65% of creditable compensation. Contributions required but not made for service in previous school years would be due before any TRS benefit is payable. However, these costs may be offset by benefits payable by TRS upon retirement, death, or refund. Additionally, a person who was incorrectly reported to TRS as a member is not eligible for TRS retirement plan benefits associated with the service; and the individual may not be eligible for participation in the active member health benefits program TRS-ActiveCare. TRS cannot more precisely estimate the fiscal impact on state or local government employers or the economic cost to persons required to comply with the section since it is not known how many employees will be subject to a reconsideration of their TRS eligibility status as a result of amendments to this section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: The amendments are proposed under §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership.

Cross-reference to statute: The proposed amendments affect the following sections of the Government Code - §821.001(6), which defines "employee"; §822.001, which states the membership requirement; §823.002, which addresses service creditable in a year; and §825.403 addressing collection of member contributions.

§25.1. Full-time Service.

(a) Employment of a person by a TRS covered employer for one-half or more of the standard full-time work load at a rate comparable to the rate of compensation for other persons employed in similar positions is regular, full-time service eligible for membership.

[~~Employment of a person by a TRS covered employer for one-half or more of the standard work load at a rate comparable to the rate of compensation for other persons employed in similar positions is defined as regular, full-time service eligible for membership. Any employee of a public state-supported educational institution in Texas shall be considered to meet the requirements of the preceding sentence if his or her customary employment is for 20 hours or more for each week and for four and one-half months or more in one school year.~~]

(b) Any employee of a public state-supported educational institution in Texas shall be considered to meet the requirements of subsection (a) of this section if his or her customary employment is for 20 hours or more for each week and for four and one-half months or more in one school year.

(c) Membership eligibility for positions requiring a varied work schedule is based on the average of the number of hours worked per week in a calendar month and the average number of hours worked must equal or exceed one-half of the hours required for a similar full-time position.

(d) For purposes of subsection (a) of this section, full-time service is employment that is usually 40 clock hours per week. If the TRS-covered employer has established a lesser requirement for full-time employment for specified positions that is not substantially less than 40 hours per week, full-time service includes employment in those positions. In no event may full-time employment require less than 30 hours per week.

(e) If there is no equivalent full-time position of a given non-certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 15. If there is no equivalent full-time position of a given certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 20.

(f) For purposes of subsection (a) of this section, regular employment is employment that is expected to continue for four and one-half months or more. Employment that is expected to continue for less than four and one-half months is temporary employment and is not eligible for membership.

(g) For purposes of subsection (a) of this section, a rate of compensation is comparable to other persons employed in similar positions if the rate of compensation is within the range of pay established by the Board of Trustees for other similarly situated employees or is the customary rate of pay for persons employed by that employer in similar positions.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605927
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER B. COMPENSATION

34 TAC §25.21, §25.31

As part of the rule review of 34 TAC Chapter 25 relating to membership credit being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to §25.21 and §25.31. The original notice of intention to review Chapter 25 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 25 is published elsewhere in this issue of the *Texas Register*. TRS has assessed §25.21 and §25.31 and determined the reasons for initially adopting the sections continue to exist, with the proposed changes described in this notice. Explanation of the proposals is set out below.

Section 25.21 concerns compensation subject to deposit and credit. The rule describes what compensation is considered TRS-eligible. The proposed amendments would clarify that, in general, salary and wages include recurring base pay. This change is proposed to emphasize that, if an employer creates a type of compensation that is not part of the employee's recurring base pay, then that compensation could be excluded from TRS-eligible compensation. TRS also proposes language to clarify what is intended with regard to additional compensation for service in a particular location of the employer and to clarify that payment for accrued but not used compensatory time for overtime worked is not eligible compensation. Additionally, TRS proposes to amend the rule to reflect amendments to Government Code, §822.201(b) made by the 79th Legislature, Third Called Session, in House Bill 1 (2006), §4.11, by providing that "salary and wages" will include compensation paid under three new programs established by House Bill 1. Another proposed amendment would exclude bonus and incentive payments unless state law requires such to be included; this change is proposed to make administration of this provision consistent and to exclude from compensation unusual types of payments on which deposits normally are not received over the length of a person's career. Proposed amendments also would exclude payments that an employer has chosen to exclude from salary and wages because they are not expected to be recurring or because the employer does not consider them to be base pay. The proposed amendments emphasize that excluding certain payments from TRS-eligible compensation may be needed for the protection of the actuarial soundness of the system and to implement the intent of the TRS benefit structure to pay only a percentage of normal, recurring base salary as replacement pay during retirement. The proposed amendments also address applying federal tax code limits on creditable compensation on a plan year basis.

Section 25.31 concerns percentage limits on compensation increases. This rule places a limit of 10% or $10,000 on increases in the last years before retirement. TRS proposes amendments to clarify that increases resulting from increasing the amount of time worked are subject to the limits. The amendments also clarify that overtime pay that is required by federal law is not subject to the limit.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that, for the first five-year period the proposed sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed sections would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each section will be to update the rules to

reflect recent changes in law or to provide clarifications needed due to recent changes in law, as well as to otherwise clarify provisions or to expressly or in greater detail describe processes or standards in use. There may be an economic cost to members who are required to comply with the proposed sections since the sections address what compensation is creditable for TRS purposes and thus determine the compensation on which member contributions and TRS-ActiveCare contributions must be paid and on which TRS retirement plan benefits may be based. Because benefits calculations would only be affected if the compensation was paid in one of the three years that the member receives his or her highest salary, it is difficult to estimate any actual cost to a member.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: The amendments are proposed under §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership and for the administration of the funds of the retirement system, and under §825.110, which requires the board to adopt rules that include a percentage limit on increases in annual compensation.

Cross-reference to statute: The proposed amendments affect the following sections of the Government Code - §821.001(4), which defines "annual compensation" and §822.201, which describes compensation subject to report and deduction for member contributions and to credit in benefit computations.

§25.21. Compensation Subject to Deposit and Credit.

(a) (No change.)

(b) Some payments made by an employer to a member are not salary or wages, even though the payments may be otherwise considered as compensation under the employment contract or federal tax laws. In general salary and wages creditable and subject to deposit are those types of monetary compensation that are recurring base pay for periods of employment and that [~~which~~]:

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

(c) The following types of monetary compensation are to be included in annual compensation:

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

(3) additional compensation paid for additional duties, for longevity, for overtime worked as required by law, or for service in a particular location or specialty the employer determines requires additional compensation compared to other employees of that employer, provided that these payments clearly meet the requirements of subsection (b) of this section;

(4) delayed payments of lump-sum amounts which by law or contract should have been paid at fixed intervals and which otherwise meet the requirements of subsection (b) of this section provided the amounts are credited to the payroll period in which they were earned; and

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

(7) compensation received under the awards for student achievement program under Subchapter N of Chapter 21, Education Code, the educator excellence awards program under Subchapter O of Chapter 21, Education Code, or a mentoring program under §21.458, Education Code;

(8) [~~(7)~~] a merit salary increase made under Education Code, §51.962;

(9) [~~(8)~~] amounts deducted from regular pay for a qualified transportation benefit under Government Code §659.202; and

(10) [~~(9)~~] compensation designated as health care supplementation by an employee under Subchapter D, Chapter 22, Education Code, as amended by House Bill 1, 79th Legislature, Third Called Session. This paragraph modifies the provision of the retirement plan described in §822.201, Government Code, as amended by House Bill 1, 79th Legislature, Third Called Session, to the extent necessary for the retirement system to be a qualified plan.

(d) The following are excluded from annual compensation:

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

(3) payments for accrued compensatory time for overtime worked or for accrued sick leave or vacation, except that continued payments of normal compensation when vacation or sick leave or compensatory time is actually taken by an employee will be included in annual compensation to the extent otherwise permitted by this section;

(4) (No change.)

(5) bonus and incentive payments , unless state law expressly provides that a type of bonus or incentive payment is to be considered TRS-creditable compensation or the payments otherwise qualify as performance pay under subsection (c)(6) of this section [~~which are not included in the contract of employment and for which the employer receives no additional consideration or value~~];

(6) - (10) (No change.)

(11) any other fringe benefit; [~~and~~]

(12) payments that an employer intentionally does not include in salary and wages because they are not expected to be permanently recurring in each pay period of employment or because they are not considered base pay and that, for the protection of the actuarial soundness of the retirement system, the type of payment should not be included in the calculation of a lifetime retirement benefit intended to replace a percentage of the member's base pay at retirement; and

(13) [~~(12)~~] payments for terminating employment or paid as an incentive to terminate employment. Examples of such payments include payments for contract buy-outs, amounts paid pursuant to an agreement in which the employee agrees to terminate employment or to waive or release rights to future employment, and amounts paid pursuant to early retirement incentive programs or other programs intended to increase the compensation paid to the employee upon receipt of the resignation of the employee or the waiver or release of rights to future employment. Increased compensation paid in the final year of employment prior to retirement that exceeds increases approved by the employer for all employees or classes of employees is presumed to be payment for terminating employment.

(e) The maximum amount of compensation of any member that may be taken into account under the retirement system shall not exceed $150,000 for plan years commencing on or after September 1, 1996. For plan years commencing on or after January 1, 2002, the maximum amount of compensation shall not exceed the limit contained in the Internal Revenue Code §401(a)(17)(A), 26 United States Code §401(a)(17)(A). For plan years beginning before January 1, 1997, in determining the compensation of any member for any year, the family aggregation rules of the Internal Revenue Code, §414(q)(6), 26 United States Code §414(q)(6) shall apply except the term "family" shall include only the spouse of the member and any lineal descendants of the member who have not attained age 19 before the end of the year.

The limits set forth in the first two sentences of this subsection shall be increased from time to time, to reflect cost of living increases, in accordance with the Internal Revenue Code, §401(a)(17), 26 United States Code §401(a)(17). The dollar limitation prescribed in the first two sentences of this subsection shall not apply to limit the compensation of any person who first becomes a member before September 1, 1996. Furthermore, that limitation shall not apply for any period during which such limitation is repealed or is not enforced by the Internal Revenue Service with regard to governmental plans. In applying the limits described in this section, a plan year is September 1 through August 31.

(f) (No change.)

§25.31. Percentage Limits on Compensation Increases.

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

(d) Increases in compensation due to a change in employers, a change in duties, additional duties or work, legislation, or federal or state law are not subject to the limits in subsection (a) of this section and the allowable amount of compensation for the remaining years prior to retirement is calculated using the increased amount. For purposes of this subsection, increasing the percentage of time worked performing the same duties or working additional days performing the same duties is not considered a change in duties or additional duties or work. However, compensation paid as wages under the Fair Labor Standard Act for overtime worked is not subject to the limits in subsection (a) of this section because it is an amount required to be paid under federal law.

(e) - (i) (No change.)

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605928
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 25. MEMBERSHIP CREDIT

As part of the rule review of 34 TAC Chapter 25 relating to membership credit being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to §§25.33, 25.41 - 25.46, 25.75, 25.113, 25.121, 25.123, 25.131, 25.184, 25.201, and 25.301. TRS also proposes amendments to §§25.1, 25.21, 25.31, 25.82, 25.161, and 25.164; however, notices of the proposed amendments to those sections are published elsewhere in this issue of the *Texas Register.* TRS also proposes the repeal of §25.44 and the creation of new §25.302 as a result of the rule review. The original notice of intention to review Chapter 25 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 25 is published elsewhere in this issue of the *Texas Register.* TRS has assessed the rules with proposed amendments and determined the reasons for initially adopting them continue to exist, with the changes described in this notice. Explanations of the proposals are set out below by subchapter of Chapter 25. Subchapters without proposed changes in them are not included.

Subchapter A, Service Eligible for Membership: This subchapter contains six rules addressing service that will make a Texas public education employee eligible for TRS pension plan membership. Changes are proposed for one rule in the subchapter, §25.1, but as noted above, notice of the changes is provided elsewhere in this issue of the *Texas Register.*

Subchapter B, Compensation: This subchapter contains eleven rules addressing the compensation on which member deposits are required for public education employees eligible for membership. Changes are proposed for three rules in the subchapter - §§25.21, 25.31, and 25.33. As noted above, notice of the changes to §25.21 and §25.31 is provided elsewhere in this issue of the *Texas Register.*

Section 25.33 concerns contribution limitation based on compensation. In accordance with federal tax law, TRS proposes amendments to this rule to clarify that the annual limit on voluntary contributions a member may make to the retirement system is applied on a plan year basis (September 1 through August 31), even if a member has a non-standard school year for reporting and service credit purposes.

Subchapter C, Unreported Service or Compensation: This subchapter contains six rules addressing service or compensation that should have been reported to TRS by a Texas public education employer but was not reported. TRS proposes amendments to five of the rules in the subchapter - §§25.41 - 25.43, 25.45, and 25.46 - as well as the repeal of §25.44.

Section 25.41 concerns required deposits for unreported service or compensation. The amendments proposed for this rule include changing the name of the section to distinguish it from §25.25, which concerns the required deposit of 6.4% of TRS-eligible compensation. Other proposed amendments would clarify that the rule applies to unreported compensation as well as to unreported service and emphasize that the fee specified in §25.43 is applicable.

Section 25.42 concerns payment of benefits contingent on deposit. This rule provides that benefits will not be paid unless all deposits that are due are paid. TRS proposes amendments to clarify the intent that all deposits, whether for unreported service or unreported compensation, must be paid.

Section 25.43 concerns deposits for unreported service. This rule addresses the statutory fee on deposits for unreported service or compensation. TRS proposes amendments to clarify the title of the section and to clarify that it applies to unreported compensation as well as to unreported service.

Section 25.44 concerns service eligibility. TRS proposes the repeal of this obsolete rule. As written, the rule seems to apply only to teachers and auxiliary employees. Based on the dates given in the rule, it is unlikely that the rule will be applied to a member.

Section 25.45 concerns verification of unreported compensation or service. This rule addresses how unreported service or compensation must be verified. TRS proposes amendments to clarify applicability of the rule to unreported compensation as well as to unreported service. Proposed minor wording changes would more accurately describe the types of documents that TRS may accept as verification. TRS also proposes new language clarifying that unreported compensation or service cannot be verified after payment of a death benefit.

Section 25.46 concerns determination of compensation subject to deposit and credit. This rule explains how deposits on unreported service will be calculated. TRS proposes amendments to clarify that unreported compensation, as well as unreported deposits, are subject to the method of calculation specified.

Subchapter F, Veteran's (USERRA) Service Credit: This subchapter contains six rules addressing the purchase of TRS service credit based on certain military service in accordance with the Uniformed Services Employment and Re-Employment Rights Act (USERRA), 38 U.S.C. §4301 et seq. TRS proposes amendments to one rule in the subchapter, §25.75.

Section 25.75 concerns application for eligible active military duty under USERRA. This rule establishes procedures and deadlines for the purchase of USERRA service credit. TRS proposes an amendment that would retain the five-year deadline but would also provide for any additional time allowed under USERRA or federal regulations enacted to implement USERRA.

Subchapter G, Purchase of Credit for Out-of-State Service: This subchapter contains six rules addressing the purchase of TRS service credit for out-of-state public education service. TRS proposes amendments to one rule in the subchapter, §25.82, but as noted above, notice of the changes to §25.82 is provided elsewhere in this issue of the *Texas Register.*

Subchapter H, Joint Service with Employees Retirement System: This subchapter contains one rule, §25.113, implementing the service transfer between TRS and the Employees Retirement System of Texas (ERS) as provided for in Chapter 805 of the Government Code. TRS proposes amending §25.113.

Section 25.113 concerns the transfer of credit between TRS and ERS. The rule describes specific steps and requirements to transfer service between the two state systems. TRS proposes several amendments to clarify the salary average that will be used in a transfer, in light of the recent statutory change from a three-year average to a five-year average for TRS members who are not grandfathered to use a three-year average. Other wording clarifications also are proposed, including clarification for working after retirement when a member has transferred service credit.

Subchapter I, Verification of Service: This subchapter contains three rules addressing the verification of compensation or service that is required to be reported but that was not reported. Changes are proposed to two rules in this subchapter, §25.121 and §25.123.

Section 25.121 concerns employer verification. This rule provides the general methods of verifying unreported service. TRS proposes amendments to clarify that the rule also applies to unreported compensation and to require that an employer must provide copies of documents supporting the verification of service or compensation upon request by TRS.

Section 25.123 concerns certification. This rule further specifies the procedures for verification of service or compensation. TRS proposes an amendment to expressly state that TRS determines whether the verified service or compensation is eligible for TRS purposes.

Subchapter J, Creditable Time and School Year: This subchapter contains four rules addressing the amount of service required in a school year in order for a member to accrue a year of TRS membership service credit. TRS proposes changes to one rule in the subchapter, §25.131.

Section 25.131 concerns required service. This rule establishes the basic length of service requirement to obtain a year of TRS membership credit. TRS proposes non- substantive amendments reorganizing the section to make it easier to read.

Subchapter L, Other Special Credit Service: This subchapter contains four rules addressing the purchase of TRS service credit. TRS proposes changes to two rules in this subchapter, §25.161 and §25.164, but as noted above, notice of the proposed changes to these rules is provided elsewhere in this issue of the *Texas Register.*

Subchapter N, Installment Payments: This subchapter contains nine rules addressing the use of an installment payment plan for the purchase of service credit, when eligible. TRS proposes changes to one rule in the subchapter, §25.184.

Section 25.184 concerns refund for nonpayment. This rule provides for TRS to terminate an installment payment agreement if a participant is late with payments or does not make payments as agreed upon. A member whose installment agreement is terminated cannot use this method for three years. TRS proposes amendments to expressly state that if an installment agreement for the purchase of equivalent membership service credit under §25.163 is terminated, the member will not be able to purchase this service credit because the statute providing the opportunity to do so, §823.405 of the Government Code, was repealed effective January 1, 2006.

Subchapter O, Rollover Distributions and Transfers to TRS: This subchapter contains one rule addressing the use of rollovers or trustee-to-trustee transfers for the purchase of TRS service credit. TRS proposes changes to the rule in this subchapter, §25.201.

Section 25.201 concerns acceptance of rollovers and transfers for purchase of TRS credit. This rule explains that TRS will accept an eligible rollover distribution from another eligible retirement plan, such as another qualified defined benefit plan, a 401(k) plan, or an IRA. The rule identifies, consistent with the federal tax code, what kinds of payments are not considered eligible rollovers. For example, under the current rule, the portion of a distribution that is not includible in gross income (i.e., after tax amounts) are not considered eligible for rollover. However, the recently enacted Pension Protection Act of 2006 amends the federal tax code to permit defined benefit plans to accept rollovers of after tax money. To permit rollover of after tax money under the new federal law, TRS proposes amending the rule to authorize this option.

Subchapter P, Calculation of Fees: This subchapter contains one rule addressing calculation of fees when the cost to purchase a type of service credit or to reinstate service credit includes a fee. TRS proposes changes to the current rule in the subchapter, §25.301, and the adoption of a new rule, §25.302. TRS also proposes changing the title of the subchapter to "Calculation of Fees and Costs" to reflect the proposed addition of new rule §25.302.

Section 25.301 concerns calculation of fees. This rule explains how fees are calculated. Staff proposes an amendment to clarify that fees are calculated from the end of the school year to the beginning date of the school year in which payment is received or installment payment commences. The amendments conform to current practice.

Proposed new §25.302 concerns the calculation of actuarial cost. As explained above, TRS proposes to move the detailed

explanation of actuarial cost and the accompanying tables in three different rules (§25.82 relating to the purchase of out-of-state service credit; §25.161 relating to the purchase of work experience service credit; and §25.164 relating to the purchase of membership waiting period service credit) to one consolidated new rule for actuarial cost calculations, proposed new §25.302. The proposed new section would replace the language in those other three rules explaining the actuarial cost calculations and the graphics accompanying those explanations. No substantive changes would be made by this consolidation of rule text.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register,* the sections of 34 TAC Chapter 25 not mentioned above are proposed for readoption without changes because, having assessed those rules, TRS has determined that the reasons for adopting them continue to exist.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will not be an effect on small or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, or, to the extent any economic cost accompanies compliance with the proposed sections, the cost is the result of applicable statutory provisions.

For each year of the first five years that the proposed sections would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each section will be to update the rules to reflect recent changes in law or to clarify matters arising as a result of implementation of changes, to clarify provisions or to describe processes or standards in use in a more detailed or express manner, and to reorganize several provisions for readability and ease of reference.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

SUBCHAPTER B. COMPENSATION

34 TAC §25.33

Statutory Authority: The amendment is proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §805.009, Government Code, which authorizes the Board to adopt rules for the administration of Chapter 805, Government Code; §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; §823.005, which authorizes the Board to adopt rules for the acceptance of rollovers; and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The proposed amendment affects the following statutes - Chapter 805, Government Code, which authorizes transfer of service credit between TRS and the Employees Retirement System of Texas (ERS); §821.001, Government Code, providing a definition of "annual compensation"; §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, providing for fees for the reinstatement of credit canceled by membership termination; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.410, Government Code, providing for installment payments; §825.105, authorizing the Board to adopt actuarial tables; §825.505, Government Code, which authorizes TRS to audit employer records; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §55 and §63, which repeal of the credit purchase option effective January 1, 2006 but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members.

§25.33. Contribution Limitation Based on Compensation.

Contributions and other additions with respect to a participant, including payments for the purchase of TRS service credit, may not exceed the limitations of 26 United States Code §415. Payments for the purchase of TRS service credit may be limited under §415 to a percentage of compensation of the participant from the employer for the plan [~~school~~] year in which the payments are sought to be made. Payments made by a beneficiary in order to purchase service credit after the death of a member are subject to the same limitations as if the payments were made by the member. For a plan [~~school~~] year in which no compensation is received by a member from a TRS-covered employer, the member or the member's beneficiary may not make deposits for service credit, unless such deposits specifically would be permitted under §415. TRS shall administer the requirements for limitations on contributions and other additions in a manner necessary to comply with federal tax laws relating to plan qualification.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605930

Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER C. UNREPORTED SERVICE OR COMPENSATION

34 TAC §§25.41 - 25.43, 25.45, 25.46

Statutory Authority: The amendments are proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §805.009, Government Code, which authorizes the Board to adopt rules for the administration of Chapter 805, Government Code; §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; §823.005, which authorizes the Board to adopt rules for the acceptance of rollovers; and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The proposed amendments affect the following statutes - Chapter 805, Government Code, which authorizes transfer of service credit between TRS and the Employees Retirement System of Texas (ERS); §821.001, Government Code, providing a definition of "annual compensation"; §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, providing for fees for the reinstatement of credit canceled by membership termination; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.410, Government Code, providing for installment payments; §825.105, authorizing the Board to adopt actuarial tables; §825.505, Government Code, which authorizes TRS to audit employer records; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §55 and §63, which repeal of the credit purchase option effective January 1, 2006 but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members.

§25.41. [~~Required~~] Deposits for Unreported Service or Compensation.

(a) Persons who have been required by law to be members of the Teacher Retirement System of Texas or who have service or compensation on which contributions were required but who have not made the required deposits shall start making deposits immediately for current service and shall make deposits as quickly as possible for previous service or compensation, along with the fee required under §25.43 of this title (Fee on Deposits for Unreported Service or Compensation).

(b) Failure to make all required deposits will [~~in years of TRS-covered employment may~~] result in ineligibility for benefits from TRS.

(c) Deposits for unreported service or compensation shall be paid in a manner consistent with any applicable limitations of 26 United States Code §415, including any applicable limitations on payments as a percentage of compensation from a TRS-covered employer in the school year in which the payments are made.

§25.42. Payment of Benefits Contingent on Deposits.

No benefits will be paid until all required deposits have been received [~~for all service which was eligible for membership~~.

§25.43. Fee on Deposits for Unreported Service or Compensation.

A fee will be charged on deposits for unreported service or compensation at the rate of 5.0% per annum of the deposits due from the end of the school year in which the deposits were due or the end of the 1974-1975 school year, whichever is later, until the date of payment.

§25.45. Verification of Unreported Compensation or Service.

Members who claim unreported service or compensation after the school year in which it was received must verify the claim by presenting to the Teacher Retirement System such evidence as the staff of the system may require to provide clear and convincing proof of the existence and amount of such service or compensation, such as [~~including, but not limited to,~~] a [~~certified~~]copy of the minutes of the governing board of the [~~his~~] employing institution, [~~certified~~] copies of any written contracts between the member and the employer, a verified statement by the employer of the reasons why such service or compensation was not reported earlier, and copies of income tax documents showing that the [~~such alleged~~] compensation was reported as income for the member. In no event shall verification be accepted after a member has retired from the system and the [~~his or her~~] first monthly annuity payment has been issued, [~~or~~] after the effective date of a member's participation in the Deferred Retirement Option Plan, or after the payment of a death benefit. A fee for deposits for unreported service as provided in §25.43 of this title (relating to Fee on Deposits for Unreported Service or Compensation) will be assessed when applicable on the amount of such unreported service or compensation.

§25.46. Determination of Compensation Subject to Deposit and Credit.

The amount of deposits due for unreported service or compensation will be calculated at the member contribution rate in effect for the year in which the service was rendered but for which no deposits or insufficient deposits were made. Contributions will be based on creditable compensation as determined under the laws and rules applicable at the time of the service.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605980
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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34 TAC §25.44

(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 Teacher Retirement System of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority: The repeal is proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit.

Cross-reference to Statute: The proposed repeal affects the following statute - §823.002, which provides for service creditable in a year.

§25.44. Service Eligibility.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605981
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER F. VETERAN'S (USERRA) SERVICE CREDIT

34 TAC §25.75

Statutory Authority: The amendment is proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §805.009, Government Code, which authorizes the Board to adopt rules for the administration of Chapter 805, Government Code; §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; §823.005, which authorizes the Board to adopt rules for the acceptance of rollovers; and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The proposed amendment affects the following statutes - Chapter 805, Government Code, which authorizes transfer of service credit between TRS and the Employees Retirement System of Texas (ERS); §821.001, Government Code, providing a definition of "annual compensation"; §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, providing for fees for the reinstatement of credit canceled by membership termination; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.410, Government Code, providing for installment payments; §825.105, authorizing the Board to adopt actuarial tables; §825.505, Government Code, which authorizes TRS to audit employer records; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §55 and §63, which repeal of the credit purchase option effective January 1, 2006 but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members.

§25.75. Application for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act.

Members desiring to make deposits for service or compensation credit for eligible military duty under the Uniformed Services Employment and Re-Employment Rights Act (USERRA) should request in writing to be billed for the cost of the credit. Requests should be addressed to Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Included with the request should be a certified or legible unaltered copy or copies of the member's service record showing the dates and nature of the member's military duty. Also included with the request should be a certification of the date of the member's application for reemployment with a Teacher Retirement System of Texas (TRS) covered employer or other proof of the date of employment with a TRS covered employer. The system may also require the member to make available to it such other evidence as may be required to establish the member's eligibility under the USERRA and §25.71 of this title (relating to Service Credit for Eligible Active Duty under the Uniformed Services Employment and Re-Employment Rights Act) for retirement credit and the amount of the deposits due. When the system determines the duty is eligible for credit, it shall bill the member for the total amounts of deposits and fees due for the credit at the last address of the member of which the system has record. The member must return the bill to the system with the total amount due for the

eligible credit or with an installment payment agreement and all subsequent installment payments due. Deposits for military duty eligible for credit under the USERRA and §25.71 of this title must be made during a period beginning with the date of re-employment and which has a duration of three (3) times the period of the person's uniformed service, not to exceed five (5) years, subject to any additional period available under USERRA.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605982
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER H. JOINT SERVICE WITH EMPLOYEES RETIREMENT SYSTEM

34 TAC §25.113

Statutory Authority: The amendment is proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §805.009, Government Code, which authorizes the Board to adopt rules for the administration of Chapter 805, Government Code; §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; §823.005, which authorizes the Board to adopt rules for the acceptance of rollovers; and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The proposed amendment affects the following statutes - Chapter 805, Government Code, which authorizes transfer of service credit between TRS and the Employees Retirement System of Texas (ERS); §821.001, Government Code, providing a definition of "annual compensation"; §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, providing for fees for the reinstatement of credit canceled by membership termination; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.410, Government Code, providing for installment payments; §825.105, authorizing the Board to adopt actuarial tables; §825.505, Government Code, which authorizes TRS to audit employer records; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §55 and §63, which repeal of the credit purchase option effective January 1, 2006 but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members.

§25.113. Transfer of Credit between TRS and ERS.

(a) Purpose. These rules are intended to implement the provisions of the Government Code, Chapter 805, concerning the transfer of credit between the Teachers Retirement System of Texas and the Employees Retirement System of Texas and to provide a systematic method of funding the actuarial value of the annuity resulting from transferred service.

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

(1) Receiving system--The system which will pay benefits based upon service credit transferred from the other system.

(2) Transferring system--The system from which service credit is transferred for the purpose of obtaining additional benefits from the other system.

(3) TRS--The Teacher Retirement System of Texas.

(4) ERS--The Employees Retirement System of Texas.

(5) Crediting system--means the system in which service credit is established prior to any transfer.

(6) ORP--The Optional Retirement Program described in Government Code, Chapter 830.

(c) Forms.

(1) Applicants for transfer must use forms prescribed by the receiving system.

(2) Applicants for the establishment of any service credit must use the forms prescribed by the crediting system.

(3) The systems will cooperate in adopting forms necessary to facilitate the exchange of information between the systems.

(d) Notice.

(1) A person electing to transfer service credit pursuant to these rules must file the appropriate form with the receiving system not later than the person's intended effective date of retirement or the last day of the month in which their retirement application is filed, whichever is later [~~said effective date~~].

(2) A beneficiary eligible to transfer service to the receiving system for the payment of death benefits shall make the election on an application form not later than 90 days after the date of death of the member.

(3) The receiving system will notify the transferring system of the pending transfer not later than 30 days following date of receipt of an application form.

(e) Manner of Transfer.

(1) Service credit and assets will be transferred through electronic and hard copy documentation pursuant to these rules, and the receiving system will maintain records of such transfers permanently.

(2) The transferring system shall provide documentation of years of credit, periods of service, military service credit, average salary, method of calculation of service credit and average salary, information necessary to comply with all federal tax regulations, interest credited, fees and interest paid, and any other dollar amount which will be a part of the transfer.

(f) Transfer of funds. The ERS and the TRS agree on the following method of transferring funds. Each system shall certify on a monthly basis the total dollar amount of annuities paid by the system which are based on service credit transferred pursuant to Government Code, Chapter 805. The amount certified shall exclude any portion of annuities paid consisting of post-retirement increases. Each system shall remit to the other system the amount certified within thirty days of receipt of such certification. It is recognized that adjustments will be made from month-to-month as a result of such things as administrative errors, the death of the annuitant or a beneficiary, return-to-work, and recovery from disability by an annuitant. The systems will jointly agree on the administrative and accounting procedures to be established in order to ensure the transfer of funds pursuant to this section.

(g) Reinstatement of withdrawn service credit.

(1) An ERS member with at least 36 months service credit in ERS may reinstate service credit in TRS that was canceled by the person's withdrawal of a TRS membership account.

(2) Such reinstatement of TRS credit shall be in the amounts and rates applicable to TRS members eligible to repurchase such credit.

(3) A TRS member with three years' service credit may reinstate, through ERS, service credit canceled by withdrawal of an ERS membership account.

(4) No service credit may be transferred based in whole or in part upon reinstated credit under this section unless the applicant meets all conditions for membership, amount of service credit, and payments required for the reinstatement of the credit.

(5) Any TRS membership service credit reinstated under this subsection may be applied toward the service credit requirements of TRS laws and rules for the purchase of out-of-state, military or other special service credit.

(h) Termination of membership. The transfer of TRS service credit to ERS will terminate TRS membership and cancel all rights to benefits from TRS based on that service.

(i) Service in the month following retirement. Both TRS and ERS laws require a separation from employment with any employer covered by the respective system for a period following a member's effective retirement date as a condition for retirement with a benefit from the respective system. With respect to a service retirement by persons using credit transferred between the systems, the following provisions apply:

(1) An ERS retiree[~~,~~] whose last place of employment is with a TRS-covered employer must be off the payroll of any [~~at the~~] TRS-covered employer for the first full calendar month following retirement under [~~at~~] ERS, or the ERS retirement will be canceled. A TRS retiree[~~,~~] whose last place of employment is with an ERS-covered employer [~~agency~~] must be off the payroll of any [~~at the~~] ERS-covered employer [~~agency~~] for the first full calendar month following retirement under [~~at~~] the TRS, or the TRS retirement will be canceled.

(2) An ERS retiree[~~,~~] whose last place of employment is with an ERS-covered employer [~~agency~~], may begin [~~return to~~] work for [~~with~~] a TRS-covered employer after retirement under ERS without a one month break in service [~~without restrictions~~]. A retiree from the TRS[~~,~~] whose last place of employment is with a TRS-covered employer, may begin [~~go to~~] work for an ERS-covered employer employer after retirement under TRS without a one month break in service [~~agency without restrictions~~].

(j) Average salary.

(1) In determining average salary used in computing benefits available to a person transferring credit under this section, the receiving system will use the higher of the average compensation factors derived solely from the service originally established in each system respectively.

(2) Each system will be responsible for determining its respective average salary factor. The transferring system will certify its average salary factor to the receiving system.

(3) If there is insufficient service to determine an average salary factor in the transferring system under the laws and rules applicable to that system, benefits will be based upon the average salary factor of the receiving system.

(4) If there is insufficient service to determine an average salary factor in the receiving system under the laws and rules applicable to that system, benefits will be based upon the average salary factor of the transferring system.

(5) If there is insufficient service to determine an average salary factor under either the transferring system or the receiving system under the laws and rules applicable to each system, respectively, benefits will be based upon an average salary factor of the receiving system. The average salary factor shall be based on the number of years of service credit the member has in that system.

(k) Transfer of Certain State Employees to ERS.

(1) Certain state employees have been transferred to ERS membership as a result of legislation enacted by the 73rd Texas Legislature, Regular Session. Among these are employees of the Texas Education Agency, employees of the Texas Surplus Property Agency transferred to the General Services Commission, some employees of the Texas Rehabilitation Commission, the Texas School for the Deaf, the Texas School for the Blind, the Higher Education Coordinating Board, the Texas Youth Commission. Such employees are eligible to transfer TRS credit to ERS for benefit purposes under the Government Code, Chapter 805 subject to the modifications contained in this section.

(2) Employees whose agencies have been transferred to ERS coverage, including the Texas Education Agency and the Texas Rehabilitation Commission, the Texas School for the Deaf, the Texas School for the Blind, the Higher Education Coordinating Board, and the Texas Youth Commission, may not retire under TRS after the effective date of the transfer, unless they again become TRS members based on other employment and subsequently obtain TRS service credit qualifying them for TRS retirement, except as provided for in Government Code, §805.002(a).

(3) Employees described in paragraph (1) of this subsection are not eligible for TRS death benefits other than a return of accumulated contributions.

(4) Notwithstanding subsection (j) of this section, the average compensation of employees described in paragraph (1) of this subsection qualifying for ERS benefits may be determined by combining monthly rates of pay while a TRS member with ERS credited monthly salary to obtain the highest 36 months of pay.

(l) Death benefits. Service credit of a person may not be transferred between systems if:

(1) one of the systems has paid or begun to pay death benefits based on the person's account; or

(2) the beneficiaries for death benefits in each system are not identical. However [~~Except~~], when only reinstated service is being transferred and no beneficiary designation was made at or after the time of reinstatement, a transfer will be allowed.

(m) Service credit.

(1) TRS will make and accept transfers of service credit in whole plan year increments based upon TRS rules for crediting service. No partial years will be transferred.

(2) TRS and ERS service [~~credit~~] in a plan year will not be combined to obtain a year of TRS service credit.

(n) ORP participants. A person who has elected to participate in ORP but who is an ERS member may repurchase TRS service credit canceled by the election of [~~or~~] ORP for purpose of transferring it to ERS under the Government Code, Chapter 805, provided TRS will not transfer or pay benefits for such service credit if the member actively participates in ORP between the date the TRS service credit is purchased and the date of the member's retirement or death. TRS will refund without interest any amounts deposited for such credit in the event the person returns to active ORP participation. The person must agree to refund the amount of any benefits erroneously paid to the person as a result of any such return to ORP.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605983
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER I. VERIFICATION OF SERVICE OR COMPENSATION

34 TAC §25.121, §25.123

Statutory Authority: The amendments are proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §805.009, Government Code, which authorizes the Board to adopt rules for the administration of Chapter 805, Government Code; §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; §823.005, which authorizes the Board to adopt rules for the acceptance of rollovers; and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The proposed amendments affect the following statutes - Chapter 805, Government Code, which authorizes transfer of service credit between TRS and the Employees Retirement System of Texas (ERS); §821.001, Government Code, providing a definition of "annual compensation"; §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, providing for fees for the reinstatement of credit canceled by membership termination; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.410, Government Code, providing for installment payments; §825.105, authorizing the Board to adopt actuarial tables; §825.505, Government Code, which authorizes TRS to audit employer records; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §55 and §63, which repeal of the credit purchase option effective January 1, 2006 but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members.

§25.121. Employer Verification.

Verification of unreported service or compensation must be made [~~done~~] by the employer on a form prescribed by TRS. At the request of TRS, employers shall provide copies of any records or information regarding service or compensation, including but not limited to contracts, work agreements, salary schedules or addenda, board minutes, payroll records, employment records, or other materials that will assist TRS in making a determination. TRS may rely upon employer verifications of service or compensation or may conduct an investigation to determine whether verified service or compensation is eligible.

§25.123. Certification.

The correctness of this affidavit must be certified by an official of the school where the service was rendered. This can be done by the superintendent, business manager, certified reporting official, secretary of the school board, or treasurer of the school board at the time the certification is made. The certification must be based upon the existing records maintained by the school and must be notarized. TRS shall

determine whether the verified service or compensation is eligible for TRS purposes.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605984
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER J. CREDITABLE TIME AND SCHOOL YEAR

34 TAC §25.131

Statutory Authority: The amendment is proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §805.009, Government Code, which authorizes the Board to adopt rules for the administration of Chapter 805, Government Code; §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; §823.005, which authorizes the Board to adopt rules for the acceptance of rollovers; and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The proposed amendment affects the following statutes - Chapter 805, Government Code, which authorizes transfer of service credit between TRS and the Employees Retirement System of Texas (ERS); §821.001, Government Code, providing a definition of "annual compensation"; §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, providing for fees for the reinstatement of credit canceled by membership termination; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.410, Government Code, providing for installment payments; §825.105, authorizing the Board to adopt actuarial tables; §825.505, Government Code, which authorizes TRS to audit employer records; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §55 and §63, which repeal of the credit purchase option effective January 1, 2006 but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members.

§25.131. Required Service.

(a) Except as provided in subsections (b), (c) and (d) of this section, a [~~A~~] member must serve at least 4 1/2 months in an eligible position during the school year to receive credit for a year of service. [~~Exceptions to this requirement are the following:~~]

(b) [~~(1)~~] A member who served less than four and one-half months in a school year but served a full semester of more than four calendar months will receive credit for a year of service.

(c) [~~(2)~~] A substitute as defined in §25.4 of this title (relating to Substitutes) will be qualified for membership and granted a full year of service credit [~~will be granted either to a substitute who qualifies for membership~~] by [~~virtue of~~] rendering [~~and paying for~~] 90 or more days of service as a substitute in a school year and verifying the service as provided in §25.121 of this title (relating to Employer Verification) and paying deposits and fees for the service as provided in §25.43 of this title (relating to Fee on Deposits for Unreported Service or Compensation [~~per §25.4 of this title (relating to Substitutes)~~].

(d) An [~~or to an~~] employee who enters into an employment contract or oral or written work agreement for a period which would qualify the employee for a year of service credit under the other provisions of this section but who actually renders only the amount of service specified in §25.4 of this title will receive credit for a year of service credit.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605985
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER N. INSTALLMENT PAYMENTS

34 TAC §25.184

Statutory Authority: The amendment is proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §805.009, Government Code, which authorizes the Board to adopt rules for the administration of Chapter 805, Government Code; §823.002,

Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; §823.005, which authorizes the Board to adopt rules for the acceptance of rollovers; and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The proposed amendment affects the following statutes - Chapter 805, Government Code, which authorizes transfer of service credit between TRS and the Employees Retirement System of Texas (ERS); §821.001, Government Code, providing a definition of "annual compensation"; §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, providing for fees for the reinstatement of credit canceled by membership termination; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.410, Government Code, providing for installment payments; §825.105, authorizing the Board to adopt actuarial tables; §825.505, Government Code, which authorizes TRS to audit employer records; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §55 and §63, which repeal of the credit purchase option effective January 1, 2006 but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members.

§25.184. Refund for Nonpayment.

(a) The Teacher Retirement System of Texas (TRS) may refund installment payments already made, but not credited towards service if:

(1) an installment payment is not made in full within 60 days after the due date;

(2) two or more consecutive monthly payments have been made through a check on an account with insufficient funds or a closed account or through an automatic bank draft for which insufficient funds were available;

(3) a member notifies TRS in writing that he will no longer make payments pursuant to the installment schedule and requests a refund of amounts previously paid; or

(4) the number of partial payments becomes excessive.

(b) If TRS refunds payments pursuant to this section, the member is not permitted to use the installment payment method or the payroll deduction method of payment for the same service for a period of three years from the date of the refund. If TRS refunds payments pursuant to this section to a member who was purchasing additional service credit under §25.163 of this title (relating to Service Credit Purchase) and §823.405, Government Code, the termination of the installment agreement results in the permanent loss of eligibility to purchase this service credit, whether through installments payments or any other kind of payment.

(c) If TRS refunds payments to a member pursuant to this section and the member later makes payment by lump sum payment or by the installment method for the same service credit for which the refund was made, any fees required by law or rule will be calculated using the new date of payment rather than the date of initial participation in the installment payment method.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605987
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

SUBCHAPTER O. ROLLOVER DISTRIBUTIONS AND TRANSFERS TO TRS

34 TAC §25.201

Statutory Authority: The amendment is proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §805.009, Government Code, which authorizes the Board to adopt rules for the administration of Chapter 805, Government Code; §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; §823.005, which authorizes the Board to adopt rules for the acceptance of rollovers; and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The proposed amendment affects the following statutes - Chapter 805, Government Code, which authorizes transfer of service credit between TRS and the Employees Retirement System of Texas (ERS); §821.001, Government Code, providing a definition of "annual compensation"; §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government

Code, which authorizes the purchase of USERRA service credit; §823.401, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, providing for fees for the reinstatement of credit canceled by membership termination; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.410, Government Code, providing for installment payments; §825.105, authorizing the Board to adopt actuarial tables; §825.505, Government Code, which authorizes TRS to audit employer records; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §55 and §63, which repeal of the credit purchase option effective January 1, 2006 but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members.

§25.201. Acceptance of Rollovers and Transfers for Purchase of TRS Credit.

(a) In addition to funds required to be accepted under Government Code §823.005, the Teacher Retirement System of Texas (TRS) may accept the funds described in subsections (b) and (c) of this section, subject to the restrictions of this section.

(b) If permitted under and subject to the provisions of federal law, TRS may accept an eligible rollover distribution from another eligible retirement plan in payment of all or a portion of any deposit a member is permitted under applicable law to make with the system for TRS credit.

(1) An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the member from an eligible retirement plan. An eligible rollover distribution does not include the following:

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the member or the joint lives (or joint life expectancies) of the member and the member's designated beneficiary, or for a specified period of ten (10) years or more;

(B) any distribution to the extent such distribution is required under Internal Revenue Code §401(a)(9);

(C) any distribution which is made upon hardship of the member; or

(D) the portion of any distribution that is not includible in gross income, except to the extent permitted under federal tax law.

(2) An "eligible retirement plan" is any program defined in Internal Revenue Code §§401(a)(31) and 402(c)(8)(B), from which the member has a right to an eligible rollover distribution, as follows:

(A) an individual retirement account under Internal Revenue Code §408(a);

(B) an individual retirement annuity under Internal Revenue Code §408(b) (other than an endowment contract);

(C) a qualified trust;

(D) an annuity plan under Internal Revenue Code §403(a);

(E) an eligible deferred compensation plan under Internal Revenue Code §457(b) which is maintained by an eligible employer under Internal Revenue Code §457(e)(1)(A); and

(F) an annuity contract under Internal Revenue Code §403(b).

(c) If permitted under and subject to the provisions of federal law, TRS may accept a direct trustee-to-trustee transfer of funds from a plan described under §403(b) or 457(b) of the Internal Revenue Code in payment of all or a portion of any deposit a member is permitted to make with TRS for permissive service credit (as defined in Internal Revenue Code §415(n)(3)(A)) in TRS.

(d) In order to authorize the rollover or transfer of funds described in this section, a member shall provide or cause to be provided to TRS information sufficient for TRS to reasonably conclude that the contribution is a valid rollover or direct trustee-to-trustee transfer as permitted under federal tax law. If TRS later determines that a contribution was an invalid rollover or direct trustee-to-trustee transfer or otherwise not permitted under federal tax law, TRS may take any action appropriate or required by the Internal Revenue Code or regulations issued thereunder, including return of the invalid contribution to the member within a reasonable time after the determination and cancellation of any credit purchased with the returned amounts.

(e) TRS shall construe and administer this section in a manner such that the TRS plan will be considered a qualified plan under §401(a) of the Internal Revenue Code of 1986, (United States Code, Title 26, §401).

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605988
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER P. CALCULATION OF FEES AND COSTS

34 TAC §25.301, §25.302

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 34 TAC §25.302 is not included in the print version of the Texas Register. The figure is available in the on-line issue of the November 10, 2006, issue of the Texas Register.)

Statutory Authority: The amendment and new section are proposed under the following authorities - §825.102, Government

Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §805.009, Government Code, which authorizes the Board to adopt rules for the administration of Chapter 805, Government Code; §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; §823.005, which authorizes the Board to adopt rules for the acceptance of rollovers; and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The proposed amendment and new section affects the following statutes - Chapter 805, Government Code, which authorizes transfer of service credit between TRS and the Employees Retirement System of Texas (ERS); §821.001, Government Code, providing a definition of "annual compensation"; §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, providing for fees for the reinstatement of credit canceled by membership termination; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.410, Government Code, providing for installment payments; §825.105, authorizing the Board to adopt actuarial tables; §825.505, Government Code, which authorizes TRS to audit employer records; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §55 and §63, which repeal of the credit purchase option effective January 1, 2006 but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members.

§25.301. Calculation of Fees.

All calculations of fees for service or compensation credit required by law shall be made by applying the annual percentage rate for each whole year from the ending date of the school year containing the date from which the fee is to be calculated to the beginning date of the school year in which payment in full is received by the retirement system or installment payments commence. In this section, "school year" means September 1 through August 31 [~~date of payment~~].

§25.302. Calculation of Actuarial Cost.

(a) When a member is purchasing TRS service credit for which the law requires that the actuarial cost or actuarial present value be deposited and for which the method in this section is referenced by another section of this title, TRS will calculate the cost using the tables and method described in subsections (b) and (c) of this section.

(b) To calculate the actuarial cost, TRS will use the cost factors obtained from the Actuarial Cost Tables furnished by the TRS actuary of record. The number of years of service credit to be purchased will determine which specific table will be used. Each of the tables cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per $1,000 of salary. The cost factor for a participant with more years of service credit than shown on the table is the same as the factor shown for the highest number of years of service credit on the table for the participant. TRS will calculate the cost to purchase service credit under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The tables set forth the cost, per $1,000 of salary, to purchase from one year to fifteen years of service credit. The number of years of service credit available for purchase is determined by the laws and rules applicable to the type of service credit to be purchased. For the purpose of calculating the required amount for a member who is grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows:

(1) For the upper region of the table (where the factors appear above the line in italics), salary is the greater of current annual salary or the average of the member's highest years of compensation, with either two or three years of compensation used for the average, depending on whether the member has only two years or has three or more years of service credit at the time of the calculation; or

(2) For the lower region of the table (where the factors appear below the line in bold), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of the table (where the factors appear below the line in bold) reflects those age and service combinations where the purchase of service credit results in immediate eligibility of the member for unreduced retirement benefits.
Figure: 34 TAC §25.302(b)(2)

(c) For the purpose of calculation for a member who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (b) of this section when a factor in the upper region of the table is used.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605989
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 25. MEMBERSHIP CREDIT

As part of the rule review of 34 TAC Chapter 25 relating to membership credit being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to §§25.82, 25.161, and 25.164. The original notice of intention to review Chapter 25 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 25 is published elsewhere in this issue of the *Texas Register.* TRS has assessed §§25.82, 25.161, and 25.164 and determined the reasons for initially adopting the sections continue to exist, with the proposed changes described in this notice. Explanation of the proposals is set out below.

Subchapter G, Purchase of Credit for Out-of-State Service.

Section 25.82 concerns the cost of purchasing out-of-state service. This rule provides the methods of calculating costs for the purchase of out-of-state service. One method is the actuarial cost method, which is described in detail in the rule, with attached actuarial tables showing the cost factors. TRS proposes amendments to delete all provisions generically describing the calculation of actuarial cost, which also appear in the work experience service credit rule §25.161 and the membership waiting period service credit rule §25.164, as well as in the tables attached as graphics in these rules. TRS proposes that the cost description and tables be moved to a new rule §25.302, relating to Calculation of Actuarial Cost, in Subchapter P, relating to Calculation of Fees. That new rule will apply to the purchase of any of these three types of service credit (i.e., credit for out-of-state, work experience, or membership waiting period service). This change would consolidate tables for each of the types of service credit, since the factors are the same. No substantive change would result from this re-organization. TRS also proposes to clarify the cost method applicable to out-of-state service beginning before January 1, 2006 for the 2005-2006 school year. Finally, TRS proposes that any member deposits made during a year for which out-of-state service credit is sought to be purchased will not be credited to the cost.

Subchapter L, Other Special Credit Service.

Section 25.161 concerns work experience service credit. The rule describes the purchase of up to two years of work experience service credit by eligible members. The service may be purchased for the actuarial cost. TRS proposes amendments similar to those proposed for §25.82, relating to out-of-state service credit cost, to consolidate the description of actuarial cost and the tables into one proposed new rule, §25.302. TRS also proposes to clarify that any member deposits made during a year for which work experience service credit is sought to be purchased will not be credited to the cost.

Section 25.164 concerns credit for service during a school year with a membership waiting period. The rule describes the eligibility for, and cost of, purchasing membership waiting period service credit, if a member was affected by the waiting period in effect during the September 1, 2003 through August 31, 2005 time period. TRS proposes amendments similar to those proposed for §25.82, relating to out-of-state service credit cost, to consolidate the description of actuarial cost and the tables into one proposed new rule, §25.302. TRS also proposes to clarify that any member deposits made during a year for which membership waiting period service credit is sought to be purchased will not be credited to the cost.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed sections would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each section will be to update the rules to reflect recent changes in law or provide guidance on implementation of such changes, to clarify provisions or to expressly describe processes or standards in use, and to reorganize the provisions for ease of reference. There may be anticipated economic cost to persons who are required to comply with the proposed sections; specifically, because regular member contributions on current compensation will not be credited to the cost of service credit purchased for the same year, the cost of the service credit therefore would be more than if any such deposits were credited to the purchase cost. TRS cannot more precisely estimate the anticipated cost because there is no way to estimate how many members with deposits in a given year will purchase service credit as permitted by these sections in the future, and the dollar amount of such deposits will vary according to salary (i.e., deposits are 6.4% of creditable compensation) and the number of months for which deposits are made.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

SUBCHAPTER G. PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

34 TAC §25.82

Statutory Authority: The amendment is proposed under §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership and for the administration of the funds of the retirement system.

Cross-reference to statute: The proposed amendment affects the following sections of the Government Code - §823.401, which authorizes purchase of out-of-state service credit; §823.404, which authorizes purchase of service credit for work experience by career or technology teacher; and §823.406, which authorizes purchase of membership waiting period service credit.

§25.82. Cost.

(a) For a person who was a member of TRS on December 31, 2005, and whose out-of-state service was performed before January 1, 2006, including service in the 2005-2006 school year that began before January 1, 2006, but continued after that date, the cost of establishing out-of-state service credit is 12% per year of the full annual salary rate for the first year of service in Texas which is both after the out-of-state service and after September 1, 1956. Annual salary is limited to $8,400 for years prior to September 1, 1969, and $25,000 for years after September 1969 but before September 1, 1979. For years starting on or after September 1, 1979, TRS will apply any relevant creditable compensation limitations to determine the full salary rate. Cost will not be based on years granted for substitute service. In addition a crediting fee of 8.0% compounded annually of the amount of deposits due and paid shall be charged from the end of the school year in which the member was first eligible to purchase credit for such service until payment for the credit is received.

(b) For a person who does not meet the eligibility requirements of subsection (a) of this section, the cost of establishing out-of-state service credit is the actuarial cost, as determined by TRS, of the additional standard annuity retirement benefits that would be attributable to the out-of-state service credit purchased under this section.

(c) To calculate the actuarial cost, TRS will use the cost factors and method described in §25.302 of this title (relating to Calculation of Actuarial Cost). [~~for a member who is grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), TRS will use the cost factors from the Out-of-State Service Credit Tables furnished by the TRS actuary of record. Each of the tables cross-references the member's age in rows and the member's years of credited service before purchase in columns. The intersection of the member's age and service credit is the cost per $1,000 of salary. When a member's service credit exceeds the last column for years of service credit on the tables, the applicable cost factor is found at the intersection of the member's age and the last column for years of service credit. TRS will calculate the cost to purchase service credit under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the tables. The tables set forth the cost, per $1,000 of salary, to purchase from one year to fifteen years of out-of-state service credit.~~]

[~~(d) For the purpose of the actuarial cost calculation for a member who is grandfathered to use a three-year salary average under §51.12 of this title, the term "salary" is defined as follows:~~]

[~~(1) For the upper region of each table (where the factors appear above the line in italics), salary is the greater of current annual salary or the average of the member's highest three years of compensation; and~~]

[~~(2) For the lower region of each table (where the factors appear below the line in bold), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time service credit is purchased. The lower region of each table (where factors appear below the line in bold) reflects those age and service combinations where the purchase of service credit results in the immediate eligibility of the member for unreduced retirement benefits.~~] [~~Figure: 34 TAC §25.82(d)(2)~~]

[~~(e) For the purpose of the calculation for a member who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (d) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (c) of this section when a factor in the upper region of a table is used.~~]

(d) [~~(f)~~]The purchase cost described in this section assumes a lump-sum deposit will be made. If deposits are made under an installment agreement, a non-refundable installment fee of 9% applies.

(e) No credit will be applied to the cost of a year of out-of-state service credit for any TRS contributions made in the same school year.

(f) [~~(g)~~] Payments for out-of-state service credit shall be paid in a manner consistent with any applicable limitations of 26 U.S.C. §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made[~~, pursuant to Internal Revenue Code §415~~]. A member, or a beneficiary of a member if service credit is sought to be established after the death of the member, may not be permitted to purchase TRS service credit under this section if payments exceed the applicable limitations on contributions.

(g) [~~(h)~~] The date of first eligibility to purchase credit for any year of out-of-state service shall be the latest of the following dates:

(1) the date the member received 5 years' credit for service in the public schools of Texas;

(2) the date state law made the out-of-state service available for TRS service credit;

(3) the date in which the member qualified to deposit payment for each year of out-of-state service under the one for two rule in effect until March 20, 1975;

(4) the date the member completed one year of creditable service in the public schools of Texas after relevant out-of-state service.

(h) [~~(i)~~] No deposits for out-of-state service credit may be made before the member accumulates 5 years of credit for service in the public schools of Texas.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605929
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER L. OTHER SPECIAL CREDIT SERVICE

34 TAC §25.161, §25.164

Statutory Authority: The amendments are proposed under §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership and for the administration of the funds of the retirement system.

Cross-reference to statute: The proposed amendments affect the following sections of the Government Code - §823.401, which authorizes purchase of out-of-state service credit; §823.404, which authorizes purchase of service credit for work experience by career or technology teacher; and §823.406, which authorizes purchase of membership waiting period service credit.

§25.161. Work Experience Service Credit.

(a) An eligible member may purchase one or two years of equivalent membership service credit in the Teacher Retirement System of Texas ("TRS") for eligible work experience in accordance with Government Code, §823.404 and subject to the approval of TRS and to any plan qualification requirements, including contribution limitations [~~permissive service credit purchase restrictions~~] under Government Code, §823.006 or [~~and/or~~] the Internal Revenue Code of 1986, as amended from time to time. For the purpose of limitations on contributions under the Internal Revenue Code, the service credit authorized under Government Code, §823.404 is non-qualified permissive service credit. A member is eligible to establish up to two years of equivalent membership service credit for eligible work experience if, at the time of the purchase, the member has at least five years of membership service credit in TRS.

(b) Equivalent membership service credit for eligible work experience may be established by depositing with TRS the amounts described in subsection (c) of this section and by submitting certification, in the form and manner prescribed by TRS, that the member is entitled to salary step credit under Education Code, §21.403(b) and is eligible to purchase the service credit.

(c) For each year of equivalent membership service credit described in this section and approved by TRS, the eligible member must deposit the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the work experience service credit to be purchased under this section. Upon receipt by TRS of the required amount, the member will be credited with the additional year(s) of service credit purchased up to the maximum years of service credit allowed under Government Code, §823.404.

(d) To calculate these amounts, TRS will use the cost factors and method described in §25.302 of this title (relating to Calculation of Actuarial Cost). [~~obtained from the two Service Purchase Tables furnished by the TRS actuary of record. Each of the tables cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per $1,000 of salary. When a member's service credit exceeds the last column for years of service credit on the tables, the applicable cost factor is found at the intersection of the member's age and the last column for years of service. TRS will calculate the cost to purchase service under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the tables. Table 1 sets forth the cost, per $1,000 of salary, to purchase one year of service. Table 2 sets forth the cost, per $1,000 of salary, to purchase two years of service. For purposes of this calculation for a member who is grandfathered to use a three-year salary average under § 51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows:~~]

[~~(1) For the upper region of each table (where the factors appear above the line in italics), salary is the greater of current annual salary or the average of the member's highest three years of compensation; and~~]

[~~(2) For the lower region of each table (where the factors appear below the line in bold), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of each table (where factors appear below the line in bold) reflects those age and service combinations where the purchase of service credit results in the immediate eligibility of the member for unreduced retirement benefits.~~]
[~~Figure: 34 TAC §25.161(d)(2)~~]
[~~Figure: 34 TAC §25.161(d)(2)~~]

[~~(e) For the purpose of the calculation for a member who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (d) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (d) of this section when a factor in the upper region of a table is used.~~]

(e) No credit will be applied to the cost of a year of work experience service credit for any TRS contributions made in the same school year.

(f) The purchase cost described in subsection (d) of this section assumes a lump-sum deposit will be made. If deposits are made under an installment agreement, a non-refundable installment fee of 9% applies.

(g) Service credit purchased under this section may be used to determine eligibility for the Texas Public School Retired Employees Group Insurance Program (TRS-Care) to the extent permitted under Insurance Code, Chapter 1575.

(h) Payments for the purchase of TRS service credit for eligible work experience shall be paid in a manner consistent with any applicable limitations of 26 United States Code §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made[~~, pursuant to Internal Revenue Code §415~~]. A member, or a beneficiary of a member if service is sought to be established after the death of the member, may not be permitted to purchase TRS service credit for some or all years of work experience if payments exceed applicable limitations on contributions.

§25.164. Credit for Service During School Year With Membership Waiting Period.

(a) A member of the Teacher Retirement System of Texas (TRS) who was subject to a membership waiting period during a period of employment that was between September 1, 2003, and August 31, 2005, pursuant to Government Code §822.001, as amended by Ch. 201, 78th Leg., R.S. 2003, may purchase one year of equivalent membership service credit in TRS in accordance with Government Code §823.406 and this section.

(b) A member is eligible to purchase one year of service credit under this section if the following requirements are met:

(1) the individual served at least 4 1/2 months in an eligible position during the school year in which the waiting period ended or, in the alternative, the individual served a full semester of more than four calendar months in an eligible position during the school year in which the waiting period ended or the individual entered into an employment contract or oral or written work agreement for a period which would qualify the individual for a year of service credit but who actually renders only 90 working days of service, and

(2) any portion of that service was performed during the membership waiting period, and

(3) the individual did not serve a sufficient length of time during the school year after becoming eligible for TRS membership to earn a year of membership service credit in the retirement system.

(c) A member may not purchase service credit under this section until after the end of the school year in which the waiting period ended. If requested by TRS, in order to purchase service credit under this section, a member shall provide verification of service and salary during the school year in which the waiting period service was performed. The verification must be in a form that TRS finds acceptable to determine that the member meets the requirements of this section.

(d) Equivalent membership service credit may be established under this section by depositing with TRS the amount described in this subsection. To establish service credit for the year, the eligible member must deposit the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the service credit to be purchased under this section.

(e) Upon receipt by TRS of the required amount, the member will be credited with the year of service credit. A member may not receive more than one year of service credit for the service performed in a school year.

(f) To calculate the amount required by this section, TRS will use the cost factors and method described in §25.302 of this title (re-

lating to Calculation of Actuarial Cost). [~~indicated on the "Waiting Period Service Credit Purchase Table" furnished by the TRS actuary of record. The table cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per $1,000 of salary. The cost factor for a participant with more years of service credit than shown on the table is the same as the factor shown for the highest number of years of service credit on the table for the participant. TRS will calculate the cost to purchase service credit under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The table sets the cost, per $1,000 of salary, to purchase one year of service credit. For the purpose of calculating the required amount for a member who is grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows:~~]

[~~(1) For the upper region of the table (where the factors appear above the line in italics), salary is the greater of current annual salary or the average of the member's highest years of compensation, with either two or three years of compensation used for the average, depending on whether the member has only two years or has three or more years of service credit at the time of the calculation; or~~]

[~~(2) For the lower region of the table (where the factors appear below the line in bold), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of the table (where the factors appear below the line in bold) reflects those age and service combinations where the purchase of service credit results in immediate eligibility of the member for unreduced retirement benefits.~~] [~~Figure: 34 TAC §25.164(f)(2)~~]

[~~(g) For the purpose of calculation for a member who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (f) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (f) of this section when a factor in the upper region of the table is used.~~]

(g) No credit will be applied to the cost of a year of membership waiting period service credit for any TRS contributions made in the same school year.

(h) The purchase cost described in subsection (f) of this section is based on a lump-sum deposit. If deposits are made by installment payments, the purchase cost will be adjusted to reflect a non-refundable installment fee of 9%.

(i) Service credit purchased under this section may be used to determine eligibility for Texas Public School Retired Employees Group Health Insurance (TRS-Care) to the extent permitted under Insurance Code, Chapter 1575.

(j) Payments for TRS service credit purchased under this section shall be paid in a manner consistent with any applicable limitations of United States Code, Title 26, §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made[~~, pursuant to Internal Revenue Code §415~~]. A member, or a beneficiary of a member, if service credit is sought to be established after the death of the member, may not be permitted to purchase TRS service credit under this section if payments exceed applicable limitations on contributions.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605978
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 27 TERMINATION OF MEMBERSHIP AND REFUNDS

34 TAC §§27.2, 27.3, 27.6, 27.8

As part of the rule review being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to 34 TAC §§27.2, 27.3, 27.6, and 27.8 of 34 TAC Chapter 27 relating to termination of membership and refunds. The original notice of intention to review Chapter 27 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 27 is published elsewhere in this issue of the *Texas Register.* As part of the rule review, TRS has assessed §§27.2, 27.3, 27.6, and 27.8 and determined the reasons for initially adopting them continue to exist, with the proposed changes described in this notice.

Section 27.2 concerns the withdrawal of member contributions by a person in a position not eligible for TRS membership. This rule addresses the eligibility of a member to terminate membership when still employed by a Texas public education employer, though not in a position eligible for membership. Because of plan qualification requirements prohibiting in-service distributions of retirement funds, TRS proposes to clarify this rule to provide that a refund would not be available to such a member. However, a person who is serving as a substitute but who is not employed in any other capacity in Texas public education may terminate TRS membership while serving as a substitute, for such service is performed in the place of another employee and usually is a day to day arrangement, with no guarantee of service continuing into the next day.

Section 27.3 concerns a false affidavit regarding termination of employment and ineligible refunds. This rule addresses ineligible refunds made when a person is still employed or when a person has a contract to be employed. The person is required to re-pay the funds to TRS. TRS proposes an amendment to expressly state that, if the payment is not returned by the end of the plan year in which the withdrawal occurred, a reinstatement fee will be applied, as with other reinstatements.

Section 27.6 concerns the reinstatement of an account. This rule addresses the eligibility requirements to reinstate service credit that was cancelled by a termination of membership. TRS proposes a clarifying provision to address what withdrawn accounts must be reinstated, if multiple accounts were withdrawn. Specifically, any account that represents less than the amount of service required for a year of membership service credit must

be reinstated if, when combined with other canceled service or with other eligible membership service or equivalent membership service performed in the same year, such combined service is sufficient to constitute a creditable year of service.

Section 27.8 concerns reinstatement of membership and service credit by ORP participants. This rule addresses when a person who elected to participate in ORP in lieu of TRS would be eligible to reinstate TRS service credit. TRS proposes amendments to streamline wording and delete an obsolete rule subsection reference but make no substantive changes.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register,* TRS has determined that the reasons for adopting 34 TAC §27.4 (relating to refunds), §27.5 (relating to termination of right to benefits), and §27.10 (relating to forfeitures not increasing benefits) continue to exist and proposes to readopt those rules without changes.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed amended rules would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each section will be to delete obsolete language and references in the rules and to clarify provisions related to the refund of contributions, re-payment of an ineligible refund, and reinstatement of a withdrawn account. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: The amendments are proposed under the following authority - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The proposed amendments affect the following statutes - Chapter 822, Subchapter A, Government Code, which provides for required and optional TRS membership; exceptions to required membership; termination of membership and its effect; withdrawal of contributions; and resumption of terminated membership; and Chapter 830, Government Code, which establishes the Optional Retirement Program (ORP) as an alternative to participation in TRS for eligible employees.

§27.2. Eligibility for Withdrawal of Member Contributions [~~Withdrawal by a Person in a Position Not Eligible for TRS Membership~~].

(a) Member contributions, including contributions picked-up by the employer pursuant to Government Code §825.409 and contributions for the purchase or re-instatement of service credit, may not be withdrawn prior to the time the member terminates employment in all positions with a TRS-covered employer, except as otherwise provided by this section.

(b) A member who is serving as a substitute as described under §25.4 of this title (relating to Substitutes) and who is not employed in any other capacity with the same or another TRS-covered employer may withdraw member contributions. [~~A member who is employed by an employer included in the Teacher Retirement System of Texas in a position which is not eligible for membership may terminate his or her membership and withdraw his or her deposits, other than any deposits picked up by the employer pursuant to the Texas Government Code, §825.409. However, a member who continues to be eligible for membership by virtue of previous employment during the school year, including a member described in §25.6 of this title (relating to Part-time or Temporary Employment), must continue to make any applicable contributions during the remainder of the school year and may not withdraw his or her deposits until the member terminates all employment for a TRS-covered employer in the school year.~~]

(c) Except as provided in subsection (b) of this section, a member employed by a TRS-covered employer may not terminate TRS membership and may not withdraw member contributions, including when the employment is ineligible for TRS membership.

(d) [~~(c)~~] Any withdrawal must be a complete withdrawal. No partial withdrawals are allowed.

§27.3. False Affidavit and Ineligible Refunds.

A member who makes affidavit that he or she has permanently terminated employment with any TRS-covered employer but who is so employed or who contracts for such employment before TRS mails the refund shall not be entitled to the refund. If the refund is made because the retirement system is not aware of the continued employment, necessary steps will be taken to secure the redeposit of the withdrawn account. No benefits will be paid until this withdrawn account is returned to the retirement system. If an ineligible refund is not returned before August 31 of the plan year in which the withdrawal occurred, a reinstatement fee as described in §27.6 of this title relating to (Reinstatement of an Account) shall apply.

§27.6. Reinstatement of an Account.

Any member who has withdrawn an account resulting in the cancellation of service credit may reinstate this account and receive credit for the canceled service by meeting the following requirements:

(1) resume membership service in the retirement system or establish eligibility under Government Code, Chapter 803 or 805;

(2) redeposit the amount withdrawn for the years during which the membership was terminated;

(3) pay a reinstatement fee of 6.0% compounded annually in whole year increments from August 31st of the plan year in which the withdrawal occurred to the date of redeposit;

(4) reinstate all withdrawn accounts which resulted in the cancellation of service credit. A withdrawn account representing less than a creditable year of service must be reinstated only when it is necessary to combine the canceled service in the account with all other canceled service or with other eligible membership service or equivalent membership service performed in the same year to constitute a creditable year of service.

§27.8. Reinstatement of Membership and Service Credit by ORP Participants,

(a) A [~~Any~~] person who was participating in the Optional Retirement Program (ORP) on September 1, 1979, was eligible to elect to become a member of the Teacher Retirement System of Texas (TRS) between September 1, 1979, and September 1, 1980. Any such[~~, inclusive, by filing a written application in a form prescribed by the retirement system. The form shall be submitted to the employer who shall transmit it to the retirement system. The~~] election was [~~shall be~~] effective on the first day of the month following the month in which it was [~~the change is~~] received by the employer.

(b) ORP participants who elected [~~elect~~] to return to TRS membership [~~in the retirement system~~] between September 1, 1979, and September 1, 1980, under subsection (a) of this section, are eligible to reinstate all previously held TRS credit, except student employment credit, under the provisions of this section only. Reinstatement may occur at any time after resumption of membership in TRS [~~the retirement system~~]. All eligible credit must be reinstated at one time. If the member's account was withdrawn, the member must pay the accumulated contributions plus a reinstatement fee of 10% per year of the amount due compounded annually from the date of withdrawal to the date of repayment. Reinstatement fees will be credited to the state contribution account. Credit will be reinstated upon application by the member on a form prescribed by TRS [~~the retirement system~~] and the deposit of all required payments. No credit may be established for service in public education while an ORP participant.

(c) Former ORP participants who return or have returned to TRS membership in the retirement system other than by an election under this section must make reinstatement under §27.6 of this title (relating to Reinstatement of an Account) [~~or §27.7 of this title (relating to Retired Members), if applicable~~].

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605931
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 29. BENEFITS

As part of the rule review of 34 TAC Chapter 29 relating to benefits being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to §§29.15, 29.26, 29.34, 29.50 - 29.52, 29.55, 29.61, and 29.70. TRS also proposes the repeal of §29.53 as a result of the rule review. The original notice of intention to review Chapter 29 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 29 is published elsewhere in this issue of the *Texas Register.* TRS has assessed the rules with proposed amendments and determined the reasons for initially adopting them continue to exist, with the proposed changes described in this notice. Explanations of the proposals are set out below by subchapter of Chapter 29. Subchapters without proposed changes in them are not included.

Subchapter A, Retirement: This subchapter contains seventeen rules describing processes and benefits for retiring or retired participants and their beneficiaries. Changes are proposed for two rules in the subchapter, §29.15 and §29.26.

Section 29.15 concerns termination of employment. TRS proposes amendments to this rule to expressly state that a contract or work agreement for post-retirement employment that does not qualify for one of the exceptions in Section 824.602, Government Code, cannot be negotiated until after the required break in service following retirement, or the person's retirement would be revoked. This amendment expressly describes how the statutory provisions are administered. Section 29.26 concerns discontinuance of disability benefits. TRS proposes amendments to this rule to clarify the meaning of "restored to active service" for the purpose of discontinuing disability retirement benefits. The amendments also expressly describe the effect on service credit and accumulated contributions when a person returns to active service after disability retirement benefits are discontinued.

Subchapter B, Death Before Retirement: This subchapter contains two rules addressing the administration of active member death benefits. Changes are proposed for one rule in the subchapter - §29.34.

Section 29.34 concerns limitations. TRS proposes amendments to this rule to change the name of the section to "Events Affecting Payment" to distinguish it from the limitations relating to federal tax code requirements described primarily in Subchapter D of this chapter. TRS also proposes amendments to this rule to clarify how the 60 day period for selection of a death benefit payment plan will be determined and to provide greater flexibility in changing a selection.

Subchapter D, Plan Limitations: This subchapter contains five rules addressing federal tax law limitations for governmental defined benefit plans such as the TRS retirement plan. TRS proposes amendments to four of the rules in the subchapter- §§29.50 - 29.52, and 29.55 - as well as the repeal of §29.53.

Section 29.50 concerns definitions. The amendments proposed for this rule would bring the language of the rule into conformity with the federal tax code and regulations, including deleting provisions no longer applicable and clarifying how member contributions that are "picked up" by employers are treated for purposes of the applicable tax limitations.

Section 29.51 concerns plan limitations on retirement benefits. This rule provides information about the applicability of the federal law limit on benefits payable for a plan year. TRS proposes amendments to delete provisions no longer applicable to a governmental plan.

Section 29.52 concerns adjustment to annual benefit limit. This rule addresses the considerations that affect the calculation of the federal law limit on benefits payable for a plan year. TRS proposes amendments to delete obsolete language corresponding to the amendments proposed to §25.51.

Section 29.53 concerns limitation for participants in defined contribution plans. This rule incorporates former federal tax code provisions imposing limits on members who participate in both a defined benefit and a defined contribution plan. The limit is no longer applicable; therefore, TRS proposes repeal of the rule.

Section 29.55 concerns limitation on contributions. This rule addresses the federal tax law limit on contributions made to TRS for the purchase of service credit. TRS proposes an amendment to expressly state that the limits are applied on a plan year basis (September 1 through August 31).

Subchapter E, Deferred Retirement Option Plan: This subchapter contains three rules implementing the deferred retirement option plan ("DROP"). TRS proposes amendments to one of the rules in the subchapter - §29.61.

Section 29.61 concerns distribution of a DROP account. TRS proposes to amend the section to clarify the distribution of any

remaining DROP amounts after the death of the participant by clarifying which beneficiary would be entitled to the distribution.

Subchapter F, Partial Lump Sum Option: This subchapter contains three rules implementing the partial lump sum option ("PLSO"). TRS proposes amendments to one of the rules in the subchapter - §29.70.

Section 29.70 concerns distribution of a PLSO payment. TRS proposes to amend the section to clarify the distribution of any remaining PLSO amounts after the death of the participant by clarifying which beneficiary would be entitle to distribution.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register,* the sections of 34 TAC Chapter 29 not mentioned above are proposed for readoption without changes because, having assessed those rules, TRS has determined that the reasons for adopting them continue to exist.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed sections would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each section will be to update the rules to reflect changes in law or to clarify implementation of changes. There is no anticipated economic cost to persons who are required to comply with the proposed sections, or, to the extent any economic cost accompanies compliance with the proposed sections, the cost is the result of applicable statutory provisions.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

SUBCHAPTER A. RETIREMENT

34 TAC §29.15, §29.26

Statutory Authority: The amendments are proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan and which require the board to adopt rules to ensure that benefits paid to a retiree, or to a beneficiary of a member or retiree, do not exceed the limits provided by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Section 415).

Cross-reference to Statute: The proposed amendments affect the following statutes - §821.001, Government Code, providing a definition of "annual compensation"; §822.001, Government Code, establishing the membership requirement and providing for member compensation subject to reporting and contributions; §822.201, Government Code, providing for member compensation subject to reporting and contributions; Subchapter D, Establishment of Military Service, of Ch. 823, Government Code, providing for the purchase of military service credit; Subchapter E, Establishment of Equivalent Membership Service, of Ch. 823, Government Code, providing for the purchase of service credit for out-of-state service, developmental leave, unused state personal or sick leave, work experience by a career or technology teacher, and membership waiting period service; §823.006, Government Code, providing for limits on contributions; §824.203, Government Code, providing for the calculation of the standard service retirement annuity; §824.2045, Government Code, providing for a partial lump sum option ("PLSO"); Subchapter I, Deferred Retirement Option Plan, of Ch. 824, Government Code, providing for participation in DROP; §825.403, providing for the collection of member contributions, including deductions previously required but not paid; §825.409, Government Code, providing for employer pick-up of member contributions; §825.506, Government Code, providing for the administration of the retirement plan as a qualified plan under federal tax law; and §825.517, Government Code, providing for an excess benefit arrangement.

§29.15. Termination of Employment.

(a) Employment in any position by a TRS-covered employer, regardless of compensation, during the first month following that person's effective date of retirement or during the first two months following a person's effective date of retirement if the retirement was established by using Government Code §824.002(d), revokes the retirement and requires a return of any benefits received under retirement.

(b) A member who is eligible for normal age retirement and who has a contract or agreement for future employment, which does not qualify for one of the exceptions in Government Code §824.602, has not ended all employment with a TRS covered employer, and may not retire and receive any benefits. Contracts or work agreements for employment that do not qualify for one of the exceptions in that section must be negotiated after the break in service required in Government Code §824.005.

(c) A member who is eligible for early age retirement may not have a contract or promise of future employment with any TRS covered employer until after the required break in service referenced in subsection (a) of this section. A person who enters into such an agreement has not ended all employment with a TRS covered employer and may not retire and receive any benefits.

§29.26. Discontinuance of Disability Benefits.

(a) A disability retiree who is restored to active service [~~or who refuses to submit to a required medical examination for more than one year~~] shall immediately have benefits discontinued and the retiree shall again become a member of the retirement system. TRS [~~The Teacher Retirement System of Texas~~] shall notify the member in writing when benefits are discontinued.

(b) A disability retiree is restored to active service in one of the following ways:

(1) by certification of the medical board as provided in Government Code §824.307(a);

(2) by notifying TRS in writing of the retiree's intention to return to active service; or

(3) by refusing to submit to a required medical examination for more than one year.

(c) A person who retired under Government Code §824.304(a) and returns to active service after receiving the maximum amount of benefits provided in subsection (a)(2) of that section begins a new membership in TRS. Service credit used to establish eligibility to retire and receive disability benefits is terminated and may not be re-established. Accumulated contributions in the disability retiree's member account at the time of retirement and attributable to service performed prior to disability retirement are forfeited.

(d) A person who retired under Government Code §824.304(a) and returns to active service before receiving the maximum amount of benefits provided in subsection (a)(2) of that section shall return to active membership in TRS and service credit used to establish eligibility to retire and receive disability benefits is restored. The accumulated contributions in the member account at the time of the disability retirement are reduced by the amount of benefits paid to the disability retiree and the member may again make member contributions on all eligible compensation received after membership is restored.

(e) A person who retired under Government Code §824.304(b) and returns to active service shall return to active membership in TRS and service credit used to establish eligibility to retire and receive disability benefits is restored. The accumulated contributions in the member account at the time of the disability retirement are reduced by the amount of benefits paid to the disability retiree and the member shall again make member contributions on all eligible compensation received after membership is restored.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605932
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER B. DEATH BEFORE RETIREMENT

34 TAC §29.34

Statutory Authority: The amendment is proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan and which require the board to adopt rules to ensure that benefits paid to a retiree, or to a beneficiary of a member or retiree, do not exceed the limits provided by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Section 415).

Cross-reference to Statute: The proposed amendment affects the following statutes - §821.001, Government Code, providing a definition of "annual compensation"; §822.001, Government Code, establishing the membership requirement and providing for member compensation subject to reporting and contributions; §822.201, Government Code, providing for member compensation subject to reporting and contributions; Subchapter D, Establishment of Military Service, of Ch. 823, Government Code, providing for the purchase of military service credit; Subchapter E, Establishment of Equivalent Membership Service, of Ch. 823, Government Code, providing for the purchase of service credit for out-of-state service, developmental leave, unused state personal or sick leave, work experience by a career or technology teacher, and membership waiting period service; §823.006, Government Code, providing for limits on contributions; §824.203, Government Code, providing for the calculation of the standard service retirement annuity; §824.2045, Government Code, providing for a partial lump sum option ("PLSO"); Subchapter I, Deferred Retirement Option Plan, of Ch. 824, Government Code, providing for participation in DROP; §825.403, providing for the collection of member contributions, including deductions previously required but not paid; §825.409, Government Code, providing for employer pick-up of member contributions; §825.506, Government Code, providing for the administration of the retirement plan as a qualified plan under federal tax law; and §825.517, Government Code, providing for an excess benefit arrangement.

§29.34. Events Affecting Payment [~~Limitations~~].

(a) A person who lives any part of a day shall be considered to live throughout the entire day. Subject to this limitation, the effective date for death and survivor benefit annuities is the last day of the month preceding the month in which the death of the member occurs, with the first payment due at the end of the month in which the death occurs.

(b) Final payment of any annuity will be made at the end of the month in which there occurs the event which terminates the annuity.

(c) An eligible member who has applied for service or disability retirement and dies on or after the retirement date will be considered to be "retired" for the computation of death or survivor benefits.

(d) Payments of death benefits to multiple beneficiaries named to "share and share alike" will be made according to the recommendations of the consulting actuary retained by the retirement system. Survivor benefits are an alternative to death benefits.

(1) If one or more joint beneficiaries are eligible and elect to receive monthly survivor benefits but one or more joint beneficiaries elect to receive death benefits, the payments to all beneficiaries, including the monthly portion of survivor benefits, will be proportionately reduced to the beneficiary's proportionate interest in the benefits payable.

(2) If all joint beneficiaries elect payment of survivor benefits, the lump-sum portion of the benefits shall be divided equally among the beneficiaries, but the monthly payment may be paid only to beneficiaries eligible to receive such payment. If there are two or more beneficiaries eligible for monthly survivor payments, the entire monthly payment authorized by law will be split in equal portions among the eligible beneficiaries. When only one named beneficiary is eligible for monthly payments, the entire monthly payment authorized by law will be made to that beneficiary.

(e) An adult beneficiary or guardian of a minor beneficiary is required to make a selection of payment within 60 days after the claim for benefits is provided by TRS [~~death of a member~~]. In circumstances of judicial or administrative proceedings or unusual hardship, the executive director or the executive director's [~~his~~] designee may extend this period for a reasonable time. A beneficiary may change a [~~his~~] selection of payment [~~only during the period allocated for making the original selection and~~] before the issuance of any warrant or electronic payment to [~~him~~] the beneficiary in full or partial payment of death or survivor benefits pursuant to the [~~his~~] selection.

(f) Except as otherwise provided in this section, payments of death benefits to the beneficiary of a member who dies before any retirement benefits have been paid shall commence no later than one year after the death of the member. Payments on behalf of any deceased member, including lump sum payments, need not commence within the one-year period if all such payments on behalf of the deceased member

are completed within five years after the member's death. Furthermore, if the deceased member's spouse is the sole beneficiary, benefits to the spouse may begin as late as December 31 of the year the member would have attained age 70 1/2 had such member lived.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200606010
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER D. PLAN LIMITATIONS

34 TAC §§29.50 - 29.52, 29.55

Statutory Authority: The amendments are proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan and which require the board to adopt rules to ensure that benefits paid to a retiree, or to a beneficiary of a member or retiree, do not exceed the limits provided by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Section 415).

Cross-reference to Statute: The proposed amendments affect the following statutes - §821.001, Government Code, providing a definition of "annual compensation"; §822.001, Government Code, establishing the membership requirement and providing for member compensation subject to reporting and contributions; §822.201, Government Code, providing for member compensation subject to reporting and contributions; Subchapter D, Establishment of Military Service, of Ch. 823, Government Code, providing for the purchase of military service credit; Subchapter E, Establishment of Equivalent Membership Service, of Ch. 823, Government Code, providing for the purchase of service credit for out-of-state service, developmental leave, unused state personal or sick leave, work experience by a career or technology teacher, and membership waiting period service; §823.006, Government Code, providing for limits on contributions; §824.203, Government Code, providing for the calculation of the standard service retirement annuity; §824.2045, Government Code, providing for a partial lump sum option ("PLSO"); Subchapter I, Deferred Retirement Option Plan, of Ch. 824, Government Code, providing for participation in DROP; §825.403, providing for the collection of member contributions, including deductions previously required but not paid; §825.409, Government Code, providing for employer pick-up of member contributions; §825.506, Government Code, providing for the administration of the retirement plan as a qualified plan under federal tax law; and §825.517, Government Code, providing for an excess benefit arrangement.

§29.50. Definitions.

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

(1) Annual additions--The sum of the following amounts credited to a member's account under any defined contribution plan (or a portion of a defined benefit plan treated as a defined contribution plan) maintained by the employer for the plan year:

(A) employer contributions;

(B) member contributions, including member contributions to a qualified defined benefit plan that have not been picked up under Code Section 414(h) but not including rollover contributions;

(C) forfeitures; and

(D) amounts allocated after March 31, 1984, to an individual medical benefit account, as defined in §415(1)(2) of the Code, that is part of a pension or annuity plan maintained by the employer. Annual additions do not include amounts described in §415(1)(2) of the Code for the purpose of computing the percentage limitation described in §415(c)(1)(B) of the Code. For any plan year beginning before January 1, 1987, only that portion of the member contributions equal to the lesser of those member contributions in excess of 6.0% of annual compensation or one-half of the member's contributions to any qualified plan maintained by the employer is treated as annual additions.

(2) Annual benefit--A benefit payable annually in the form of a straight life annuity (ignoring that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity, as defined in §417 of the Code) with no ancillary or incidental benefits or rollover contributions and exclusive of any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under §417 of the Code (but inclusive of any such contributions that are picked up by the employer pursuant to §414(h)(2) of the Code, or that otherwise are not treated as a separate defined contribution plan). If the benefit is payable in any other form, the determination as to whether the limitation described in §29.51 of this title (relating to Plan Limitations on Retirement Benefits) has been satisfied shall be made by adjusting such benefit so that it is actuarially equivalent to the annual benefit described in this section in accordance with the regulations issued by the secretary of the treasury.

(3) Annual compensation--All wages within the meaning of §3401(a) of the Code relating to income tax withholding at source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the services performed and without regard to whether such wages are treated as compensation under any other provision of this chapter. Annual compensation shall include amounts deferred under §402(g)(3) of the Code and any amounts contributed or deferred by the employer at the election of the employee which is excluded from gross income under §§125, 132(f)(4), or 457 of the Code. Annual compensation shall not include amounts picked up under §414(h) of the Code.

(4) Code--The Internal Revenue Code of 1986, as amended.

~~[(5) Defined benefit plan fraction--For any plan year, beginning before January 1, 2000, a fraction in which:]~~

~~[(A) the numerator is the projected annual benefit of a member, determined as of the close of the plan year pursuant to §1.415-7(b)(3) of the Income Tax Regulations; and]~~

~~[(B) the denominator is the lesser of:]~~

~~*f(i)* the product of 1.25 and the maximum dollar limitation prescribed by §29.51(a)(1) of this title (relating to Plan Limitations on Retirement Benefits), as adjusted, for the plan year; or]~~

~~*f(ii)* the product of 1.4 and the amount that may be taken into account under §29.51(a)(2) of this title (relating to Plan Limitations on Retirement Benefits) for the plan year. The annual additions may not be recomputed for plan years beginning before January 1, 1987, to treat all employee contributions as annual additions.]~~

(5) [~~(6)~~] Defined contribution plan--A plan described in §414(i) of the Code and, solely for purposes of this subchapter, employee contributions to any other qualified plan maintained by the employer, other than any picked-up contributions.

~~[(7) Defined contribution plan fraction--For any plan year, beginning before January 1, 2000, a fraction in which:]~~

~~[(A) the numerator is the sum of the annual additions to the member's account as of the close of the plan year; and]~~

~~[(B) the denominator is the sum of the lesser of the following amounts determined for the plan year and each prior plan year of employment with the employer:]~~

~~*f(i)* the product of 1.25 and the dollar limitation in effect under §415(c)(1)(A) of the Code for the plan year, determined without regard to §415(c)(6) of the Code; or]~~

~~*f(ii)* the product of 1.4 and the amount that may be taken into account under §415(c)(1)(B) of the Code for the plan year. The annual additions may not be recomputed for plan years beginning before January 1, 1987, to treat all employee contributions as annual additions.]~~

(6) [~~(8)~~] Employer--The agents, agencies or political subdivisions of the State responsible for education, including the governing board of any school district created under the laws of the State, any county school board, the board of trustees, the State Board of Education, the Texas Education Agency, the board of regents of any college or university, or any other legally constituted board or agency of any public school.

(7) [~~(9)~~] Member contributions--Those contributions within the meaning of the Code, §411(c)(2)(C), but not any contributions picked up by the employer within the meaning of §414(h)(2) of the Code.

(8) [~~(10)~~] Plan year--The plan's accounting year beginning on September 1 of each year and ending on the following August 31.

§29.51. Plan Limitations on Retirement Benefits.

(a) Notwithstanding any other provisions of this chapter, the benefit provided with respect to any member for any plan year shall not exceed an annual benefit computed in accordance with the limitations prescribed by this section. Specifically, the maximum annual benefit payable in any plan year to a member may not exceed [~~the lesser of:~~]

[~~(1)~~] the applicable dollar amount established in Internal Revenue Code §415(b)(1)(A), as adjusted pursuant to Internal Revenue Code §415(d). [~~; or~~]

~~[(2) 100% of the member's annual compensation averaged over the three consecutive plan years (or the actual number of plan years for a member whose total service credit is for less than three consecutive plan years) during which the member had the greatest aggregate annual compensation from the employer. However, this subsection (2) shall not apply to plan years beginning after December 31, 1994.]~~

(b) Benefits provided to a member under this plan and under any other defined benefit plan or plans maintained by the employer shall be aggregated for purposes of determining whether the limitations in subsection (a) of this section are met. If the aggregate benefits otherwise payable to any member from this plan and any other defined benefit plan or plans maintained by the employer would otherwise exceed the limitations of subsection (a) of this section, reductions in benefits are required to be made to the other plan to the extent necessary to enable each plan or plans to satisfy those limitations.

§29.52. Adjustment to Annual Benefit Limit.

(a) The maximum benefit otherwise permitted under §29.51 of this title (relating to Plan Limitations on Retirement Benefits) is subject to the following adjustments.

(1) If the annual benefit begins before the member attains age 62, the Internal Revenue Code §415(b)(1)(A) limitation, as adjusted, shall be reduced in a manner prescribed by the secretary of the treasury. For plan years ending before January 1, 2002, that adjustment may not reduce the member's annual benefit below $75,000, if the member's benefit begins after age 55, or the actuarial equivalent of $75,000 beginning at age 55 if benefits begin before age 55. The preceding sentence will not apply to plan years ending after December 31, 2001.

(2) If the annual benefit begins after the member attains age 65, the Internal Revenue Code §415(b)(1)(A) limitation, as adjusted, will be increased so that it is the actuarial equivalent of the Internal Revenue Code §415(b)(1)(A) limitation at age 65.

(3) The portion of a member's benefit that is attributable to the member's own contributions (other than picked-up contributions) is not part of the annual benefit subject to the limitations of §29.51. Instead, the amount of those member contributions is treated as an annual addition to a qualified defined contribution plan maintained by the employer.

(b) The dollar limitation on annual benefits provided by §29.51, but not the $75,000 limitation provided by subsection (a) of this section, shall be adjusted annually as provided by §415(d) of the Code and the regulations prescribed by the secretary of the treasury to reflect cost of living adjustments. The adjusted limitation is effective for TRS benefits for the TRS plan year that begins on or after the earliest allowable effective date of the changes under federal regulations.

(c) The limitation provided by §29.51 for a member who has separated from service with a vested right to a pension shall be adjusted annually as provided by §415(d) of the Code and the regulations prescribed by the secretary of the treasury.

(d) The following interest rate assumptions shall be used in computing the limitations under §29.51.

(1) For the purpose of determining the portion of the annual benefit that is attributable to member contributions, the factors described in §411(c)(2)(B) and (C) of the Code and the regulations thereunder shall be used even though §411 of the Code does not otherwise apply to the retirement system.

(2) For the purpose of adjusting the annual benefit to a straight life annuity, the interest rate assumption is 5.0%, unless a different rate is required by the secretary of the treasury.

(3) For the purpose of adjusting the Internal Revenue Code §415(b)(1)(A) limitation after a member attains age 65, the interest rate assumption is 5.0%, unless a different rate is required by the secretary of the treasury, and the mortality decrement shall be ignored to the extent that a forfeiture does not occur at death.

(e) An adjustment under §415(d) of the Code may not be taken into account before the year for which that adjustment first takes effect. No adjustment is required for the value of qualified joint and survivor annuity benefits, preretirement disability or death benefits, post retirement medical benefits, or post retirement cost-of-living increases made in accordance with §415(d) of the Code and §1.415-3(c) of the Income Tax Regulations.

(f) This plan may still pay an annual benefit to any member in excess of the member's maximum annual benefit otherwise allowed if:

(1) the annual benefit derived from the employer's contributions under all defined benefit plans of the employer subject to the limitations of §25.51 and §415 of the Code does not in the aggregate exceed $10,000 for the plan year or for any prior plan year; and

(2) the member has not at any time participated in a defined contribution plan maintained by the employer. For purposes of this subsection, member contributions to the plan are not considered a separate defined contribution plan maintained by the employer.

(g) If a member has fewer than ten years of actual membership service credit in the plan at the time the member begins to receive benefits under the plan, the Internal Revenue Code §415(b)(1)(A) limitation, as adjusted, shall be reduced by multiplying the limitation by a fraction in which the numerator is the number of years of service credit and the denominator is 10; provided, however, that the fraction may not be less than one-tenth. If the member has fewer than ten years of employment with the employer, [~~the 100% limitation of §29.51(a)(2) (for plan years beginning before January 1, 1995), and~~] the $10,000 limitation of subsection (f) of this section shall be reduced in the same manner as provided in the preceding sentence, except the numerator shall be the number of actual years of employment with the employer rather than number of years of service credit.

§29.55. Limitation on Contributions.

Contributions to the plan to establish service or compensation credit or for other purposes shall be limited in a plan year to the extent required by Internal Revenue Code §415 and accompanying regulations. Payments to TRS are subject to §25.33 of this title (relating to Contribution Limitation Based on Compensation). The availability of service or compensation credit or benefits associated with such credit may be affected by limitations on contributions to the plan.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200606011
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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34 TAC §29.53

(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 Teacher Retirement System of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority: The repeal is proposed under the following authority - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: No other code, article or statute is affected by this proposed repeal.

§29.53. Limitation for Participant in Defined Contribution Plan.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200606012
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER E. DEFERRED RETIREMENT OPTION PLAN

34 TAC §29.61

Statutory Authority: The amendment is proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan and which require the board to adopt rules to ensure that benefits paid to a retiree, or to a beneficiary of a member or retiree, do not exceed the limits provided by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Section 415).

Cross-reference to Statute: The proposed amendment affects the following statutes - §821.001, Government Code, providing a definition of "annual compensation"; §822.001, Government Code, establishing the membership requirement and providing for member compensation subject to reporting and contributions; §822.201, Government Code, providing for member compensation subject to reporting and contributions; Subchapter D, Establishment of Military Service, of Ch. 823, Government Code, providing for the purchase of military service credit; Subchapter E, Establishment of Equivalent Membership Service, of Ch. 823, Government Code, providing for the purchase of service credit for out-of-state service, developmental leave, unused state personal or sick leave, work experience by a career or technology teacher, and membership waiting period service; §823.006, Government Code, providing for limits on contributions; §824.203, Government Code, providing for the calculation of the standard service retirement annuity; §824.2045, Government Code, providing for a partial lump sum option ("PLSO"); Subchapter I, Deferred Retirement Option Plan, of Ch. 824, Government Code, providing for participation in DROP; §825.403, providing for the collection of member contributions, including deductions previously required but not paid; §825.409, Government Code, providing for employer pick-up of member contributions; §825.506, Government Code,

providing for the administration of the retirement plan as a qualified plan under federal tax law; and §825.517, Government Code, providing for an excess benefit arrangement.

§29.61. Distribution.

(a) When a member who has participated in the Deferred Retirement Option Plan (DROP) retires, the system shall distribute the accumulated amount in the member's DROP account in one of the following manners:

(1) in a lump sum;

(2) in yearly or monthly increments over a five-year period;

(3) in yearly or monthly increments over a ten-year period; or

(4) a roll-over as authorized by law.

(b) Interest shall be credited to the DROP account until final distribution is made. The initial DROP distribution shall be due and payable at the same time as the first annuity payment. Thereafter, monthly payments shall be payable on the first of each succeeding month until the payment period has expired. Yearly distributions, after the initial yearly distribution, shall be due on the anniversary of the date the initial distribution was due and payable.

(c) A member must elect the form of distribution at the time of retirement. No distribution shall be made until all necessary documents for payment of retirement or death benefits are received by TRS.

(d) Payment of DROP installments selected by a retiree under subsection (a) of this section will continue to the beneficiary upon the death of the annuitant for the remainder of the payment period. A retiree or beneficiary of a retiree receiving a DROP distribution may make a one-time election to accelerate installment payments to a lump sum amount representing the remaining DROP account balance at the time of final distribution.

(e) In the event of the death of a member participating in the DROP, [~~the DROP beneficiary is entitled to receive~~] the accumulated amount in the DROP account including credited interest shall be paid to the DROP beneficiary or in the absence of a DROP beneficiary as indicated in subsection (f) of this section. Payment may be eligible for rollover to the extent provided by law.

(f) A member participating in the DROP or a DROP annuitant shall separately designate one or more beneficiaries to receive any DROP benefits due in the event of death. DROP beneficiaries need not be the same persons named to receive other payments from the retirement system upon the death of the member or annuitant. At the death of a member participating in DROP and in [~~In~~] the absence of a designated DROP beneficiary the payment of any DROP distribution will be made to the beneficiary eligible to receive any death benefits. At the death of a DROP annuitant and in the absence of a designated DROP beneficiary the payment of any DROP distribution will be made to the beneficiary designated to receive any retirement benefits. If there is no designated beneficiary for retirement benefits, payment of any DROP distribution will be made to the beneficiary eligible to receive any survivor benefits [~~as provided in Texas Government Code, §824.103~~].

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200606013

Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER F. PARTIAL LUMP-SUM PAYMENT

34 TAC §29.70

Statutory Authority: The amendment is proposed under the following authorities - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan and which require the board to adopt rules to ensure that benefits paid to a retiree, or to a beneficiary of a member or retiree, do not exceed the limits provided by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Section 415).

Cross-reference to Statute: The proposed amendment affects the following statutes - §821.001, Government Code, providing a definition of "annual compensation"; §822.001, Government Code, establishing the membership requirement and providing for member compensation subject to reporting and contributions; §822.201, Government Code, providing for member compensation subject to reporting and contributions; Subchapter D, Establishment of Military Service, of Ch. 823, Government Code, providing for the purchase of military service credit; Subchapter E, Establishment of Equivalent Membership Service, of Ch. 823, Government Code, providing for the purchase of service credit for out-of-state service, developmental leave, unused state personal or sick leave, work experience by a career or technology teacher, and membership waiting period service; §823.006, Government Code, providing for limits on contributions; §824.203, Government Code, providing for the calculation of the standard service retirement annuity; §824.2045, Government Code, providing for a partial lump sum option ("PLSO"); Subchapter I, Deferred Retirement Option Plan, of Ch. 824, Government Code, providing for participation in DROP; §825.403, providing for the collection of member contributions, including deductions previously required but not paid; §825.409, Government Code, providing for employer pick-up of member contributions; §825.506, Government Code, providing for the administration of the retirement plan as a qualified plan under federal tax law; and §825.517, Government Code, providing for an excess benefit arrangement.

§29.70. Distribution.

(a) The partial lump-sum option payment shall be made at the same time as the initial retirement annuity payment is made. For those retirees selecting two or three annual lump-sum payments, the second and third payment shall be made on the appropriate anniversary date of the due date of the initial lump-sum payment. No interest will be paid on any lump-sum amounts paid in the second year, third year, or at any other time.

(b) A retiree who selected two or three annual lump-sum payments may receive all remaining money due at any time they elect in writing to do so.

(c) A retiree will be permitted to roll-over any amounts as authorized by law.

(d) In the event a retiree dies prior to receiving all payments due from the partial lump-sum option plan, the retirement system will pay any partial lump-sum benefits due in a single lump sum payment to the beneficiary eligible to receive the retirement benefits except in the circumstances where subsection (e) of this section applies. If there is no beneficiary designated under subsection (e) of this section and there is no beneficiary eligible to receive the retirement benefits, the retirement system will pay any partial lump-sum benefits due in a single lump sum payment to the beneficiary eligible to receive any death and survivor benefits.

(e) A retiree has the option of designating a beneficiary specifically for any unpaid lump-sum payments due under this section upon the death of the retiree. Any such designation must be done on a form prescribed by and filed with the retirement system. The designation would be superior to subsection (d) of this section and would control the payment of a single lump sum payment of any money due upon the death of the retiree under the partial lump-sum option plan. In the event that the designated beneficiary named under this subsection dies prior to distribution, TRS will pay the lump sum benefit under subsection (d) of this section.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200606014
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

As part of the rule review being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to 34 TAC §§31.12 - 31.17, 31.19, 31.34, and 31.41 of 34 TAC Chapter 31 relating to employment after retirement. The original notice of intention to review Chapter 31 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 31 is published elsewhere in this issue of the *Texas Register.* As part of the rule review, TRS has assessed §§31.12 - 31.17, 31.19, 31.34, and 31.41 and determined the reasons for initially adopting them continue to exist, with the proposed changes described in this notice. Explanations of the proposals are set out below by subchapter of Chapter 31. Subchapters without proposed changes in them are not included.

Subchapter B, Employment After Service Retirement. This subchapter contains nine rules addressing the general rule of forfeiture of annuities resulting from employment after retirement with a TRS covered employer and the exceptions to that general rule. Changes are proposed for seven rules in the subchapter-§§31.12 - 31.17, and 31.19.

Section 31.12 concerns exceptions to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the general rule of forfeiture for retirees who retired after January 1, 2001, and lists the exceptions to the general rule available for these retirees. TRS recommends adding a reference to the new exception for faculty members of professional nursing programs created during the last legislative session. See §824.602(a)(8), Government Code, as amended by Acts 2005, 79th Legislature, Regular Session, ch. 674 (Senate Bill 132), §8.

Section 31.13 concerns the substitute service exception to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the exception for retirees serving as substitutes. TRS proposes adding language clarifying that this exception may be used in the same calendar month as the exception for one-half time employment, but the retiree may not work more than one-half of the total time available for work. Additional language is also proposed that clarifies that this exception may be used in the same school year as the acute shortage area exception and the principal/assistant principal exception, provided that the requirements for those two exceptions are met. Other changes address formatting the rule into subsections for ease in reading and referencing.

Section 31.14 concerns the one-half time employment exception to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the exception for employment that does not exceed one-half time. TRS proposes language clarifying that paid time off is considered employment for the purpose of determining the number of hours available for work in a given calendar month. This language addresses confusion regarding whether only hours actually worked count towards the monthly maximum allowed for one-half time employment or whether paid time off must also be counted. Additional proposed language clarifies that the hours an employer is scheduled to be closed for business are not included in the total number of hours available for work in a given month used to calculate the maximum number of hours available for one-half time employment. For example, if a TRS covered employer is scheduled to be closed for business from December 18 - 31, 2006, the number of workdays available in the month of December is 11. A retiree working under the one-half time exception for that employer would be limited to working only 5 days in the month of December 2006.

Section 31.15 concerns the six-month exception to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the exception for full-time employment that does not exceed six months. TRS proposes adding language clarifying that working in a full-time position during any month in the school year in which the retiree retires results in the forfeiture of the annuity for that month, without regard to the number of days worked. This language is intended to address primarily the effect of retirees returning to work in full-time positions in August of the same school year in which they retired. (For return to work purposes under TRS's rules, a school year begins on September 1 and ends on August 31.) TRS also proposes additional language that clarifies that paid time off is considered employment for return to work purposes and must be reported as employment in the calendar month in which it is taken. This language addresses attempts to avoid forfeiting the

annuity for June by taking paid leave when the retiree's duties require working into June.

Section 31.16 concerns the acute shortage area exception to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the exception for employment on as much as a full-time basis as a classroom teacher in an acute shortage area. TRS proposes adding language that clarifies that work under this exception may be combined in the same school year with work as a substitute without forfeiting any annuity, provided the requirements for working under this exception are met.

Section 31.17 concerns the principal or assistant principal exception to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the exception for employment on as much as a full-time basis as a principal or assistant principal. TRS proposes adding language that clarifies that work under this exception may be combined in the same school year with work as a substitute without forfeiting any annuity, provided the requirements for working under this exception are met.

Section 31.19 concerns the exception for a faculty member of professional nursing program to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the new exception available beginning September 1, 2005 for retirees employed as faculty members in undergraduate or graduate professional nursing programs and provides the requirements for utilizing the exception. TRS proposes only to amend the title of the rule to add the word "Exception."

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register,* TRS has determined that the reasons for adopting the other rules in Subchapter B of Chapter 31 - 34 TAC §31.11 (relating to employment resulting in forfeiture of service retirement annuity) and §31.18 (relating to the bus driver exception) - continue to exist and proposes to readopt those rules without changes.

Subchapter C, Employment After Disability Retirement. This subchapter contains four rules addressing the general rule of forfeiture of annuities due to employment with a TRS covered employer after disability retirement and the exceptions to that general rule for disability retirees. In the subchapter, changes are proposed only for §31.34.

Section 31.34 concerns employment up to three months on a one-time only trial basis. The rule describes the exception to the general rule of forfeiture for disability retirees who would like to become employed on a full time basis for a three month trial period. TRS proposes changing the requirement that the three consecutive months fall in the same school year so that the trial period may span two school years. TRS also proposes language that allows the disability retiree to notify TRS of the election to utilize the trial period any time prior to the end of the trial period, rather than by the end of the first month of the trial employment period.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register,* TRS has determined that the reasons for adopting the other rules in Subchapter C of Chapter 31 - 34 TAC §31.31 (relating to employment resulting in forfeiture of disability retirement annuity), §31.32 (relating to half-time employment up to 90 days), and §31.33 (relating to substitute service up to 90 days) - continue to exist and proposes to readopt those rules without changes.

Subchapter D, Employer Pension Surcharge. This subchapter contains one rule - §31.41 - addressing the return to work pension surcharge paid by employers for certain retirees who return to their employment. TRS proposes a minor change to that rule, as described below.

Section 31.41 concerns the return to work pension surcharge. The rule describes the amount of pension surcharge owed by the TRS covered employer for each month a retiree working in a TRS-covered position is reported to TRS. The rule also provides that the surcharge is not owed on retirees who were reported working for that employer on the Employment of Retired Members Report for the report month of January 2005. TRS proposes adding language to clarify that the surcharge is based on the amount paid in a report month to a retiree whose employment is subject to the surcharge. For example, if a retiree who worked during the 2005-2006 school year returns to work in August 2006 for the 2006-2007 school year, the TRS covered employer must report the retiree as working in August. The amount of surcharge owed for August is based on the salary paid in August, even if the salary paid in August was for work performed during the 2005-2006 school year.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections; any fiscal implications are the result of statutory requirements. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed amended rules would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each section will be to update the rules to reflect recent legislation and to clarify the application of exceptions to the general rule of forfeiture of service or disability retirement annuity for employment after retirement, as well as the application of the surcharge requirement. There is no anticipated economic cost to persons who are required to comply with the proposed sections; any economic cost results from statutory requirements.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §§31.12 - 31.17, 31.19

Statutory Authority: The amendments are proposed under the following sections of the Government Code - §824.601, which authorizes the retirement system to adopt rules necessary for administering Subchapter G (relating to Loss of Benefits on Resumption of Service) of Chapter 824; §824.602, which requires the TRS Board of Trustees to adopt rules governing the employment of a substitute and defining "one-half time basis"; and §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The proposed amendments affect the following statutes in the Government Code - §824.601, which provides for the loss of benefits on resumption of service; §824.602, which provides for exceptions to the general rule of forfeiture of retirement annuity for employment after retirement;

and §825.4092, which provides for employer contributions (surcharges) for employed retirees.

§31.12. Exceptions to Forfeiture of Service Retirement Annuity.

A person who is receiving a service retirement annuity who retired after January 1, 2001, forfeits the annuity for any month in which the retiree is employed by a public educational institution covered by TRS, except in the cases set forth in §31.13 of this chapter (relating to Substitute Employment), §31.14 of this chapter (relating to One-half Time Employment), §31.15 of this chapter (relating to Six Month Exception), §31.16 of this chapter (relating to the Acute Shortage Area Exception), §31.17 of this chapter (relating to the Principal/Assistant Principal Exception), [~~and~~] §31.18 of this chapter (relating to the Bus Driver Exception), and §31.19 of this chapter (relating to the Faculty Member of a Professional Nursing Program Exception). Effective June 20, 2003 employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

§31.13. Substitute Service.

(a) Any person receiving a service retirement annuity who retired after January 1, 2001, may work in a month as a [~~daily~~] substitute in a public educational institution without forfeiting the annuity payment for that month, provided the pay for work as a substitute does not exceed the daily rate of substitute pay established by the employer. [~~Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003, and may not be combined with the substitute service exception without forfeiting the annuity payment except as provided in this chapter. The exception described in this section is not available to retirees who have elected the exception described in §31.15 of this chapter (relating to Six Month Exception). The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May) or under §29.21 of this title (relating to Effective Date for Disability Retirement).~~]

(b) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003, and may not be combined with the substitute service exception without forfeiting the annuity payment except as provided in this chapter. [~~A retiree who reports for duty as a daily substitute during any day and works any portion of that day shall be considered to have worked one day.~~]

(c) The exception described in this section is not available to retirees who have elected the exception described in §31.15 of this chapter (relating to Six Month Exception).

(d) The exception described in this section and the exception for one-half time employment described in §31.14 of this chapter (relating to One-half Time Employment) may be used during the same school year. If the substitute service and the one-half time employment occur in the same calendar month the total amount of time that the retiree works in both positions may not exceed the amount of time available that month for work on a one-half time basis.

(e) In addition to the service described in subsection (d) of this section, substitute service under this exception may be combined in the same school year with work under the following exceptions without loss of annuity provided the requirements for work under each exception are met:

(1) acute shortage area as described in §31.16 of this chapter (relating to Acute Shortage Area Exception); and

(2) principal or assistant principal as described in §31.17 of this chapter (relating to Principal or Assistant Principal Exception).

(f) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May) or under §29.21 of this title (relating to Effective Date for Disability Retirement).

(g) A retiree who reports for duty as a daily substitute during any day and works any portion of that day shall be considered to have worked one day.

§31.14. One-half Time Employment.

(a) A person who is receiving a service retirement annuity may be employed on a one-half time basis without forfeiting annuity payments for the months of employment. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) Except as provided in subsection (e) of this section, one-half time employment measured in clock hours shall not in any month exceed one-half of the time required for a similar full time position in a calendar month or 92 clock hours, whichever is less. Paid time-off is employment for purposes of this section and reduces the number of hours available to work in the calendar month in which it is taken. Because the time required for a full time position may vary from month to month, determination of one-half time will be made on a calendar month basis. If an employer is scheduled to be closed for business during all or part of a calendar month, the amount of time available for one-half time employment is reduced by the number of business days the employer is closed. Actual course instruction in state-supported colleges (including junior colleges), universities, and public schools shall not exceed during any calendar month one-half the normal load for full-time employment at the same teaching level.

(c) For bus drivers, "one-half time" employment shall in no case exceed 12 days in any calendar month, unless the retiree qualifies for the bus driver exception in §31.18 of this chapter (relating to Bus Driver Exception). Work by a bus driver for any part of a day shall count as a full day for purposes of this section.

(d) This exception and the exception for substitute service may be used during the same school year provided the substitute service and one-half time employment do not occur in the same month. Effective September 1, 2003, this exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis.

(e) For the 2005-2006 school year only, retirees who retired prior to September 1, 2005 and work in one-half time positions will not forfeit their annuities under this section for working additional hours during the months of September, October, and November 2005 if:

(1) the work was as a result of emergency conditions due to Hurricane Rita as declared by the Governor of Texas; and

(2) the retiree was working in a health care facility.

§31.15. Six-Month Exception.

(a) Any person receiving a service retirement annuity, who retired after January 1, 2001, may, without forfeiting payment of the annuity, be employed on as much as full time for no more than six months in a school year if the work meets the requirements in subsection (b) of this section and the person complies with the requirements of subsection (c) of this section. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) The work must occur:

(1) in no more than six months in a school year; and

(2) in a school year that begins after the retiree's effective date of retirement or no earlier than October 1 if the effective date of retirement is August 31. Except in cases set forth in §31.18 of this chapter (relating to Bus Driver Exception), employment in a full-time position during any month in the school year in which the retiree retired results in the forfeiture of annuity for that month without regard to the number of days worked.

(c) A person who retired after January 1, 2001, and who, during a school year, has already used the exception described in §31.13 of this chapter (relating to Substitute Service) or §31.14 of this chapter (relating to One-half Time Employment) is eligible for the exception described in this section during the same school year. However, the permissible substitute service, the employment for work at no more than half time during the same school year, and any combination in the same calendar month of substitute service and one-half time employment must be included in the six months of employment allowed under this section. The six-month exception will be allowed so long as the retiree is eligible and is reported under that exception by the employer. A retiree using the six-month exception must use the first six months of a school year in which any work occurs. In the event the retiree wants to use the six-month exception and has not been reported in that manner, the reporting entity must notify TRS in writing by amending the previous TRS 118, Employment of Retired Member(s), report(s).

(d) A person who retired after January 1, 2001, and is using the six-month exception, will forfeit an annuity payment for any month in the school year for work in excess of the six-month period. This applies even if the work would otherwise qualify for an exception under §31.13 of this chapter (relating to Substitute Service) for substitute work or for exceptions applicable to one-half time or less employment, employment as a bus driver, employment in an acute shortage area, or employment as a principal or assistant principal.

(e) A retiree may elect to revoke the six month exception by submitting the election in writing and returning any ineligible payments.

(f) A retiree employed under the six-month exception who, during the same school year, also works as a substitute or one-half time or less may not be employed in or reported under the substitute or one-half time category during the remaining months of the school year.

(g) Paid time off, including sick leave, vacation leave, and compensatory time for overtime worked, is employment for purposes of this section and must be reported to TRS as employment for the calendar month in which it is taken.

§31.16. Acute Shortage Area Exception.

(a) A person who is retired under Government Code, §824.202(a) without reduction for retirement at an early age and who teaches at least one classroom hour per day in an acute shortage area in accordance with Government Code, §824.602(a)(5) will be considered eligible for the employment after retirement exception described in that section. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) A retiree eligible to work under the acute shortage area exception must elect in writing on a form prescribed by TRS to take advantage of the exception no later than the end of the first month of employment under the exception or 30 days after the date of employment, whichever is later.

(c) If the form is not received and the retiree continues to work on a full time basis for more than six months, the annuity payments will be suspended each month in which work is performed until the election form is received by TRS.

(d) In the event the retiree elects to use the acute shortage area exception and has not been reported in that manner, the reporting entity must notify TRS in writing by amending the previous TRS 118, Employment of Retired Member(s), report(s).

(e) The 12 month separation period required under Government Code, §824.602(a)(5) for the acute shortage area exception may be any 12 consecutive months following the month of retirement so long as the retiree is not employed in any position or capacity by a public educational institution covered by TRS during any part of each of the 12 months. Employment by a third party entity as described in subsection (a) of this section is considered employment by a public educational institution covered by TRS for purposes of this subsection.

(f) Work under the exception described in this section and work under the exception for substitute service described in §31.13 of this chapter (relating to Substitute Service) may be combined in the same school year without loss of annuity provided the requirements for work under this section are met.

§31.17. Principal or Assistant Principal Exception.

(a) A person who has retired under Government Code, §824.202(a) without reduction for retirement at an early age and who is hired as and performs the duties of a principal or assistant principal as certified by the employer in accordance with Government Code, §824.602(a)(6) will be considered eligible for employment after retirement under the exception described in this section. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) A retiree must elect in writing on a form prescribed by TRS to take advantage of the exception described by this section no later than the end of the first month of employment under this section or 30 days after the date of employment, whichever is later.

(c) If the form is not received and the retiree continues to work on a full time basis for more than six months the annuity payments will be suspended each month work is performed until the election form is received by TRS.

(d) In the event the retiree elects to use the principal or assistant principal exception and has not been reported in that manner, the reporting entity must notify TRS in writing by amending the previous TRS 118, Employment of Retired Member(s), report(s).

(e) For the principal or assistant principal exception, the 12 month separation period required by Government Code, §824.602 may

be any 12 consecutive months following the month of retirement so long as the retiree is not employed in any position or capacity by a public educational institution during any part of each of the 12 months. Employment by a third party entity as described in subsection (a) of this section is considered employment by a public educational institution covered by TRS for purposes of this subsection.

(f) Work under the exception described in this section and work under the exception for substitute service described in §31.13 of this chapter (relating to Substitute Service) may be combined in the same school year without loss of annuity provided the requirements for work under this section are met.

§31.19. Faculty Member of Professional Nursing Program Exception.

(a) Beginning on September 1, 2005, a person who is employed on a full-time basis as a faculty member in an undergraduate or graduate professional nursing program as defined by Education Code, §54.221 is considered eligible for employment after retirement under the exception described in Government Code, §824.602(a)(8). Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) For purposes of the exception described in this section, a faculty member is a retiree employed by an undergraduate or graduate professional nursing program as described in Education Code, §54.221 to serve as a full-time member of its faculty or staff with duties that include teaching, research, administration, or performing other professional services.

(c) A retiree must elect in writing on a form prescribed by TRS to take advantage of the exception described by this section no later than the end of the first month of employment under this section or 30 days after the date of employment, whichever is later.

(d) If the form is not received and the retiree continues to work on a full-time basis for more than six months the annuity payment will be suspended each month work is performed until the election form is received by TRS.

(e) In the event the retiree elects to use the exception described in this section and has not been reported in that manner, the reporting entity must notify TRS in writing by amending the Employment of Retired Member(s) report.

(f) For the exception described in this section, the 12 month separation period described in Government Code, §824.602(a)(8) may be any 12 consecutive months following the month of retirement so long as the retiree is not employed in any position or capacity by a public educational institution during any part of each of the 12 months. Employment by a third party entity is considered employment by a public educational institution covered by TRS for purposes of this subsection.

(g) The exception described in this section expires at the end of the spring semester in 2015.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605990

Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

34 TAC §31.34

Statutory Authority: The amendment is proposed under the following sections of the Government Code - §824.601, which authorizes the retirement system to adopt rules necessary for administering Subchapter G (relating to Loss of Benefits on Resumption of Service) of Chapter 824; §824.602, which requires the TRS Board of Trustees to adopt rules governing the employment of a substitute and defining "one-half time basis"; and §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The proposed amendment affects the following statutes in the Government Code - §824.601, which provides for the loss of benefits on resumption of service; §824.602, which provides for exceptions to the general rule of forfeiture of retirement annuity for employment after retirement; and §825.4092, which provides for employer contributions (surcharges) for employed retirees.

§31.34. Employment Up to Three Months on a One-Time Only Trial Basis.

(a) Any person receiving a disability retirement annuity may, without forfeiting payment of the annuity, be employed on a one-time only trial basis on as much as full time for a period of no more than three consecutive months [~~in a school year~~] if the work meets the requirements in subsection (b) of this section and the person complies with the requirements of subsection (c) of this section. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) The work must occur:

(1) in a period, designated by the employee, of no more than three consecutive months [~~of a school year~~]; and

(2) in a school year that begins after the retiree's effective date of retirement or no earlier than October 1 if the effective date of retirement is August 31.

(c) TRS must receive written notice of the retiree's election [~~A retiree must elect in writing on a form prescribed by TRS~~] to take advantage of the exception described by this section. The notice must be made on a form prescribed by TRS and filed with TRS prior to the end of the three month trial period [~~no later than the end of the first month of employment under this section or 30 days after the date of employment, whichever is less~~].

(d) Working any portion of a month counts as working a full month for purposes of this section.

(e) The three month exception permitted under this section is in addition to the 90 days of work allowed in §31.33 of this chapter (relating to Substitute Service up to 90 Days) or §31.32 of this chap-

ter (relating to Half-time Employment Up to 90 Days) for a disability retiree.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605991
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER D. EMPLOYER PENSION SURCHARGE

34 TAC §31.41

Statutory Authority: The amendment is proposed under the following sections of the Government Code - §824.601, which authorizes the retirement system to adopt rules necessary for administering Subchapter G (relating to Loss of Benefits on Resumption of Service) of Chapter 824; §824.602, which requires the TRS Board of Trustees to adopt rules governing the employment of a substitute and defining "one-half time basis"; and §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The proposed amendment affects the following statutes in the Government Code - §824.601, which provides for the loss of benefits on resumption of service; §824.602, which provides for exceptions to the general rule of forfeiture of retirement annuity for employment after retirement; and §825.4092, which provides for employer contributions (surcharges) for employed retirees.

§31.41. Return to Work Employer Pension Surcharge.

(a) For each report month a retiree is working in a TRS-covered position and reported on the Employment of Retired Members Report, the employer that reports the retiree shall pay to the Teacher Retirement System of Texas (TRS) a surcharge based on the retiree's salary paid that report month. For purposes of this section, the employer is the reporting entity that reports the employment of the retiree and the criteria used to determine if the retiree is working in a TRS-covered position are the same as the criteria for determining employment eligible for TRS membership, except that a retiree reported as a substitute must meet the requirements of §31.1(b) of this title for the surcharge not to apply. For the 2005-2006 school year only, a retiree who retired before September 1, 2005 and is employed for a period of more than 4 1/2 months due to the enrollment of students displaced by Hurricane Katrina may be considered a temporary employee whose employment is not subject to the surcharge under this section.

(b) The surcharge amount that must be paid by the employer for each retiree working in a TRS-covered position is an amount that is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on member contribution rate and the state pension contribution rate.

(c) The surcharge is due from each employer that reports a retiree as working as described in this section on or after September 1, 2005, beginning with the report month for September 2005.

(d) The surcharge is not owed by the employer for any retiree reported by that employer on the Employment of Retired Members Report for the report month of January 2005.

(e) The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service as provided in §31.13 of this title unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment, the surcharge is owed by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service.

(f) The surcharge is owed by the employer on any retiree who is working for a third party entity but serving in a TRS-covered position and who is considered an employee of that employer under §824.601(d) of the Government Code.

(g) If a retiree is employed concurrently in more than one position that is not eligible for TRS membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title. If the employment is with more than one employer, the surcharge is owed by each employer.

(h) If a retiree is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge is owed by each employer.

(i) If a retiree is employed in a position eligible for TRS membership, the surcharge is owed by each employer on all subsequent employment with a TRS-covered employer for the same school year.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605992
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 33. LEGAL CAPACITY

34 TAC §33.2, §33.5

As part of the rule review being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to 34 TAC §33.2 and §33.5 of 34 TAC Chapter 33 relating to employment after retirement. The original notice of intention to review Chapter 33 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 33 is published elsewhere in this issue of the *Texas Register*. As part of the rule review, TRS

has assessed §33.2 and §33.5 and determined the reasons for initially adopting them continue to exist, with the proposed changes described in this notice.

Section 33.2 concerns payments for the account of a minor child or incapacitated person. The rule requires payments to be made as authorized by the person with legal authority to act on behalf of the child or incapacitated person. TRS proposes expanding references in the rule title and text to encompass not just payments for the account of, but also to transactions of any kind (change of address, change of bank, etc.) for a minor child or incapacitated person.

Section 33.5 concerns approval of designated beneficiary. The rule requires that beneficiary designation for an incapacitated person must be approved by court or otherwise as provided by law. TRS proposes a minor change to also permit a designation to be made "as authorized" by a court because at times a court might have previously entered an order giving authority instead of specifically approving the designation.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register*, TRS has determined that the reasons for adopting the other rules in Chapter 33 - 34 TAC §§33.1 (relating to selection of plan for payment of death claim for minor child), 33.3 (relating to selection of plan for payment of death claim for an incapacitated person), 33.4 (relating to selection of retirement plan for an incapacitated person), 33.6 (relating to power of attorney), and 33.7 (relating to acceptable signatures) - continue to exist, and the retirement system proposes to readopt those rules without changes.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed amended rules would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each section will be to update references to the scope of retirement-system transactions and court actions to which the rules apply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: The amendments are proposed under the following sections of the Government Code - §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The proposed amendments affect the following statutes in the Government Code - §824.404, which provides for survivor benefits and selection for plan of payment, including those made by a guardian on behalf of a minor child; and §825.508, which provides that persons entitled to an annuity payment or other benefits administered by TRS may designate an authorized representative by power of attorney.

§33.2. Transactions on Behalf [~~Payments for the Account~~] of a Minor Child or Incapacitated Person.

(a) Retirement plan transactions on behalf [~~Payments for the account~~] of a minor child who has not had the disabilities of minority removed must be directed by the guardian of the estate of the child, by a person authorized in a court order, or as otherwise provided by the law.

(b) Retirement plan transactions on behalf [~~Payments for the account~~] of a person who is legally incapacitated must be made as directed by the guardian of the estate of the incapacitated person or as otherwise provided by the law.

§33.5. Approval of Designated Beneficiary.

Any designation of beneficiary for any purpose on behalf of a person who is legally incapacitated must be approved or authorized by a court of competent jurisdiction or as otherwise provided by the law.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605934
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 35. PAYMENTS BY TRS

34 TAC §35.1

As part of the rule review being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to 34 TAC §35.1 of 34 TAC Chapter 35 relating to payments by TRS. The original notice of intention to review Chapter 35 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 35 is published elsewhere in this issue of the *Texas Register*. As part of the rule review, TRS has assessed §35.1 and determined the reasons for initially adopting it continue to exist, with the proposed changes described in this notice.

Section 35.1 concerns computation errors by TRS in determining a payment amount. The rule authorizes TRS to correct errors in its files and adjust future payments accordingly. TRS proposes amendments to clarify that errors in processing are included within the scope of the rule as errors in the files of the system. Also, TRS proposes clarifying that, in adjusting a future annuity so that a person will receive the actuarial equivalent of what should have been received had the error not occurred, TRS can make adjustments on less than a lifetime basis. Because lifetime adjustment may not be feasible for small amounts owed to the retirement system, TRS proposes amendments to allow flexibility in adjusting one or more payments in appropriate circumstances.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register*, TRS has determined that the reasons for adopting the only other rule in Chapter 35 - 34 TAC §35.2 (relating to direct rollovers from

TRS) - continue to exist, and the retirement system proposes to readopt that rule without changes.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed amended rule would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing the section will be to clarify the scope of errors addressed by the rule and to enhance administrative efficiency by providing flexibility in the adjustment of smaller errors. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: The amendments are proposed under the following section of the Government Code - §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board, and §824.601(f), Government Code, which authorizes the Board to adopt rules necessary for the administration of Government Code Chapter 804, Subchapter G, Loss of Benefits on Resumption of Service, relating to employment after retirement.

Cross-reference to Statute: The proposed amendments implement the following sections of the Government Code - §802.1024, which provides for the correction of errors in the payment of benefits by a retirement system, and §825.109, Government Code, which provides for the correction of errors by TRS so that future payments will be adjusted to reflect the actuarial equivalent of the benefits to which the person is entitled. The proposed amendments also affect §823.002, Government Code, which establishes requirements for the correction of errors related to the determination of creditable service; §824.006, Government Code, which provides that a monthly annuity is payable to a retiree or beneficiary through the month in which the person entitled to the annuity dies; and §824.601, Government Code, which provides that a retiree is not entitled to benefit payments for any month in which the retiree is employed in Texas public education, except as provided for by §824.602, Government Code.

§35.1. Payment [~~Computation~~] Error.

(a) If any error in the records, including errors caused by the administrative process, results in any member, retiree, beneficiary, or alternate payee under Gov't Code Section 804.005 receiving more or less than the recipient would have been entitled to receive had the records been correct, the Teacher Retirement System of Texas (TRS) shall correct such error and so far as practicable shall adjust any future payment in such a manner that the actuarial equivalent of the benefit to which the recipient was correctly entitled will be paid. The adjustment may be made to one or more future payments or to payments for as long as the life of the recipient, at the discretion of TRS.

(b) If no future payments are due, TRS may recover an overpayment in any manner that would be permitted for the collection of any other debt.

(c) TRS may correct an overpayment of benefits to a person entitled to receive payments from TRS by the method described in subsection (a) of this section only for an overpayment made during the three years preceding the date TRS discovers or discovered the overpayment.

(d) TRS may not recover from a person entitled to receive payments from TRS any overpayment made more than three years before the discovery of the overpayment. This subsection does not apply to recovery of any payments made after the death of a retiree or beneficiary if such payments were not due because of the death of the recipient but were paid because TRS did not receive notice of the recipient's death.

(e) The limitations in subsections (c) and (d) of this section do not apply to an overpayment that a reasonable person should know the person is not entitled to receive.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605935
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

As part of the rule review of 34 TAC Chapter 41, relating to health care and insurance programs, being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS) proposes amendments to §§41.15 - 41.19, 41.30 - 41.41, 41.50 - 41.52, and 41.91. The original notice of intention to review Chapter 41 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 41 is published elsewhere in this issue of the *Texas Register*. TRS has assessed the rules with proposed amendments and determined the reasons for initially adopting them continue to exist, with the changes described in this notice. Explanations of the proposals are set out below by subchapter of Chapter 41. Subchapters without proposed changes in them are not included.

Subchapter B, Long-Term Care, Disability, and Life Insurance: This subchapter contains six rules addressing the insurance coverage that can be offered pursuant to Chapter 1576 of the Insurance Code. Changes are proposed for five rules in the subchapter, §§41.15, 41.16, 41.17, 41.18, and 41.19.

Section 41.15 concerns requirements to bid on insurance for school district employees and retirees under Chapters 1576 and 1577 of the Insurance Code. The rule establishes the eligibility requirements for contractors or carriers to bid on the insurance coverage that can be offered under Chapter 1576 (Chapter 1577 of the Insurance Code was repealed effective September 1, 2005). All of the amendments proposed for this rule update statutory references following legislative changes; there are no substantive changes being proposed for this rule.

Section 41.16 concerns coverage offered under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program. The rule provides that the TRS Board may select or reject any and all coverage options relating to the group long-term care insurance program. The two proposed amendments to this rule update statutory references; there are no substantive changes being proposed for this rule.

Section 41.17 concerns definitions. The rule contains definitions for terms used in Subchapter B of Chapter 41. All of the amendments proposed for this rule update statutory references; there are no substantive changes being proposed for this rule.

Section 41.18 concerns eligibility for the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program. The rule describes the individuals that are eligible to participate in the long-term care insurance program. The one proposed amendment to this rule is very minor and conforms to similar changes proposed for other rules regarding statutory citation style. There are no substantive changes being proposed for this rule.

Section 41.19 concerns initial enrollment periods for the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program. This rule establishes the enrollment periods of coverage for long-term care insurance as required by Chapter 1576, Texas Insurance Code. One of the amendments proposed for this rule updates statutory references following legislative changes. The change from "Central" to "Austin" time is intended to avoid confusion when Texas switches between "Central" time and "Daylight Savings" time during the year. The proposed changes to this rule are not substantive.

Subchapter C, Texas School Employees Group Health (TRS-ActiveCare): This subchapter contains sixteen rules addressing the administration and operation of the TRS-ActiveCare health benefits program. Changes are proposed for all but one of the rules in the subchapter--§§41.30, 41.31, 41.32, 41.33, 41.34, 41.35, 41.36, 41.37, 41.38, 41.39, 41.40, 41.41, 41.50, 41.51, and 41.52.

Section 41.30 concerns participation in the Texas School Employees Uniform Group Health Coverage Act (TRS-ActiveCare) by school districts, other educational districts, charter schools, and regional education service centers: The rule describes the manner, form, timing and effect of election by entities eligible to participate in the TRS-ActiveCare health benefits program. State law directs TRS to provide by rule details concerning participation in TRS-ActiveCare by school districts, regional education service centers, educational districts, certain risk pools, and eligible charter schools. The rule clarifies the law by providing details about the election into and participation by those eligible entities. Proposed substantive changes include the following: (i) requiring that a notice of election be received by TRS on or prior to the tenth (10th) business day before the first day of the enrollment period to be established for the entity making the election in order to insure that employees and their dependents are afforded adequate enrollment periods; and (ii) requiring that a notice of revocation be received by TRS no later than the tenth (10th) business day before the first day of the enrollment period to be established for the entity that made an election. The latter proposed requirement will provide sufficient time for the entity to give notice that its employees and their dependents should not attempt to enroll in TRS-ActiveCare. Proposed non-substantive changes include the following: (i) updating statutory references following legislative changes that re-codified some sections of law; (ii) reorganizing certain parts of the rule for purposes of clarification and readability; (iii) updating the rule to address current election procedures and expired deadlines; and (iv) removing subsection (b)(3) of §41.30 because the law upon which this subsection was based has expired.

Section 41.31 concerns eligible bidders. The rule describes eligible bidders for contracts concerning the various services associated with TRS-ActiveCare, including bids from health maintenance organizations. In addition to updating language in the rule to reflect current terminology, the proposed amendments remove references to "proposals" to provide clarity and consistency. The concept of "bids" includes the concept of "proposals" within the context of the statutory scheme of TRS-ActiveCare.

Section 41.32 concerns bid procedure. The rule addresses a number of issues associated with bid procedures. Pursuant to §1579.054, Insurance Code, a contract to provide coverage in association with TRS-ActiveCare may be awarded only through competitive bidding under rules adopted by TRS. The one proposed change is to eliminate an existing typographical error.

Section 41.33 concerns definitions applicable to the Texas School Employees Uniform Group Health Coverage Program. This rule contains a number of definitions applicable to TRS-ActiveCare. Many of these definitions provide greater details and clarification regarding definitions that are found in §§1579.002 - 1579.004 of the Insurance Code. A proposed new paragraph (1)(D) of §41.33 contains the only substantive changes. The new subsection seeks to clarify individuals that are not included in the definition of "Dependent" for purposes of TRS-ActiveCare even though, within the common meaning of the word, the individual may be in a "dependent relationship" with a full-time or part-time employee. For example, the proposed new subsection clarifies that a dependent does not include a parent or grandparent, nor does the term include a brother or sister except in the limited circumstances noted in the proposed language for this rule. Proposed non-substantive changes include the following: (i) updating statutory references following legislative changes that re-codified some sections of law; and (ii) rewording certain parts of the rule for purposes of clarification and readability.

Section 41.34 concerns eligibility for coverage under the Texas School Employees Uniform Group Health Coverage Program. The rule clarifies the law concerning the persons eligible to be enrolled in TRS-ActiveCare. The proposed changes are non-substantive and include the following: (i) updating statutory references following legislative changes that re-codified some sections of law; and (ii) rewording certain parts of the rule for purposes of clarification and readability.

Section 41.35 concerns coverage plans. As required by state law, the rule defines the types of coverage plan and available tiers of coverage offered by TRS-ActiveCare. Proposed non-substantive changes include the following: (i) updating statutory references following legislative changes that re-codified some sections of law; and (ii) reorganizing certain parts of the rule for purposes of clarification and readability. Proposed substantive changes include: (i) stating that TRS-ActiveCare shall include at least two, not three, coverage plans, which is consistent with §1579.101 (b), Insurance Code; and (ii) revising subsection (d) in compliance with amendments made to §1579.104, Insurance Code.

Section 41.36 concerns enrollment periods for the TRS-ActiveCare Program. The rule describes and clarifies the enrollment periods for TRS-ActiveCare. Proposed substantive changes include the following: (i) in subsections (d), (e), (f), and (g) of

§41.36, clarifying that a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare during the given enrollment period; (ii) in subsection (d) of the section, providing that the enrollment period associated with a special enrollment event shall be the 31 calendar days immediately after the date of the special enrollment event, which is consistent with the other 31-day enrollment periods noted in this rule--HIPAA requires that this enrollment period last at least 30 days after the special enrollment event; (iii) also in subsection (d), stating that the enrollment form must be received by a participating entity or the health plan administrator, within the noted 31 calendar day period--this is consistent with other TRS-ActiveCare rules; (iv) in subsection (f) of the rule, stating that the 31 calendar day period begins when notice of the contract termination is sent by TRS or its designee to the eligible employee, versus when notice is received by the employee--this proposed date can be accurately determined by TRS; and (v) in subsections (f) and (g) of §41.36, stating that the enrollment form must be received by a participating entity or the health plan administrator, versus "submitted" by the employee, within the noted 31 calendar day period--this proposed change is consistent with other TRS-ActiveCare rules. Proposed non-substantive changes include reorganizing certain parts of the rule for purposes of clarification and readability.

Section 41.37 concerns effective date of coverage. The rule describes the effective dates of coverage in TRS-ActiveCare for eligible full-time and part-time employees and their eligible dependents. It is proposed that the current language of subsection (a) in the section be deleted because the deadline noted therein has expired. Similarly, it is proposed that the current language in subsection (c)(3) of §41.37 be deleted because the 90 day waiting period for TRS membership no longer exists.

Section 41.38 concerns termination date of coverage. The rule describes when coverage terminates under TRS-ActiveCare. All of the proposed changes are non-substantive in nature and are offered for the purpose of clarifying this rule. The use of "Austin" time avoids the confusion created by the semiannual switches between "Daylight Savings Time" and regular "Central Time."

Section 41.39 concerns coverage for individuals changing employers. The rule addresses various issues that may arise when an employee either enrolled or eligible to enroll in TRS-ActiveCare changes employers. The additional proposed language in subsection (a)(1) of the rule clarifies that when an employee changes his or her employer, the employee may add dependents only if a special enrollment event arises under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). The remaining proposed changes to the section are non-substantive.

Section 41.40 concerns coverage continuation while on leave without pay. The rule addresses the continuation of coverage under TRS-ActiveCare while the individual is on leave without pay. All of the proposed changes are non-substantive in nature and are offered for the purpose of clarifying this rule. As with proposed amended §41.38, the use of "Austin" time avoids the confusion created by the semiannual switches between "Daylight Savings Time" and regular "Central Time."

Section 41.41 concerns premium payments. The rule addresses issues associated with the payment of premiums by participating entities. All of the proposed changes to the section are non-substantive in nature and are consistent with similar changes in other rules.

Section 41.50 concerns adjudication of claims. The rule addresses appeals relating to claims and other benefits that are made to the TRS Appeal Committee, and possibly thereafter to the Executive Director. Numerous non-substantive changes are being proposed for purposes of clarification and readability. Proposed substantive changes include the following: (i) in subsection (a) of §41.50, clarifying that all procedures established by the administering firm be exhausted before an appeal is made to TRS; (ii) providing that the members of the Appeal Committee shall be appointed by and serve at the discretion of the Chief Operating Officer if the position of the Deputy Director is vacant; (iii) providing that the Committee shall apply the TRS-ActiveCare plan design and rules in effect on the date the first of the following events occurs--the date the claim was incurred or the date the benefit was denied by the administering firm; (iv) requiring that a request for an appeal conference be submitted and received by TRS, versus only a requirement that the request be submitted, no later than 45 days after the date of the initial written decision by the Committee; (v) clarifying that while waiting for an appeal conference, the initial denial by the Committee shall stand until the conference is held; (vi) requiring that a request for an appeal to the Executive Director be submitted and received by TRS, versus only a requirement that the request be submitted, no later than 45 days after the date of the initial written decision by the Committee or no later than 30 days after the date of the written decision by the Committee made pursuant to an appeal conference.

Section 41.51 concerns appeals relating to eligibility. The rule addresses appeals relating to eligibility that are made to the TRS Appeal Committee, and possibly thereafter to the Executive Director. These issues are also part of the on-going operations of TRS- ActiveCare; therefore, the reason for adopting the rule continues to exist. Numerous non-substantive changes are being proposed for purposes of clarification and readability. More substantive in nature, language found in subsection (c) that incorporates by reference the procedures found in §41.50 is being deleted. In its place, a handful of new sections are being added which "mirror" existing or proposed subsections of §41.50 (e.g., subsections (c), (d), (e), (g) and (h) of §41.51). Comments concerning proposed changes to §41.50 (above) are equally applicable to similar language found in subsections (c), (d), (e), (g) and (h) of §41.51. Subsection (f) contains the most substantive proposed changes in this rule. For the first time, subsection (f) provides that if TRS finds that extraordinary circumstances constituting "good cause," as defined in this subsection, prevented the Petitioner from complying fully with a deadline under TRS-ActiveCare plan design or rules, the appeal may be granted. Note further that proposed subsection (f) expressly addresses, for the first time in the TRS-ActiveCare rules, situations when misinformation concerning an enrollment deadline is provided not just by TRS, but also by the TRS-ActiveCare health plan administrator (presently, Blue Cross Blue Shield of Texas) or a participating entity (e.g., a school district). This proposed amendment to the rule provides that misinformation from any of these three sources may, under certain circumstances, be grounds for a finding of "good cause" to allow an enrollment in TRS-ActiveCare.

Section 41.52 concerns expulsion from TRS-ActiveCare Program. The rule addresses various issues associated with the expulsion of a participant in TRS-ActiveCare. All of the proposed changes to §41.52 are non-substantive in nature and are consistent with similar changes in other rules.

Subchapter D, Comparability of Group Health Coverages: This subchapter addresses the efforts of TRS in determining the comparability of a school district's group health coverage to the basic health coverage provided under the Texas Employees Group Benefits Act and contains only one rule, §41.91, which is proposed for amendment.

Section 41.91 concerns certification of insurance coverage. This rule specifically addresses the role of TRS in conducting a comparability study and the factors to be considered in determining comparability to the basic health care coverage offered to state employees. The comparability study only applies to school districts that do not participate in TRS-ActiveCare. Also, this rule addresses the scope of the comparability study and the reporting requirements of the affected school districts. All of the amendments proposed for this rule either update statutory references or make minor, non-substantive changes to the text of the rule.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register*, the sections of 34 TAC Chapter 41 not mentioned above are proposed for readoption without changes because, having assessed those rules, TRS has determined that the reasons for adopting them continue to exist.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed amendments would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each amended section will be to update the rules to reflect recent changes in law, to clarify and enhance the readability of provisions, and to incorporate into rule certain practices and procedures applied by staff. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

SUBCHAPTER B. LONG-TERM CARE, DISABILITY AND LIFE INSURANCE

34 TAC §§41.15 - 41.19

Statutory Authority: The amendments are proposed under the following statutes: §1576.006, Insurance Code, which authorizes TRS to adopt rules relating to the group long-term care insurance program as TRS considers necessary; §1579.052, Insurance Code, which authorizes TRS to adopt rules relating to the TRS-ActiveCare program as TRS considers necessary, including rules relating to the adjudication of claims and expelling participants from the program for cause; §1579.101, Insurance Code, which requires TRS to establish by rule plans for group coverages under the TRS-ActiveCare program and to define by rule the requirements of each coverage plan and tier of coverage; §1579.102, Insurance Code, which requires TRS to prescribe by rule the coverage provided under the TRS-ActiveCare catastrophic coverage plan; and §22.004, Education Code, which requires TRS to adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage offered under the Texas Employees Group Benefits Act.

Cross-reference to statute: The proposed amendments affect the following sections of the Insurance Code: §1576.008, which addresses competitive bidding requirements; §1576.001, which contains various definitions; §1576.006, which grants the trustee the authority to adopt rules as necessary to administer Chapter 1576; §1579.052, which grants the trustee the authority to adopt rules as necessary to administer Chapter 1579, including rules relating to the adjudication of claims and expelling participants from TRS-ActiveCare for cause; §1579.151, which describes elections available to school districts with 500 or fewer employees and elections available to various other entities eligible to participate in TRS-ActiveCare; §1579.152, which addresses participation in TRS-ActiveCare by school districts with more than 500 employees; §1579.1525, which addresses participation in TRS-ActiveCare before September 1, 2005, by school districts with more than 500 employees; §1579.153, which addresses participation in TRS-ActiveCare by certain risk pools; §1579.154, which addresses participation in TRS-ActiveCare by eligible charter schools; §1579.054, which requires competitive bidding under rules adopted by the trustee; §1579.055, which provides that the trustee is not required to select the lowest bid and may also consider any relevant criteria; §1579.002, which contains general definitions; §1579.003, which contains the definition of an "employee"; §1579.004, which contains the definition of a "dependent"; §1579.201, which provides that the terms "full-time employee" and "part-time employee" shall have the meanings assigned by rules adopted by the trustee; §1579.202, which describes "eligible employees" for TRS-ActiveCare; §1579.101, which authorizes plans of group coverages; §1579.104, which addresses optional coverages that can be offered under TRS-ActiveCare; §1579.203, which addresses the ability of an eligible employee to select different coverage plans; and §1579.255, which addresses payments to TRS-ActiveCare by participating entities.

§41.15. Requirements to Bid on Insurance for [~~For~~] School District Employees and Retirees Under Chapter [~~Chapters~~] 1576 [~~and 1577~~] of the Insurance Code.

(a) All contractors contracting and providing coverage under Chapter [~~Chapters~~] 1576 [~~and 1577~~], Insurance Code, must:

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

(3) coordinate services under the insurance coverages provided under Chapter [~~Insurance Code Chapters~~] 1576, Insurance Code [~~and 1577~~]; and

(4) (No change.)

(b) - (d) (No change.)

§41.16. Coverage Offered Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

Under the authority granted by Chapter [~~Chapters~~] 1576 [~~and 1577~~], Insurance Code, the TRS Board of Trustees may select or reject any and all coverage options relating to the program, including but not limited to:

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

§41.17. Definitions.

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

(1) Carrier or Insurer--Any entity authorized by the Texas Department of Insurance to provide any of the insurance coverage, ben-

efits, or services described by Chapter 1576, Insurance Code, [~~Article 3.50-4A~~] under the insurance laws of this state.

(2) - (5) (No change.)

(6) Program--The Texas Public School Employees and Retirees Group Long-Term Care Insurance Program set out in Chapter [~~Chapters~~] 1576 [~~and 1577~~], [~~Texas~~] Insurance Code.

(7) (No change.)

§41.18. Eligibility for the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

(a) (No change.)

(b) Texas public school retirees, as defined by [~~Insurance Code~~] §1575.004, Insurance Code, who are not participating in a group program under the Texas Employees Group Benefits Act or the State University Employees Uniform Insurance Benefits Act, their spouses, surviving spouses, parents, grandparents, parents of their spouses, and parents of their surviving spouses are eligible to participate in the program.

(c) (No change.)

§41.19. Initial Enrollment Periods for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

(a) In accordance with Chapter [~~Insurance Code, Chapters~~] 1576 [~~and 1577~~], Insurance Code, TRS as trustee has the authority to declare periodic open enrollment and the rules and conditions for such open enrollment periods for the program.

(b) The initial enrollment period for newly hired eligible participating members and their eligible family members will begin on the effective date of employment and end at 11:59 p.m. Austin [~~Central~~] Time on the 90th day after the effective date of employment.

(c) The initial enrollment period for eligible current Texas public school employees who are covered under their employer-sponsored group long-term care plan but whose employer is terminating the group long-term care plan and their eligible family members will begin on the date such plan is terminated by their employer and end at 11:59 p.m. Austin [~~Central~~] Time on the 30th day after the termination date of such plan.

(d) The initial enrollment period for eligible service retirees under age 60 and their eligible family members is the same as their initial enrollment period under the TRS-Care program set out in §41.1 (relating to Enrollment Periods for the Texas Public School Retired Employees Group Benefits Program [~~(TRS-Care)~~]).

(e) The initial enrollment period for surviving spouses of eligible participating members and surviving spouses of eligible retirees will begin on the first day after the eligible employee or retiree dies and end at 11:59 p.m. Austin [~~Central~~] Time on the 30th day after the end of the month in which the eligible participating member or retiree dies.

(f) The initial enrollment period for new spouses and parents of new spouses will begin on the date of the eligible participating member's or retiree's marriage and end at 11:59 p.m. Austin [~~Central~~] Time on the 30th day after the marriage date.

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

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605936
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §§41.30 - 41.41, 41.50 - 41.52

Statutory Authority: The amendments are proposed under the following statutes: §1576.006, Insurance Code, which authorizes TRS to adopt rules relating to the group long-term care insurance program as TRS considers necessary; §1579.052, Insurance Code, which authorizes TRS to adopt rules relating to the TRS-ActiveCare program as TRS considers necessary, including rules relating to the adjudication of claims and expelling participants from the program for cause; §1579.101, Insurance Code, which requires TRS to establish by rule plans for group coverages under the TRS-ActiveCare program and to define by rule the requirements of each coverage plan and tier of coverage; §1579.102, Insurance Code, which requires TRS to prescribe by rule the coverage provided under the TRS-ActiveCare catastrophic coverage plan; and §22.004, Education Code, which requires TRS to adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage offered under the Texas Employees Group Benefits Act.

Cross-reference to statute: The proposed amendments affect the following sections of the Insurance Code: §1576.008, which addresses competitive bidding requirements; §1576.001, which contains various definitions; §1576.006, which grants the trustee the authority to adopt rules as necessary to administer Chapter 1576; §1579.052, which grants the trustee the authority to adopt rules as necessary to administer Chapter 1579, including rules relating to the adjudication of claims and expelling participants from TRS-ActiveCare for cause; §1579.151, which describes elections available to school districts with 500 or fewer employees and elections available to various other entities eligible to participate in TRS-ActiveCare; §1579.152, which addresses participation in TRS-ActiveCare by school districts with more than 500 employees; §1579.1525, which addresses participation in TRS-ActiveCare before September 1, 2005, by school districts with more than 500 employees; §1579.153, which addresses participation in TRS-ActiveCare by certain risk pools; §1579.154, which addresses participation in TRS-ActiveCare by eligible charter schools; §1579.054, which requires competitive bidding under rules adopted by the trustee; §1579.055, which provides that the trustee is not required to select the lowest bid and may also consider any relevant criteria; §1579.002, which contains general definitions; §1579.003, which contains the definition of an "employee"; §1579.004, which contains the definition of a "dependent"; §1579.201, which provides that the terms "full-time employee" and "part-time employee" shall have the meanings assigned by rules adopted by the trustee; §1579.202, which describes "eligible employees" for TRS-ActiveCare; §1579.101, which authorizes plans of group coverages; §1579.104, which addresses optional coverages that can be offered under TRS-

ActiveCare; §1579.203, which addresses the ability of an eligible employee to select different coverage plans; and §1579.255, which addresses payments to TRS-ActiveCare by participating entities.

§41.30. Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act [(TRS-ActiveCare)] by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers.

(a) Manner, form and effect of election.

(1) Form of the notice of election. All elections to participate [opt in or opt out of participation] in the health benefits program, referred to as "TRS-ActiveCare," [uniform group coverage] under the Texas School Employees Uniform Group Health Coverage Act (the "Act"), Chapter 1579, [(TRS-ActiveCare) pursuant to the provisions of] Insurance Code, shall be in writing, in a form prescribed [Article 3.50-7, as added by the 77th Legislature, 2001 in House Bill 3343 and as permitted] by the Teacher Retirement System of Texas (TRS), as trustee of TRS-ActiveCare. An incomplete or unsigned notice of election will not be deemed received by TRS for purposes of determining whether a valid election has been exercised [the program, shall be in writing, in a form prescribed by TRS and received by TRS no later than 5:00 p.m. on or before the applicable election deadline date specified in this section].

(2) Timing of the receipt of the notice of election. A notice of election otherwise valid must be received by TRS on or prior to the tenth (10th) business day before the first day of the enrollment period established under §41.36 of this title for the entity seeking to join TRS-ActiveCare. [A notice of election otherwise valid received by facsimile before the applicable deadline is acceptable if TRS receives the original, signed notice of election within seven calendar days after the applicable deadline. An incomplete or unsigned notice of election will not be deemed received by TRS for purposes of determining whether a valid election has been exercised.]

(3) Time of the receipt of a notice of revocation. In order to revoke a [A] valid election to participate in TRS-ActiveCare, a written notice of revocation, signed by the entity that filed the valid election, must be received by TRS no later than the tenth (10th) business day before the first day of the enrollment period established under §41.36 of this title for the entity. There is no particular form required for a written notice of revocation. However, an unsigned notice of revocation will not be deemed received by TRS for purposes of determining whether a valid revocation has been exercised. [filed with TRS is irrevocable once the election deadline passes, unless TRS is authorized to extend a deadline and does so by resolution of the TRS Board of Trustees.]

(4) Discontinuance of participation. Entities that [electing to] participate in [the] TRS-ActiveCare [program] may not discontinue participation unless authorized by Chapter 1579, Insurance Code, [Article 3.50-7,] and by appropriate rule or resolution adopted by the TRS Board of Trustees. [Entities opting out of participation in the TRS-ActiveCare program have no further opportunity to elect to participate except as authorized by Insurance Code, Article 3.50-7, and by appropriate rule or resolution adopted by the TRS Board of Trustees. If an entity has an option to opt in and thereby participate in the TRS-ActiveCare program, a failure to properly or timely file a notice of election shall have the effect of the entity electing not to participate. Likewise, if an entity has an option to opt out and thereby not participate in the TRS-ActiveCare program, a failure to properly or timely file a notice of election shall have the effect of the entity electing to participate.]

(b) School districts with 500 or fewer employees. Pursuant to §1579.151(a), Insurance Code, [Article 3.50-7 §5(a),] school districts with 500 or fewer employees as of January 1, 2001 were [are] required to participate effective September 1, 2002 in [the] TRS-ActiveCare [program], except that certain of these school districts were authorized to [may] delay or opt out of participation by specified election deadline dates. With regard to a school district that opted out of participation in TRS-ActiveCare pursuant to either §1579.151(b) or §1579.153 (c), Insurance Code, as those provisions existed at the time the school district opted out, subsection (h) of this section provides the method for such a school district to change its election [deadlines as provided in paragraphs (1) through (3) of this subsection].

[(1) Pursuant to Insurance Code, Article 3.50-7 §5(g), a school district with 500 or fewer employees as of January 1, 2001 that, on January 1, 2001, was individually self-funded for the provision of health care coverage to its employees may elect to opt out of the mandatory participation in the TRS-ActiveCare program effective September 1, 2002, by filing its notice of election with TRS on or before September 1, 2001. Subsection (h) of this section provides the method for a school district to change its election.]

[(2) Pursuant to Insurance Code, Article 3.50-7 §5(e), a school district with 500 or fewer employees as of January 1, 2001 that was a member on January 1, 2001 of a risk pool established under the authority of Local Government Code, Chapter 172, may opt out of the mandatory participation in the TRS-ActiveCare program effective September 1, 2002 by filing its notice of election with TRS on or before September 1, 2001 and electing thereby to continue in the risk pool that the district participated in on January 1, 2001. Subsection (h) of this section provides the method for a school district to change its election.]

[(3) Pursuant to Insurance Code, Article 3.50-7 §5(h), a school district with 500 or fewer employees as of January 1, 2001, other than a qualifying district as defined in subsection (b)(3)(B) of this section, that is a party to a contract for the provision of health insurance coverage to the employees of the district that is in effect on September 1, 2002 may delay mandatory participation in the TRS-ActiveCare program effective September 1, 2002, by filing its notice of election with TRS on or before September 1, 2001.]

[(A) A qualifying school district, as defined in subsection (b)(3)(B) of this section, may delay mandatory participation in the TRS-ActiveCare program effective September 1, 2002, by filing its notice of election with TRS on or before August 15, 2002.]

[(B) A qualifying school district is one that meets the following criteria:]

[(i) had 500 or fewer employees as of January 1, 2001;]

[(ii) made available to its employees in the 2001-2002 school year one or more plans of comparable coverage as determined by the TRS comparability report for the 2001-2002 school year; and]

[(iii) reflected in its comparability compliance report to TRS that at least 50% of the district's aggregate employees covered by plans offered by the district in the 2001-2002 school year were participating in the comparable plan(s) made available by the district.]

[(C) At the time of an election under subsection (b)(3) of this section, such a school district must provide the expiration date of the contract to TRS and shall begin mandatory participation in the TRS-ActiveCare program on the first day of the month immediately following the month in which termination or expiration of the contract occurs.]

(c) School districts with 501 or more employees but not more than 1000 employees. School districts with 501 or more employees but

not more than 1000 employees at any time during the 2001 school year, as reflected on any report received by TRS for a reporting period during that school year may elect to participate in [~~the~~] TRS-ActiveCare [~~program~~] in the manner prescribed in subsection (h) of this section.

(d) School districts with 1001 or more employees. A school district with 1001 or more employees at any time during the 2001 school year, as reflected on any report received by TRS for a reporting period during that school year, may elect to participate in [~~the~~]TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, [~~program, provided that notice of its election shall be in a form prescribed by TRS and shall be received by TRS at its offices on or after November 22, 2002~~] in which event the school district will become a participating entity on the later of the first day of the month following six (6) months from [~~after~~] the date on which TRS receives the notice of election or a preferred date specified by the school district in its notice of election. Alternatively, the district will become a participating entity effective on the date approved by the Executive Director, if applicable, as described in subsection (i) of this section.

(e) Educational districts. Pursuant to §1579.151(c),Insurance Code, [~~Article 3.50-7 §5(i),~~] educational districts whose employees are members of TRS are required to participate effective September 1, 2002 in [~~the~~] TRS-ActiveCare [~~program~~], except that educational districts with 500 or fewer employees on January 1, 2001 were allowed to [~~may~~] opt out of participation. September 1, 2001 was [~~is~~] the deadline for such an educational district to file its notice of election with TRS to opt out of participation in [~~the~~] TRS-ActiveCare [~~program~~]. Subsection (h) of this section provides the [~~a~~] method for an educational district to change its election.

(f) Charter schools. Pursuant to §1579.154, Insurance Code, [~~Article 3.50-7 §6,~~] an open-enrollment charter school established under [~~Education Code,~~] Chapter 12, Subchapter D, Education Code, ("charter school") may elect to participate in [~~the~~] TRS-ActiveCare by complying with both paragraphs (1) and (2) of this subsection [~~program~~]. Only an eligible charter school under the Act may elect to participate.

(1) Pursuant to §1579.154(a), Insurance Code, [~~Article 3.50-7 §6(a),~~] to be eligible, a charter school must agree to inspection of all records of the school relating to its participation in [~~the~~] TRS-ActiveCare [~~program~~] by TRS, by the administering firm as defined in §1579.002(1), Insurance Code, [~~Article 3.50-7 §2(1),~~] by the commissioner of education, or by a designee of any of those entities, and further must agree to have its accounts relating to participation in [~~the~~] TRS-ActiveCare [~~program~~] annually audited by a certified public accountant at the school's expense. The agreement of the charter school shall be evidenced in writing and shall constitute a part of a notice of election prescribed by TRS pursuant to subsection (a) of this section.

[~~(2) This paragraph applies only to charter schools eligible to participate in the TRS-ActiveCare program that either received state funding in accordance with Education Code, Chapter 12, prior to June 1, 2001, and did not file a notice of election to participate on or before September 1, 2001, or received or will receive state funding in accordance with Education Code, Chapter 12, on or after June 1, 2001, and did not or do not file a notice of election to participate on or before the later of September 1, 2001 or the ninetieth calendar day following the date the Texas Education Agency authorized the Comptroller to issue the first payment of funds to such charter school, so long as the ninetieth calendar day is no later than June 30, 2003. Those eligible charter schools may elect to opt into and participate in the TRS-ActiveCare program by filing a notice of election in a form prescribed by TRS and received by TRS in its offices no later than 5:00 p.m., Central Time, on July 1, 2003, in which event the charter school will become a participating entity no later than the first day of the month following sixty (60) days after the date on which TRS receives the notice.~~]

(2) [~~(3)~~] Eligible charter schools [~~that do not elect to participate in the TRS-ActiveCare program pursuant to subsection (f)(2) of this section~~] may elect to [~~opt into and~~] participate in [~~the~~] TRS-ActiveCare [~~program~~] by filing a notice of election in compliance with subsection (a) of this section, [~~in a form prescribed by TRS and received by TRS in its offices at any time or date after 5:00 p.m., Central Time, on July 1, 2003,~~] in which event the charter school will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the charter school in its notice of election. Alternatively, the eligible charter school will become a participating entity effective on the date approved by the Executive Director, if applicable, as described in subsection (i) of this section.

(g) Regional education service centers. Pursuant to §1579.151(a), Insurance Code, [~~Article 3.50-7 §5(a),~~] each regional education service center established under Chapter 8, Education Code, [~~Chapter 8,~~] is required to participate effective September 1, 2002 in [~~the~~] TRS-ActiveCare [~~program~~].

(h) School districts that opted out of participation in TRS-ActiveCare as described in subsection (b)[~~(1), (b)(2),~~] or (c) of this section[~~,~~] and educational districts that opted out of participation in TRS-ActiveCare as described in subsection (e) of this section may elect to [~~opt into and~~] participate in [~~the~~] TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, in which event the school district will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the school district in its notice of election. Alternatively, the district will become a participating entity effective on the date approved by the Executive Director, if applicable, as described in subsection (i) of this section. [~~program as follows:~~]

[~~(1) By filing a notice of election in a form prescribed by TRS and received by TRS in its offices no later than 5:00 p.m., Central Time, on July 1, 2003, in which event the district will become a participating entity no later than the first day of the month following sixty (60) days from the date that TRS receives the notice; or~~]

[~~(2) By filing a notice of election in a form prescribed by TRS and received by TRS in its offices at any time or date after 5:00 p.m., Central Time, on July 1, 2003, in which event the district will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice or a preferred date specified by the school district; or~~]

[~~(3) By complying with subsection (i) of this section.~~]

(i) An entity that will become a participating entity in [~~the~~] TRS-ActiveCare [~~program~~] on the first day of the month following six (6) months after the date on which TRS receives the entity's notice of election but desires to become a participating entity on an earlier date may include in its notice of election a request that the Executive Director consider an exception to the notice requirement. The notice of election must include the earlier date on which the entity desires its coverage to begin. The Executive Director will grant the exception if, in his or her sole discretion, upon considering the following criteria, he or she finds that an exception is in the best interest of [~~the~~] TRS-ActiveCare [~~program~~]:

(1) the impact on the requesting entity's employees and dependents;

(2) the impact on the health plan [~~TRS-ActiveCare program's third-party~~] administrator of TRS-ActiveCare;

(3) the impact on the [~~TRS-ActiveCare program's~~] provider network of TRS-ActiveCare;

(4) the number of potential enrollees that would be coming into [~~the~~] TRS-ActiveCare [~~program~~] for the first time on the same date; and

(5) the impact on [~~the~~] TRS-ActiveCare [~~program~~] as a whole, taking into account any recommendations and observations of TRS's health care consultant.

§41.31. Eligible Bidders.

(a) The health benefits program offered under the Texas School Employees Uniform Group Health Coverage Act [~~Program~~] may include separate contracts for:

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

(5) ancillary services [~~to provide other ancillary benefits~~].

(b) Except for health maintenance organizations, which must meet other requirements in this section, to be eligible to bid on health benefit services or products, prescription drugs or administrative services, a bidder must have:

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

(c) TRS may approve a health maintenance organization (HMO) to offer a health benefit plan to participants in [~~the~~] TRS-ActiveCare [~~program~~]. In order to be eligible to bid [~~or make a proposal~~], an HMO must satisfy all of the following conditions:

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

(3) The HMO must submit a responsive bid [~~or proposal~~], with rates, to TRS within the timeframe and in the manner and format prescribed by TRS. Once adopted by TRS, the rates and benefit may not be modified during a plan year without the prior written approval of TRS. A request for expansion to a non-contiguous service area shall require a separate responsive bid [~~or proposal~~] and approval by TRS.

(4) (No change.)

(d) TRS shall use a competitive bidding process to approve one or more HMOs to offer a health benefit plan to TRS-ActiveCare [~~program~~] participants in areas of the state determined by TRS. TRS may establish, for different areas of the state, different criteria for HMOs to qualify to bid [~~or make a proposal~~]. TRS may at any time establish or change the number, if any, of HMOs to approve in each area. If TRS elects to request bids [~~or proposals~~] for such plans, TRS will establish:

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

§41.32. Bid Procedure.

(a) (No change.)

(b) The bid opening shall take place at a date and time set by [{]TRS[~~}~~].

(c) - (e) (No change.)

§41.33. Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program.

The following words and terms when used in subchapter C or in connection with the administration of Chapter 1579, Insurance Code, [~~§3.50-7~~] shall have the following meanings unless the context clearly indicates otherwise.

(1) Dependent--Only those [~~All~~] individuals described by Chapter 1579.004, Insurance Code [~~3.50-7, §2(3)~~], and [~~including~~] an unmarried individual [~~child~~] under 25 years of age ("child") who is described by any one of the following subparagraphs at all times during which the child is receiving coverage under [~~the~~] TRS-ActiveCare [~~Program~~].

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

(D) For clarification and without intending to identify all persons who are not a Dependent for purposes of coverage, even though the individual may be in a dependent relationship with a full-time or part-time employee, the following are not included in the definition of Dependent in this section:

(i) Other than the spouse of a full-time or part-time employee, a Dependent does not include an individual who is a "participating member" as defined in paragraph (5) of this section.

(ii) A Dependent does not include a parent or grandparent of a full-time or part-time employee.

(iii) A Dependent does not include a brother or a sister of a full-time or part-time employee unless the brother or sister is an unmarried individual under 25 years of age who is either:

(I) under the legal guardianship of a full-time or part-time employee; or

(II) in a regular parent-child relationship with a full-time or part-time employee, meaning that the brother or sister's primary residence is the household of that full-time or part-time employee, the full-time or part-time employee provides at least 50% of the brother or sister's support, neither of the brother or sister's natural parents reside in that household, and the full-time or part-time employee has the legal right to make decisions regarding the brother or sister's medical care.

(2) Full-time employee--A participating member who:

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

(C) is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees [~~Uniform~~] Group [~~Insurance~~] Benefits Act (Chapter 1551, Insurance Code [~~article 3.50-2~~]) or the [~~Texas~~] State [~~College and~~] University Employees Uniform [~~Group~~] Insurance Benefits Act (Chapter 1601, Insurance Code [~~article 3.50-3~~]) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, [~~Insurance Program established under~~] Insurance Code, also known as [~~article 3.50-4 {~~]TRS-Care).

(3) (No change.)

(4) Participating entity--An entity participating in [~~the~~] TRS-ActiveCare [~~program~~] including a school district; another educational district whose employees are members of the retirement system; a regional education service center; and a charter school that meets the requirements of Chapter 1579, Insurance Code [~~article 3.50-7~~]. An entity is considered to be participating in [~~the~~] TRS-ActiveCare [~~program~~] on and after the first date coverage becomes effective for its employees.

(5) Participating member--A person defined by [~~Government Code~~] §822.001 and §822.002, Government Code, whose membership in the retirement system has not been terminated as described by [~~Government Code~~] §§822.003 - 822.006, Government Code, and who is currently contributing to the Teacher Retirement System of Texas pension trust fund in accordance with §825.403, Government Code [~~§825.403~~].

(6) Part-time employee--An individual who is currently employed by a participating entity for 10 hours or more each week; and:

(A) (No change.)

(B) is not a retiree who waived coverage under the health benefits program under theTexas Public School Retired Employees Group Benefits Act, Chapter 1575, [Insurance Program established under] Insurance Code, also known as [article 3.50-4 (]TRS-Care[)]; and

(C) is not receiving coverage as an employee or retiree from a uniform group insurance or health benefits program under the Texas Employees [Uniform] Group [Insurance] Benefits Act (Chapter 1551, Insurance Code [article 3.50-2]) or the [Texas] State [College and] University Employees Uniform [Group] Insurance Benefits Act (Chapter 1601, Insurance Code [article 3.50-3]) or the Texas Public School Retired Employees Group Benefits Act (Chapter 1575, [Insurance Program established under] Insurance Code, also known as [article 3.50-4 (]TRS-Care).

(7) (No change.)

(8) TRS-ActiveCare [program]--The health benefits program under the Texas School Employees Uniform Group Health Coverage Act, Chapter 1579, [Program established by] Insurance Code [article 3.50-7].

(9) Trustee or TRS--The Teacher Retirement System of Texas acting in its capacity as trustee under Chapter 1579, Insurance Code [article 3.50-7].

§41.34. Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program.

The following persons are eligible to be enrolled in [the] TRS-ActiveCare [program] under terms, conditions and limitations established by the trustee unless expelled from the program under provisions of Chapter 1579, Insurance Code [article 3.50-7].

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

(3) Dependents, as defined in §41.33 of this title pursuant to Chapter 1579.004, [under] Insurance Code [article 3.50-7, §2(3)(A), (B) or (C), of either a full-time employee or a part-time employee]. A child defined in Chapter 1579.004 (3), Insurance Code , who is 25 years of age or older [article 3.50-7, §2(3)(C)] is eligible for coverage only if, and only for so long as, such child's mental retardation or physical incapacity is a medically determinable condition that prevents the child from engaging in self-sustaining employment as determined by TRS.

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

(6) Individuals who become eligible as determined by TRS for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272), through their participation in [the] TRS-ActiveCare [program].

(7) - (8) (No change.)

§41.35. Coverage Plans.

(a) [The] TRS-ActiveCare [program] shall include at least two [three] coverage plans, including a catastrophic care coverage plan and a primary care coverage plan, in accordance with Chapter 1579, Insurance Code [article 3.50-7]. The coverages provided for eligible persons under the [three] plans offered will include, but are not limited to, basic medical expense coverage and prescription drug coverage, in accordance with terms, conditions, and limitations adopted by resolution of the trustee.

(b) [The] TRS-ActiveCare [program] may also include additional plans for health-care coverage under terms, conditions and limitations adopted by resolution of the trustee.

(c) The coverage plans offered under [the] TRS-ActiveCare [program] will each include at least two of the following rating tiers:

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

(d) TRS may not offer optional coverages, other than optional permanent [that may include but are not limited to] life insurance, optional [dental care, eye care,] long-term care insurance, and optional disability insurance[, or other coverages considered advisable] to employees participating in TRS-ActiveCare [eligible persons] in accordance with terms, conditions and limitations adopted by resolution of the trustee.

§41.36. Enrollment Periods for [the] TRS-ActiveCare [Program].

(a) A full-time or part-time employee who becomes employed in an eligible capacity with a participating entity has an initial enrollment period of 31 days, beginning on the first day that the full-time or part-time employee becomes employed in an eligible capacity with a participating entity and ending at 11:59 p.m. Austin [Central] Time on the 31st day thereafter.

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

(d) The enrollment period for an individual who becomes eligible for coverage due to a special enrollment event, [shall be] as defined under provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)) (HIPAA), shall be the 31 calendar days immediately after the date of the special enrollment event. During a special enrollment period, [as defined by HIPAA] an individual who is already covered under a plan offered under TRS-ActiveCare may not elect a different plan, for himself or any eligible dependents, for the remainder of the existing plan year but may only add eligible dependents for coverage under the employee's existing plan selection. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after the date of the special enrollment event.

(e) Eligible full-time and part-time employees and their eligible dependents who are enrolled in an HMO with a TRS contract that is not renewed for the next plan year may make one of the following elections [by submitting a completed enrollment form during the plan enrollment period, to become effective on September 1 of the next plan year]:

(1) (No change.)

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, without preexisting condition exclusions. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare during the plan enrollment period. Coverage under the elected option becomes effective on September 1 of the next plan year.

(f) Eligible full-time or part-time employees and their eligible dependents who are enrolled in an HMO with a TRS contract that is terminated during the plan year may make one of the following elections [by submitting a completed enrollment form within 31 calendar days after receiving notice of the contract termination, to become effective on a date determined by TRS]:

(1) (No change.)

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, without preexisting condition exclusions. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after notice of the contract termination is sent to the eligible full-time or part-time employee by TRS or

its designee. Coverage under the elected option becomes effective on a date determined by TRS.

(g) Eligible full-time or part-time employees and their eligible dependents enrolled in an approved HMO whose eligibility status changes because the eligible full-time or part-time employee no longer resides, lives, or works in the HMO service area shall make one of the following elections [~~by submitting a completed enrollment form within 31 calendar days after their change in eligibility status, to become effective on the first day of the month following the date their eligibility status changed~~]:

(1) (No change.)

(2) enroll in the TRS-ActiveCare preferred provider organization coverage plan, subject to applicable preexisting condition limitations. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within 31 calendar days after the employee's change in eligibility status. Coverage under the elected option becomes effective on the first day of the month following the date the employee's eligibility status changed.

(h) (No change.)

§41.37. Effective Date of Coverage.

~~[(a) For eligible full-time employees, eligible part-time employees, and their eligible dependents, coverage shall become effective September 1, 2002, provided that they enroll before August 31, 2002.]~~

(a) [~~(b)~~] Except as otherwise provided by §41.39 of this title (relating to Coverage for Individuals Changing Employers) coverage shall become effective as described in this subsection for eligible full-time employees and eligible part-time employees whose employer first becomes a participating entity after September 1, 2002, and who enroll no later than the last calendar day of the month immediately preceding the date their employer first becomes a participating entity or no later than the last day of an approved initial enrollment period for a large school district as provided by §41.36 of this title (relating to Enrollment Periods for [~~the~~] TRS-ActiveCare [~~Program~~]). Coverage shall become effective for such individuals and their eligible dependents on the date the employer first became a participating entity.

(b) [~~(c)~~] Except as otherwise provided by §41.39 of this title (relating to Coverage for Individuals Changing Employers) coverage shall become effective as described in this subsection for eligible full-time employees and eligible part-time employees who begin working for a participating entity in an eligible capacity after August 31, 2002, and who enroll no later than the 31st day after the first date they become eligible to enroll, ("Individuals"). Coverage shall become effective for such Individuals and their eligible dependents on one of the following dates as specified by the Individual on the application for coverage:

(1) The first day the Individual is employed in an eligible capacity with the participating entity; or

(2) The first day of the calendar month following the month in which the Individual is employed in an eligible capacity with the participating entity.[~~; or~~]

~~[(3) For an Individual employed in an eligible capacity by a participating entity on or after September 1, 2003, who is not a member of TRS as of the date of employment, the first day of the calendar month in which the Individual satisfies the 90-day waiting period for TRS membership in accordance with §25.34(c) of this title (relating to Administration of Membership Waiting Period).]~~

(c) [~~(d)~~] For eligible full-time employees, eligible part-time employees and their eligible dependents who enroll during an open-enrollment period established by resolution of the trustee, coverage shall become effective on the date specified by resolution of the trustee.

§41.38. Termination Date of Coverage.

(a) Unless otherwise required by law or this section, coverage shall terminate at the earliest of:

(1) 11:59 p.m. Austin [~~Central~~] Time on the last calendar day of the month in which the covered individual's employer, or the employer of the individual under whom a dependent qualified for coverage, ceases to be a participating entity;

(2) 11:59 p.m. Austin [~~Central~~] Time on the last calendar day of the month in which a covered individual, or the individual under whom a dependent qualified for coverage, terminates employment as determined by the participating entity, except as otherwise provided under §41.39 of this title (relating to Coverage for Individuals Changing Employers);

(3) 11:59 p.m. Austin [~~Central~~] Time on the last calendar day of the month in which a covered individual, or the individual under whom a dependent qualified for coverage, is no longer eligible for coverage under [~~the~~] TRS-ActiveCare [~~program~~] under §41.34 of this title (relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program);

(4) 11:59 p.m. Austin [~~Central~~] Time on the date specified by the trustee if the covered individual, or the individual under whom a dependent qualified for coverage, is expelled from the program;

(5) 11:59 p.m. Austin [~~Central~~] Time on the last calendar day of the month immediately preceding the month in which TRS receives a notification from a participating entity, in the form prescribed by TRS, that a covered individual failed to make a required monthly premium payment to the participating entity;

(6) 11:59 p.m. Austin [~~Central~~] Time on the last calendar day of the month in which a covered individual enters into active, full-time military, naval, or air service, except as provided under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) or other applicable law; or

(7) 11:59 p.m. Austin [~~Central~~] Time on the last day of the month for which TRS-ActiveCare received payment if the participating entity employing the covered individual, or the individual under whom a dependent qualified for coverage, has failed to make all premium payments due for a period of 90 days or longer; or

(8) the termination date and time that a health maintenance organization participating in [~~the~~] TRS-ActiveCare [~~program~~] provides for in its Evidence of Coverage for the reasons listed in that Evidence of Coverage.

(b) For individuals receiving continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) ("COBRA"), coverage shall terminate the earlier of:

(1) 11:59 p.m. Austin [~~Central~~] Time on the last calendar day of the month immediately preceding the date on which TRS fails to receive a timely and complete monthly premium payment from an individual receiving COBRA continuation coverage; or

(2) 11:59 p.m. Austin [~~Central~~] Time on the last calendar day of the month in which an individual's eligibility for COBRA continuation coverage expires or otherwise terminates.

§41.39. Coverage for Individuals Changing Employers.

(a) A full-time or part-time employee enrolled in [~~the~~] TRS-ActiveCare [~~program~~] who changes employment from one participating entity to another participating entity within the same plan year may not change coverage plans or add dependents unless:

(1) changes to add dependents are authorized due to a special enrollment event under provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(2) (No change.)

(3) the new employment is with a participating entity that does not make available the option under which the individual was covered on the last date of previous employment, provided that options are offered under [the] TRS-ActiveCare [program] that are not applicable to all participating entities.

(b) No break in coverage will occur for a full-time or part-time employee enrolled in [the] TRS-ActiveCare [program] who changes employment from one participating entity to another participating entity within the same plan year if all the criteria set forth in paragraphs (1) - (3) of this subsection are met. The former employer participating entity shall determine the last date of employment for purposes of this subsection.

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

(c) Full-time or part-time employees who initially waive coverage under [the] TRS-ActiveCare [program] may enroll during any open enrollment as prescribed by resolution of the trustee; however, they may not enroll due to a change in employment from one participating entity to another during the same plan year unless the change occurs during a concurrent open enrollment.

§41.40. Coverage Continuation While on Leave Without Pay.

(a) Full-time and part-time employees covered under [the] TRS-ActiveCare [program] who are placed on leave-without-pay-status by a participating entity in accordance with that entity's personnel policies, and their eligible covered dependents, may continue participation in [the] TRS-ActiveCare [program] in accordance with this section under the coverage plan in effect the day before leave without pay begins. For purposes of this section, "leave-without-pay status" includes unpaid leave taken in accordance with the Family and Medical Leave Act of 1993 or other applicable law.

(b) Individuals who were placed on leave-without-pay status by a participating entity in accordance with that employer's personnel policies or applicable law prior to the date the employer became a participating entity may enroll in [the] TRS-ActiveCare [program] in accordance with §41.36 of this title (relating to Enrollment Periods for [the] TRS-ActiveCare [Program]) if they were covered by the participating entity's health coverage plan on the day before the employer became a participating entity and provided they would meet eligibility requirements under §41.34 of this title (relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program) but for their leave-without-pay status.

(c) Individuals who were placed on leave-without-pay status by a participating entity in accordance with that employer's personnel policies or applicable law prior to the date the employer became a participating entity, but who were not covered by the participating entity's health coverage plan on the day before the employer became a participating entity, may enroll in [the] TRS-ActiveCare [program] in accordance with §41.36 of this title when they return to work and provided they meet eligibility requirements under §41.34 of this title.

(d) Unless otherwise required by applicable law, continued coverage for an individual described in subsection (a) or (b) of this section shall terminate the earlier of:

(1) 11:59 p.m. Austin [Central] Time on the last calendar day of the month for which premiums are paid;

(2) 11:59 p.m. Austin [Central] Time on the last calendar day of the month in which the employment of the covered individual, or the individual under whom a dependent qualified for coverage, terminates as determined by the participating entity, except as otherwise provided under §41.39 of this title (relating to Coverage for Individuals Changing Employers);

(3) 11:59 p.m. Austin [Central] Time on the last calendar day of the month in which a covered individual, or the individual under whom a dependent qualified for coverage, is no longer eligible for coverage under [the] TRS-ActiveCare [Program] under §41.34 of this title due to requirements unrelated to leave-without-pay status; or

(4) 11:59 p.m. Austin [Central] Time on the last calendar day of the sixth month following the month in which coverage continuation under this section began for either the covered individual, or for the individual under whom a dependent qualified for coverage.

§41.41. Premium Payments.

(a) Each participating entity shall remit to TRS the amount on each bill directed to the participating entity by TRS or the administering firm. The participating entity shall remit payment on or before the sixth day after the last day of each month in which TRS or the administering firm issued a bill. Payment shall be delivered in the same manner (e.g., currently, TEXNET) in which the participating entity delivers retirement contributions. Any waiver granted to a participating entity under [Government Code] §825.408(a), Government Code, does not apply to amounts billed under this section or to amounts otherwise owed to TRS for [the] TRS-ActiveCare [program].

(b) A participating entity will be billed for all full-time and part-time employees enrolled in [the] TRS-ActiveCare [program] who were employed by the participating entity on the date that TRS or its designee generates the bill for that billing month as reported by the participating entity. In addition, a participating entity will be billed retroactively for all full-time and part-time employees who enroll after the date on which the bill is generated for that month and choose coverage for that month. A participating entity will also be billed for any individual covered in accordance with §41.40 of this title (relating to Coverage Continuation While on Leave Without Pay.) Participating entities are responsible for collecting all applicable premiums and other costs that are required to be paid by its full-time employees, part-time employees, and any individuals covered in accordance with §41.40 of this title. A participating entity shall remit the full amount billed each month.

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

§41.50. Appeals Relating to [Adjudication of] Claims.

(a) A person enrolled in [the] TRS-ActiveCare [program], other than a person enrolled in a health maintenance organization (HMO) participating in TRS-ActiveCare, who is denied payment of a claim or other benefit ("Claimant") may appeal the denial through [submit] a written request [to the administering firm for reconsideration of the claim. The claimant shall submit a request for reconsideration] according to procedures established by the administering firm. All such procedures must be exhausted before the administering firm will issue a final decision. All relevant medical information should be submitted to the administering firm prior to the issuance of a final decision. Persons enrolled in a TRS-ActiveCare HMO shall follow the appeal procedures set out by the HMO.

(b) A claimant may appeal the final denial of a claim or other benefit by the administering firm to the Teacher Retirement System of Texas (TRS), acting in its capacity as trustee of [the] TRS-ActiveCare [program].

(c) An appeal made pursuant to subsection (b) of this section [of a final denial of a claim or other benefit by the administering firm] must be submitted by the claimant in writing and received by TRS no

later than 60 days after the date of the letter from the administering firm finally denying the claim. The appeal shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.

(d) An appeal made pursuant to subsection (b) of this section [~~of denial of a claim~~] shall state the nature of the claim and shall include copies of all relevant documents that were considered by the administering firm, including copies of the correspondence to and from the administering firm.

(e) The TRS Appeal Committee ("Committee") is responsible for review and determination of appeals made pursuant to subsection (b) of this section. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Operating Officer and shall serve at the discretion of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Operating Officer.

(f) The Committee shall review an appeal made pursuant to subsection (b) of this section for timeliness [~~and sufficiency~~] and may deny an appeal that is not timely filed. Denial of an appeal for failure to file in a timely manner is a final decision by TRS.

(g) The Committee shall apply the TRS-ActiveCare plan design and rules in effect on the date the first of the following events occurs:

(1) the date the claim was incurred; or

(2) the date the benefit was denied by the administering firm.

(h) [~~(g)~~] If the Committee determines that the claim should be paid or a benefit allowed, it shall so inform the administering firm and the claimant.

(i) [~~(h)~~] If the Committee determines that the information submitted with the appeal supports the denial by the administering firm, the Committee shall provide a written decision, which shall include anexplanation of the reasons for the decision, to the claimant and to the administering firm. The written decision [~~explanation~~] shall include information on how the claimant may request an appeal conference or an appeal to the Executive Director.

(j) [~~(i)~~] A request for [~~To obtain~~] an appeal conference must be submitted by the[~~, a~~] claimant in writing and must be received by TRS [~~submit a request in writing to the TRS-ActiveCare Grievance Administrator~~] no later than 45 days after the date of the initial written decision by [~~explanation of~~] the Committee. The request for an appeal conference shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.

(k) [~~(j)~~] Upon receipt of a timely request for an appeal conference, the TRS-ActiveCare Grievance Administrator shall schedule an appeal conference with the Committee. The Grievance Administrator shall notify the claimant and the administering firm of the time, date, and manner of the conference, as well as the procedures applicable to the conference.

(l) [~~(k)~~] At any time prior to the appeal conference, the Committee may decide to grant the appeal and will notify the claimant of this determination without the necessity of an appeal conference. The Committee cannot [~~can not~~] deny a claim after an appeal conference has been requested without holding the conference, but the initial denial by the Committee shall stand until the conference is held.

(m) [~~(l)~~] At the conference, the Committee shall consider the medical information previously submitted to the administering firm in support of the payment of the claim or benefit, as well as the administering firm's determination regarding medical issues. The Committee may request additional review by the administering firm on medical issues before the Committee issues a decision.

(n) [~~(m)~~] The Committee shall decide the appeal and shall notify the claimant and the administering firm of the decision in writing. The decision will include an explanation of the basis for the decision.

(o) [~~(n)~~] The decision of the Committee may be appealed by the claimant to the TRS Executive Director. A request for an [~~An~~] appeal to the Executive Director must [~~shall~~] be submitted by the claimant [~~to TRS~~] in writing and must be received by TRS no later than 45 days after the date of the initial written decision by the Committee or no later than 30 days after the date of the written decision by the Committee made pursuant to [~~after~~] an appeal conference. The request for an appeal to the Executive Director shall be directed to the attention of the TRS-ActiveCare Grievance Administrator. The appeal shall specifically describe why the claimant alleges that the Committee's decision is erroneous. The Executive Director shall make a decision based on the written appeal and based on the written decision of the Committee, as well as any written documents reviewed by the Committee. Pursuant to the delegation of authority through this section, the decision of the Executive Director is the final decision of TRS.

§41.51. Appeals Relating to Eligibility.

(a) A full-time or part-time employee ("Petitioner") [~~person~~] whose application to enroll themselves and/or their dependents [~~for enrollment~~] in [~~the~~] TRS-ActiveCare [~~program~~] is denied by either TRS, the administering firm, or a participating entity may appeal the denial to TRS.

(b) An appeal made pursuant to subsection (a) of [~~to TRS under~~] this section shall be made in writing and must be received by [~~shall be filed with~~] TRS no later than 45 days after the date of denial. The appeal shall be directed to the TRS-ActiveCare Grievance Administrator. TRS may, at its sole discretion, [~~The person filing the appeal also shall~~] provide a copy of the appeal to the administering firm or the participating entity that denied enrollment.

(c) An appeal made pursuant to subsection (a) of this section shall state the basis for appeal and shall include all relevant documents and correspondence that were considered by TRS, the administering firm, or a participating entity when the enrollment was denied. [~~The appeal shall be processed in the manner similar to the procedures established in §41.50 of this chapter (relating to Adjudication of Claims).~~] The administering firm or participating entity is [~~not~~] required, upon request by TRS, to participate in the [~~procedures unless the firm has made a decision relevant to the appeal. A participating entity that denied an application for enrollment is entitled to participate in the~~] process.

(d) The TRS Appeal Committee ("Committee") is responsible for the review and determination of appeals made pursuant to subsection (a) of this section. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Operating Officer and shall serve at the discretion of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Operating Officer.

(e) The Committee shall review an appeal made pursuant to subsection (a) of this section for timeliness and may deny an appeal that is not timely received by TRS. Denial of an appeal for failure to file in a timely manner is a final decision by TRS.

(f) In determining eligibility for enrollment, the Committee shall apply the TRS-ActiveCare plan design and rules in effect for the plan year in which the Petitioner is seeking enrollment. If TRS finds that extraordinary circumstances constituting "good cause" prevented the Petitioner from complying fully with a deadline established by TRS under the TRS-ActiveCare plan design or rules, the appeal may

be granted. For purposes of this subsection, "good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause. If a person was reasonably prevented from complying with a deadline as a result of an unexpected natural disaster or sudden catastrophic event, that event may constitute "good cause" even though the event occurs on or near a deadline and arguably Petitioner could have met the deadline if Petitioner had acted sooner. Misinformation concerning a deadline provided to Petitioner by either TRS, the health plan administrator of TRS-ActiveCare, or a participating entity, and relied upon by Petitioner, may be grounds for "good cause" if the act of providing misinformation to Petitioner is documented or substantiated and a reasonable person would have relied on the information provided to Petitioner and reasonably would not have known the information provided to Petitioner was inaccurate.

(g) The Committee shall notify the Petitioner, the administering firm, and the participating entity of its decision in writing.

(h) If the Committee determines that the enrollment should be allowed, it shall inform the Petitioner, the administering firm, and the participating entity of the manner and effective date of enrollment by the Petitioner.

(i) [~~(d)~~] The Petitioner may appeal a [~~A~~] decision of the TRS Appeal Committee relating to eligibility [~~may be appealed by the affected person or by the participating entity~~] to the TRS Executive Director. A request for an [~~An~~] appeal to the Executive Director must [~~shall~~] be submitted by the Petitioner in writing and must be received by TRS [~~filed~~] no later than 30 days after the date of the initial written decision by the TRS Appeal Committee. The request for an appeal to the Executive Director shall be directed to the attention of the TRS-ActiveCare Grievance Administrator. Pursuant to the delegation of authority through this section, the decision of the Executive Director is the final decision of TRS.

§41.52. Expulsion from TRS-ActiveCare [~~Program~~].

(a) The trustee, acting through the TRS Executive Director, may expel from participation in [~~the~~] TRS-ActiveCare [~~Program~~] a participant who submits or causes to be submitted a false or fraudulent claim or enrollment application, or who has defrauded or attempted to defraud, any health benefits plan or pharmacy benefits plan offered under TRS-ActiveCare [~~the program~~].

(b) (No change.)

(c) Following a hearing, the Executive Director may expel a person from participation in TRS-ActiveCare [~~the program~~] for a period of time not to exceed five years if the Executive Director finds that the person submitted or caused to be submitted a false or fraudulent claim or enrollment application or has defrauded or attempted to defraud any health benefits plan or pharmacy benefits plan offered under TRS-ActiveCare [~~the program~~]. Pursuant to the delegation of authority through this section, the order of the Executive Director is the final decision of TRS.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605993

Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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SUBCHAPTER D. COMPARABILITY OF GROUP HEALTH COVERAGES

34 TAC §41.91

Statutory Authority: The amendments are proposed under the following statutes: §1576.006, Insurance Code, which authorizes TRS to adopt rules relating to the group long-term care insurance program as TRS considers necessary; §1579.052, Insurance Code, which authorizes TRS to adopt rules relating to the TRS-ActiveCare program as TRS considers necessary, including rules relating to the adjudication of claims and expelling participants from the program for cause; §1579.101, Insurance Code, which requires TRS to establish by rule plans for group coverages under the TRS-ActiveCare program and to define by rule the requirements of each coverage plan and tier of coverage; §1579.102, Insurance Code, which requires TRS to prescribe by rule the coverage provided under the TRS-ActiveCare catastrophic coverage plan; and §22.004, Education Code, which requires TRS to adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage offered under the Texas Employees Group Benefits Act.

Cross-reference to statute: The proposed amendments affect the following sections of the Insurance Code: §1576.008, which addresses competitive bidding requirements; §1576.001, which contains various definitions; §1576.006, which grants the trustee the authority to adopt rules as necessary to administer Chapter 1576; §1579.052, which grants the trustee the authority to adopt rules as necessary to administer Chapter 1579, including rules relating to the adjudication of claims and expelling participants from TRS-ActiveCare for cause; §1579.151, which describes elections available to school districts with 500 or fewer employees and elections available to various other entities eligible to participate in TRS-ActiveCare; §1579.152, which addresses participation in TRS-ActiveCare by school districts with more than 500 employees; §1579.1525, which addresses participation in TRS-ActiveCare before September 1, 2005, by school districts with more than 500 employees; §1579.153, which addresses participation in TRS-ActiveCare by certain risk pools; §1579.154, which addresses participation in TRS-ActiveCare by eligible charter schools; §1579.054, which requires competitive bidding under rules adopted by the trustee; §1579.055, which provides that the trustee is not required to select the lowest bid and may also consider any relevant criteria; §1579.002, which contains general definitions; §1579.003, which contains the definition of an "employee"; §1579.004, which contains the definition of a "dependent"; §1579.201, which provides that the terms "full-time employee" and "part-time employee" shall have the meanings assigned by rules adopted by the trustee; §1579.202, which describes "eligible employees" for TRS-ActiveCare; §1579.101, which authorizes plans of group coverages; §1579.104, which addresses optional coverages that can be offered under TRS-ActiveCare; §1579.203, which addresses the ability of an eligible employee to select different coverage plans; and §1579.255,

which addresses payments to TRS-ActiveCare by participating entities.

§41.91. Certification of Insurance Coverage.

(a) This section applies only to school districts that do not participate in the program offered under Chapter 1579, Insurance Code[~~, Article 3.50-7~~].

(b) The Executive Director [~~executive director~~] of the Teacher Retirement System of Texas (TRS) shall determine the comparability of a school district's group health coverage to the coverage provided under the Texas Employees [~~Uniform~~] Group [~~Insurance~~] Benefits Act (Chapter 1551, Insurance Code[~~, Article 3.50-2~~]). As required by the Education Code, §22.004, each district shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, [~~the~~] Local Government Code, [~~Chapter 172~~] or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 842, [~~the~~] Insurance Code, [~~Chapter 20,~~] or a health maintenance organization under Chapter 843, [~~the Texas Health Maintenance Organization Act (~~]Insurance Code[~~, Chapter 20A)~~]. The coverage must meet the substantive coverage requirements of Chapter 1251, Subchapter A, Chapter 1364, and Subchapter A, Chapter 1366, Insurance Code, [~~Article 3.51-6~~] and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental diagnostic procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under the Texas Employees [~~Uniform~~] Group [~~Insurance~~] Benefits Act (Chapter 1551, Insurance Code[~~, Article 3.50-2~~]). In addition to these requirements, the following factors shall be considered in determining comparability:

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

(c) For the purposes of this decision, "comparable" means "similar, but not identical."

(d) TRS staff, under the direction of the Executive Director [~~executive director~~], will develop a methodology and criteria for comparison determination. This methodology will include an evaluation of relevant variables with respect to applicable factors stated in subsection (b) of this section, including the following related to the scope of coverage:

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

(3) provider network availability and utilization.

(A) To provide for the reasonable and accurate consideration of these variables, a determination of each plan's benefit replacement ratio to the basic Texas Employees Group Benefits [~~Uniform~~] coverage will be used. Benefit replacement ratio means the ratio of benefits projected to be paid by the plan to the projected incurred cost of the services provided. Benefit replacement ratio determinations will involve review of applicable factors set forth in the Education Code, §22.004(a) in connection with plan information provided by the district. A plan will be certified as comparable if it has a benefit replacement ratio not more than five percentage points below the ratio of the applicable benchmark plan under Chapter 1551, [~~the~~] Insurance Code[~~, Article 3.50-2~~].

(B) The benchmark plan will reflect the basic health coverage provided under the Texas Employees [~~Uniform~~] Group [~~Insurance~~] Benefits Act (Chapter 1551, Insurance Code[~~, Article 3.50-2~~]) ("Act"). Specifically the benchmark plan is the plan under the Act (or two plans if, in accordance with the Act, there is a distinction between point of service and out-of-network indemnity plans) most prevalent by number of employees participating. If the most prevalent plan(s) under the Act are amended, the benchmark plan(s) will be amended accordingly.

(C) (No change.)

(D) TRS staff and the Executive Director [~~executive director~~] may consult with qualified experts (including a group insurance consultant or actuary as described in §1575.052(b)(2), Insurance Code, [~~Article 3.50-4, §5(a)(9))~~] to evaluate comparability, develop and use methodology, and determine benefit replacement ratios.

(E) (No change.)

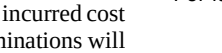
(e) Each public school district shall report, using a uniform reporting form or method of reporting prescribed by [~~the Teacher Retirement System (~~]TRS[~~)~~], the district's compliance with the Education Code, §22.004(c), to the Executive Director [~~executive director~~] of TRS by March 1 of each even-numbered school year. The report must reflect the district group health coverage plan in effect during the current plan year and must include all information required by statute and any additional information requested by TRS staff to complete the certification. A district's failure to submit required information to TRS on or before March 1 of each even-numbered year may result in a TRS report to the Legislative Budget Board and the legislature reflecting the district's non-compliance, as described in subsection (f) of this section.

(f) The Executive Director [~~executive director~~] of TRS shall certify whether a district's coverage is comparable to the basic health coverage provided under the Texas Employees [~~Uniform~~] Group [~~Insurance~~] Benefits Act (Chapter 1551, Insurance Code[~~, Article 3.50-2~~]). If the Executive Director [~~executive director~~] determines that the group health coverage offered by a district is not comparable, the Executive Director [~~executive director~~] shall report that information to the district and to the Legislative Budget Board. The Executive Director [~~executive director~~] shall submit a report to the legislature not later than September 1 of each even-numbered year describing the status of each district's group health coverage program based on the information provided by the district and the certification described herein.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605994
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438



CHAPTER 43. CONTESTED CASES

34 TAC §§43.1, 43.3, 43.6, 43.8 - 43.10, 43.12, 43.15, 43.16, 43.18, 43.20, 43.23, 43.28, 43.34, 43.37 - 43.39, 43.42, 43.44, 43.45

As part of the rule review of 34 TAC Chapter 43, relating to contested cases being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to §§43.1, 43.3, 43.6, 43.8 - 43.10, 43.12, 43.15, 43.16, 43.18, 43.20, 43.23, 43.28, 43.34, 43.37 -

43.39, 43.42, 43.44, and 43.45. TRS also proposes new §43.48; however, notice of the proposed new section is published elsewhere in this issue of the *Texas Register*. The original notice of intention to review Chapter 43 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 43 is published elsewhere in this issue of the *Texas Register*. TRS has assessed the rules with proposed amendments and determined the reasons for initially adopting them continue to exist, with the changes described in this notice. Explanations of the proposals are set out below.

Section 43.1 concerns administrative review of individual appeals. TRS proposes amendments to this rule to reflect that, as a result of statutory changes during the 79th Legislature, Regular Session (2005), TRS is authorized to employ, select, or contract for the services of an administrative law judge or hearing examiner not affiliated with the State Office of Administrative Hearings (SOAH) to conduct a hearing on an appeal relating to the pension plan. The amendments recognize that a referral for a contested case hearing may be either to SOAH or to an administrative law judge not affiliated with SOAH. Other rules proposed to be amended for the same reason are §43.3, concerning definitions; §43.6, concerning filing of documents; §43.8, concerning extension of time for filings pleadings; §43.9, concerning docketing of adjudicative hearings, dismissal, and SOAH authority; §43.10, concerning authority of the TRS executive director to grant relief; §43.12, concerning form of petitions and other pleadings; §43.15, concerning motions; §43.16, concerning notice of hearing and other actions; §43.18, concerning motion for consolidation; §43.20, concerning appearance and representation; §43.23, concerning powers of the administrative law judge; §43.28 concerning pre-filed direct testimony in disability appeal proceedings; §43.34 concerning conduct and decorum at hearing; §43.37 concerning recording of the hearing and certified language interpreter; §43.38 concerning dismissal without hearing; §43.39 concerning summary disposition; §43.42 concerning reopening of hearing; §43.44 concerning discovery; and §43.45 concerning proposals for decision, exceptions, and appeals to the TRS Board of Trustees. Additionally, amendments are proposed to §43.45 concerning proposals for decision, findings of fact, and conclusions of law to reflect other recent statutory changes that authorize the TRS Board of Trustees, in its sole discretion, to refuse to accept proposed findings or conclusions and take other action in a contested case proceeding. Finally, amendments are proposed to §43.45 concerning appeals to the TRS Board of Trustees to clarify that appeals are considered in open meeting to the extent required by law and to provide that a party appealing to the Board consents to public discussion of relevant facts, including information that may otherwise be confidential by law.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register*, the sections of 34 TAC Chapter 43 not mentioned above are proposed for readoption without changes because, having assessed those rules, TRS has determined that the reasons for adopting them continue to exist.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed amendments would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each amended section will be to update the rules to reflect recent changes in law and to inform hearing participants of the open meeting considerations applicable to an appeal to the TRS Board of Trustees. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: The amendments are proposed under the following authorities--§825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board; and §825.115, Government Code, which authorizes the Board to adopt rules for the implementation of §825.115(b), Government Code, relating to a final decision in a contested case.

Cross-reference to Statute: The proposed amendments affect the following statutes--§825.115, Government Code, which addresses the applicability of Chapter 2001, Government Code, including the making of final decision in a proceeding considered to be a contested case under Chapter 2001; Chapter 551, Government Code, regarding open meetings; and Chapter 2003, Government Code, regarding the State Office of Administrative Hearings.

§43.1. Administrative Review of Individual Requests.

(a) (No change.)

(b) Final administrative decision by chief officer. In the event that a person is adversely affected by a determination, decision, or action of department personnel, the person may make a request to the appropriate manager within the department and then to the chief officer of the division. The chief officer shall mail a final written administrative decision, which shall include a statement that the person may appeal the decision to the executive director and the deadline for doing so. A person adversely affected by a decision of a chief officer may appeal the decision to the executive director of TRS as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The executive director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of the chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting [~~Adjudicative Hearing, Dismissal, and SOAH Authority~~]).

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

§43.3. Definitions.

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

(1) (No change.)

(2) Administrative law judge--An individual appointed to conduct the adjudicative hearing in a contested case. The Executive Director may refer an appeal to be heard by an administrative law judge employed by the State Office of Administrative Hearings or may employ, select, or contract for the services of another administrative law judge or hearing examiner to conduct a hearing.

(3) - (8) (No change.)

(9) Hearing--The trial-like portion of the contested case proceeding that is handled by an administrative law judge after the Executive Director of TRS dockets an appeal [~~SOAH after referral of a matter by TRS~~].

(10) - (16) (No change.)

(17) State Office of Administrative Hearings--The state agency established by Chapter 2003, Government Code, which may [~~to~~] serve as the forum for the conduct of an adjudicative hearing upon referral of an appeal by TRS [~~hearings~~].

(18) - (21) (No change.)

§43.6. Filing of Documents.

All documents relating to any appeal pending or to be instituted before the executive director or the board shall be filed with the executive director at TRS, 1000 Red River Street, Austin, Texas 78701-2698. If the executive director has docketed an appeal and referred it [~~to SOAH~~] for an adjudicative hearing, documents shall be filed with the administrative law judge [~~SOAH~~] and a copy provided to the TRS docket clerk during the time the matter is pending before the administrative law judge [~~at SOAH~~].

§43.8. Extensions.

Unless otherwise provided by statute, the time for filing pleadings or other documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with its filing. In the case of filings that initiate a proceeding or that are made before an appeal has been referred for an adjudicative hearing [~~to SOAH~~], the executive director will determine whether good cause exists and whether an extension should be granted. In the case of filings made in a proceeding after TRS has referred the appeal for an adjudicative hearing [~~to SOAH~~], rules governing hearings before SOAH will control so long as the matter is before SOAH. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official. For matters returned by an administrative law judge or hearing examiner [~~SOAH~~] to TRS, either through dismissal from the adjudicative hearing [~~SOAH~~] docket or through issuance of a proposal for decision, the executive director may determine whether good cause exists and whether an extension should be granted. The executive director is authorized to rule on motions for extensions on matters directed to the Board if no Board meeting is scheduled before the expiration of the applicable period of time.

§43.9. Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting[~~, Dismissal, and SOAH Authority~~].

(a) On an appeal over which TRS has jurisdiction and authority to grant relief and that otherwise complies with this chapter, the executive director shall assign the petition a TRS docket number, provide all parties notice of the docket number, and refer the matter [~~to the State Office of Administrative Hearings~~] for an adjudicative hearing before the State Office of Administrative Hearings or otherwise as authorized by law.

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

(d) If [~~When~~] a contested case is referred to the State Office of Administrative Hearings (SOAH) for adjudicative hearing, then [~~SOAH and~~] during the period of time the case is before SOAH, the adjudicative hearing rules for SOAH (1 TAC Chapter 155) shall apply unless inconsistent with applicable statutes or constitutional provisions. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official.

(e) A party that files an appeal and causes a matter to be docketed and referred to for adjudicative hearing [~~SOAH~~] shall have the responsibility of prosecuting the appeal within a reasonable time period. TRS may seek dismissal with prejudice of an appeal if a responsible party fails to obtain a setting for a hearing on the merits within two years of referral of the matter for an adjudicative hearing [~~to SOAH~~].

§43.10. Authority to Grant Relief.

At any time before an appeal is referred for adjudicative hearing [~~to SOAH~~], the executive director or, in the matter of certification for disability retirement, the Medical Board may grant the relief sought by the petitioner and dismiss the appeal, provided that the interest of other individual parties are not adversely affected. If [~~After~~] a matter has been referred to SOAH, the SOAH administrative law judge may dismiss the case from the SOAH docket in accordance with SOAH rules. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the dismissal of the case.

§43.12. Form of Petitions and Other Pleadings.

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

(e) Pleadings should be styled: "Petition of (Name of Petitioner)." If a TRS, [~~or~~] SOAH, or other adjudicative hearing docket number has been assigned, pleadings shall contain the docket number.

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

§43.15. Motions.

A motion, unless made during a hearing, shall be made in writing, set forth the relief or order sought, state the grounds for such relief, and be timely filed with SOAH, [~~or~~] TRS, or the administrative law judge, as applicable. A copy shall be served by the movant on each party of record. Any reply to the motion shall be timely filed with SOAH, [~~or~~] TRS, or the administrative law judge, as applicable, with a copy served on the movant and other parties of record. Failure to serve copies may be grounds for withholding consideration of the motions or replies. Unless otherwise directed by the administrative law judge, executive director, or board, motions based on matters which do not appear of record must be supported by affidavit. When necessary, a hearing will be held to consider any motion.

§43.16. Notice of Hearing and Other Action.

(a) Notices of hearing, proposals for decision, and all other rulings, orders, and actions by SOAH, [~~or~~] TRS, or an administrative law judge, as applicable, shall be served upon all parties or their attorneys of record in person or at their last known address by mail. Service by mail is complete upon deposit in the mail, properly addressed, with postage prepaid. Service may also be accomplished by electronic mail or facsimile transmission if all parties agree. In that case, the sender shall retain the original of the document and file it upon request with the administrative law judge or the executive director, as applicable. Upon request, the sender has the burden of proving the date and time of receipt of the document served by facsimile transmission or electronic mail. Electronic mail may not be used with documents produced pursuant to a discovery request. On motion by any party or on its own motion, TRS may serve notice of a hearing on any person whose interest in the subject matter will be directly affected by the final decision in the case.

(b) - (d) (No change.)

§43.18. Motion for Consolidation.

A motion for consolidation of two or more appeals, applications, petitions, or other proceedings shall be in writing, signed by the movant or the movant's attorney, and filed with SOAH, [~~or~~] TRS, or the administrative law judge, as applicable, prior to the date set for hearing. The motion shall state the number and style of all proceedings sought to be consolidated, and the movant shall file a copy of the motion in each proceeding. No two or more appeals, applications, petitions, or other proceedings shall be consolidated or heard jointly without the consent of all parties to all such proceedings unless the administrative law judge or executive director shall find that the two or more appeals, applications, petitions, or other proceedings involve common questions of law or fact, or both, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice. Special hearings on separate issues may also be allowed.

§43.20. Appearance and Representation.

(a) (No change.)

(b) An attorney representing a person or party in a proceeding must be authorized to practice law in the court of highest jurisdiction of any state of the United States or the District of Columbia. The attorney of record of any party shall be the attorney who signs the first pleading filed on behalf of the party or who files with TRS, [~~or~~] SOAH, or the administrative law judge, as applicable, a written notice signed by the party designating the attorney as attorney of record in the case. An attorney appearing on behalf of a party may be required to show authority to act for the party. Nothing in this chapter shall be interpreted to require a party to the hearing to be represented by counsel.

§43.23. Powers of the Administrative Law Judge.

The presiding administrative law judge shall have the authority established by applicable statutes and by the procedural rules of SOAH, 1 TAC Chapter 155 if a matter has been referred to SOAH, or the rules of this chapter if a matter has been referred for an adjudicative hearing to a hearing official not affiliated with SOAH. Additionally, the administrative law judge may

(1) (No change.)

(2) determine the scope of the matter referred to the administrative law judge [~~SOAH~~]; and

(3) limit testimony to matters under TRS's jurisdiction and to matters referred to the administrative law judge [~~SOAH~~] by TRS.

§43.28. Pre-filed Direct Testimony in Disability Appeal Proceedings.

(a) In a contested case concerning Medical Board denial of certification of disability or a finding that a disability retiree is no longer mentally or physically incapacitated from the performance of duty, all testimony and other evidence, including medical or employment records, that the petitioner intends to offer in petitioner's direct case shall be pre-filed at least 90 days before the date of the hearing on the merits. Testimony shall include all expert and fact witnesses, including that of a petitioner who intends to testify. In order to avoid any unnecessary expense and time associated with adjudicative hearings and in accordance with Government Code, § [~~Section~~] 824.303, which requires Medical Board certification in order for a person to be retired, TRS staff shall be given adequate opportunity to present such information to the Medical Board for consideration before the hearing on the merits. If, upon consideration of the information petitioner intends to offer at hearing, the Medical Board certifies the person as disabled, TRS staff or petitioner may move for dismissal of the appeal. If, however, the Medical Board does not certify the person as disabled, the petitioner may continue to prosecute the appeal as previously docketed and referred for an adjudicative hearing [~~to SOAH~~]. The petitioner shall not be permitted to introduce direct testimony and evidence that has not been pre-filed and made available to the Medical Board for consideration.

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

§43.34. Conduct and Decorum at Hearing.

Every participant in the proceedings shall conduct himself with proper dignity, courtesy, and respect for SOAH, TRS, the administrative law judge, all other participants, and all other persons attending the proceedings. TRS, [~~or~~] SOAH, or the administrative law judge may take such action as appropriate and necessary to enforce this rule.

§43.37. Recording of the Hearing; Certified Language Interpreter.

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

(c) In the alternative to a stenographic recording or transcript prepared by a court reporter, TRS may prepare a transcript from a video or audio tape of the proceeding. The transcript prepared by TRS may be considered the official record of the proceeding. TRS may obtain the official audio or video recording from the administrative law judge [~~SOAH~~] for purposes of preparing the transcript. A party who objects to a TRS-prepared transcript and requests that proceedings be stenographically recorded or transcribed by a court reporter may be required to pay the costs of such recording and transcription.

(d) - (e) (No change.)

§43.38. Dismissal without Hearing.

(a) The administrative law judge may consider motions for dismissal from the adjudicative hearing [~~SOAH~~] docket without a hearing and recommend dismissal with or without prejudice for any of the following reasons:

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

(b) The administrative law judge shall dismiss from the adjudicative hearing [~~SOAH~~] docket and recommend dismissal by TRS of the appeal of a petitioner who has defaulted by:

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

(c) (No change.)

§43.39. Summary Disposition.

(a) A party may move with or without supporting affidavits for a summary disposition any time after an appeal has been referred for an adjudicative hearing [~~to SOAH~~]. The motion for summary disposition shall specify the grounds for resolving the appeal without an evidentiary hearing. The motion and any supporting affidavits shall be filed and served at least 25 days before the time specified for the hearing. The motion may be granted if the pleadings, discovery, affidavits, stipulation of the parties, and authenticated or certified public records submitted in support of the motion show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on the issues expressly set out in the motion.

(b) (No change.)

§43.42. Reopening of Hearing.

Upon motion of any party or upon the order of the administrative law judge the hearing may be reopened for good cause at any time before the proposal for decision is issued. After issuance of a proposal for decision, the executive director (for decisions pending before the executive director) or board may order the hearing reopened for good cause at any time before a decision is made. If the hearing is ordered to be reopened, the executive director or the board, as applicable, shall remand the matter to SOAH or an administrative law judge for additional hearing and recommendation.

§43.44. Discovery.

Parties may obtain discovery under 1 TAC §155.31 if the matter is before SOAH or under the rules of this chapter if the matter was referred for an adjudicative hearing to a hearing official not affiliated with SOAH.

§43.45. Proposals for Decision, Exceptions, and Appeals to the Board of Trustees.

(a) The administrative law judge shall issue a proposal for decision with proposed conclusions of law and findings of fact in accordance with Government Code, Chapter 2001 and other applicable law [~~1 TAC §155.59~~].

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

(f) The final decision in an appeal shall be based upon the existing record in the case. In its sole discretion, the [~~The~~] board of trustees or the executive director, as applicable, may take the following actions [~~change a proposed finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, only, if the board or executive director determines~~]:

(1) modify, refuse to accept, or delete any proposed finding of fact or conclusion of law made by the administrative law judge;

(2) make alternative findings of fact and conclusions of law;

(3) vacate or modify an order issued by the administrative law judge; and

(4) make a final decision on a contested case.

[~~(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided to the administrative law judge, or prior administrative decisions;~~]

[~~(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or~~]

[~~(3) that a technical error in a finding of fact should be changed; or~~]

[~~(4) that the change is pursuant to a fiduciary responsibility.~~]

(g) In exercising it discretion, the board of trustees or the executive director, as applicable, may consider but is not limited to the following grounds for changing a finding of fact or conclusion of law or for making a final decision in a contested case that is contrary to the recommendation of the administrative law judge:

(1) the administrative law judge did not properly apply or interpret applicable law, retirement system rules, written policies provided to the administrative law judge, or prior administrative decisions;

(2) a prior administrative decision on which the administrative law judge relied is incorrect or should be changed;

(3) a technical error in a finding of fact should be changed;

(4) a finding or conclusion or other action of the administrative law judge would alter the terms of the plan; or

(5) the change is pursuant to a fiduciary responsibility.

(h) [~~(g)~~] An administrative decision of TRS staff, a decision by the Medical Board, or a decision by the executive director is the final decision of TRS unless a party exhausts any right to appeal a matter to the board of trustees.

(i) An appeal to the Board of Trustees shall be considered in open meeting to the extent required by law. A party who appeals to the Board of Trustees consents to the public discussion of all relevant facts, including information in the member's file that may otherwise be confidential by law.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605937
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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34 TAC §43.48

As part of the rule review of 34 TAC Chapter 43 relating to contested cases being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes the creation of new §43.48 as a result of the rule review. The original notice of intention to review Chapter 43 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 43 is published elsewhere in this issue of the *Texas Register*.

Proposed new §43.48 concerns appeal to court. The proposed new section would place the responsibility for the cost of preparing the administrative appeal record on the appealing party if a decision of the TRS Board of Trustees is appealed to court.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed section is in effect, the fiscal implication for TRS as a result of enforcing or administering the new section will be that TRS would experience cost savings when Board decisions are appealed to court, such as transcription and copying costs. Mr. Galaviz has determined that there will be no fiscal implications for local government or other state government entities. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed sections would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing the new section will be to place costs of appeal record preparation on the appealing party instead of on the TRS pension trust fund. There is an anticipated economic cost to persons who are required to comply with the proposed section since the rule will make an appealing party responsible for the cost of record preparation. It is not possible to estimate the amount of fiscal savings to TRS or the economic cost to persons required to comply with the proposed section since those computations depend on the nature of the hearing record and the number of appeals filed, neither of which can be reasonably determined at this time. The cost of a hearing record could be several hundred dollars or more, depending on the length of the record and whether transcription services would be required.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: New §43.48 is proposed under §825.102, Government Code, which authorizes the Board to adopt rules

for the administration of the funds of the retirement system and for the transaction of the business of the Board, and §2001.177, Government Code, which authorizes a state agency by rule to require an appealing party to pay the cost of preparation of the record of the agency proceeding that is required to be sent to the reviewing court.

Cross-reference to Statute: Proposed new §43.48 affects the following statutes: §825.115, Government Code, which addresses the applicability of Chapter 2001, Government Code; Ch. 2001, Government Code; §2001.177, Government Code, regarding the cost of preparing the agency record for judicial review.

§43.48. Cost of Preparing Administrative Record.

In the event an appeal of the Final Decision of the Board of Trustees is authorized by law, any cost associated with pursuing the appeal is the responsibility of the appealing party, including the cost of the record of the administrative proceedings and the transcription of any video or audio recordings of administrative proceedings.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605938
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

34 TAC §47.10, §47.17

As part of the rule review being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to 34 TAC §47.10 and §47.17 of 34 TAC Chapter 47 relating to Qualified Domestic Relations Orders. The original notice of intention to review Chapter 47 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 47 is published elsewhere in this issue of the *Texas Register*. As part of the rule review, TRS has assessed §47.10 and §47.17 and determined the reasons for initially adopting them continue to exist, with the proposed changes described in this notice.

Chapter 47 addresses the requirements and procedures applicable to orders awarding a portion of TRS benefits to an alternate payee, most commonly as a division of community property in a divorce. Section 47.10 concerns the determination of whether an order is a Qualified Domestic Relations Order (QDRO). The rule describes the legal requirements for a court order to be consider "qualified" so that TRS may make direct payment to the alternate payee identified in the order. TRS proposes two amendments. First, to address concerns about the use of Social Security numbers in QDROs, which are commonly accessible to the public through the courts as part of case files, TRS proposes an amendment that would permit TRS to accept an alternate means of verification of the Social Security number if a court determines that omitting the Social Security numbers in the order is necessary to reduce the risk of identity theft. TRS would still be required to have in the retirement system's records Social Security numbers for both parties to the QDRO to identify recipients properly and report the income to the Internal Revenue Service correctly. Second, TRS proposes an amendment permitting a QDRO, as well as a divorce decree, to include language relating to revocation of a beneficiary to the extent permitted by law.

Section 47.17 concerns the calculation of an alternate payee's benefits before a member's benefit begins. The rule describes how payments to an alternate payee will be calculated when those payments begin before a member retires, as is authorized by state law, Section 804.005, Government Code. Because the rule currently does not expressly address all of the adjustments that may appropriately be made when a member is participating in the Deferred Retirement Option Plan (DROP), TRS proposes amendments to fully explain the appropriate adjustments.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register*, TRS has determined that the reasons for adopting the other rules in Chapter 47 continue to exist, and the retirement system proposes to readopt the following rules without changes: 34 TAC §§47.1 (relating to payments by TRS), 47.2 (relating to submission of orders), 47.3 (relating to review of orders), 47.4 (relating to payment pursuant to qualified orders), 47.5 (relating to orders not qualified), 47.6 (relating to determination that an order is not qualified is final), 47.7 (relating to submission of amended order), 47.8 (relating to orders affecting Optional Retirement Program), 47.9 (relating to orders affecting benefits from more than one public retirement system), 47.13 (relating to benefits resulting from resumption of membership and reinstatement of service credit), 47.14 (relating to reinstatement of service credit), 47.15 (relating to death of an alternate payee), and 47.16 (relating to effective date of TRS review of orders).

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed amended rules would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing each section will be to provide flexibility in the use of Social Security Numbers to lessen the risk of identity theft and to provide additional notice to DROP participants regarding appropriate adjustments in the calculation of an annuity affected by a QDRO, when payments to an alternate payee begin before a member retires. There is no anticipated economic cost to persons who are required to comply with the proposed sections, or any economic cost is the result of statutory requirements.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: The amendments are proposed under the following sections of the Government Code - §804.003, which authorizes TRS to adopt rules relating to QDROs; §804.005(g), which authorizes TRS to adopt rules for the administration of §804.005; §824.1012(c), which authorizes TRS to establish by

rule procedures and documentation necessary for the administration of the section; and §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board. The amendments also are adopted in conjunction with 26 United States Code §414(p) relating to QDROs and qualified plans.

Cross-reference to Statute: The proposed amendments affect the following statutes in the Government Code - §804.003, which sets out the requirements for QDROs; §804.005, which authorizes payment in certain circumstances in lieu of benefits awarded by a QDRO; §824.1012, which, in connection with a divorce proceeding, provides for a court-approved revocation of beneficiary designation for certain retirement benefit options; and §824.1013, which provides for the court-ordered change of beneficiary after retirement.

§47.10. Determination of Whether an Order is a Qualified Domestic Relations Order.

TRS shall apply the statutory criteria to determine whether an order is a QDRO. The following provisions shall also be used in making the determination.

(1) The order must provide for each possible distribution by the retirement system for the member or retiree. This requirement may be met by a provision that:

(A) awards a specified or clearly determinable percentage, rather than an amount, of each distribution by TRS based on the participant's account; or

(B) awards all benefits not specified to the participant to be paid in accordance with plan provisions.

(2) The order must provide for reducing the amount awarded in the event of reduction of the benefit based on the age of the participant, each reduction to be in proportion to the factors used to reduce the standard annuity on the basis of the participant's age below normal retirement age. This requirement shall not apply if:

(A) the order awards a percentage of whatever monthly benefit is payable after all elections have been made by the member, or in the event of death benefits, by the designated beneficiary;

(B) the member or retiree has reached normal retirement age and, if a retiree, has retired without any reduction for early age retirement at the time of the determination as to whether the order is a QDRO; or

(C) the order reflects that the retiree is, or will be receiving, retirement benefits reduced for early age retirement and the award to the alternate payee has considered the reduced amount of the retiree's annuity payments.

(3) The order may not:

(A) purport to require the designation by the participant of a particular person as the recipient of benefits in the event of a member's or annuitant's death;

(B) purport to require the selection of a particular payment plan or benefit option;

(C) require any action on the part of the retirement system contrary to its governing statutes or plan provisions other than the direct payment of the benefit awarded to an alternate payee; or

(D) award any interest in distributions by the retirement system contingent on any condition other than those conditions resulting in the liability of the retirement system for payment under its plan provision.

(4) A QDRO may not provide for the award of a specific amount of a benefit, rather than a percentage of this benefit, to an alternate payee unless the order also provides for a reduction of the amount awarded in the event that the benefits available to the retiree or member are reduced by law. This requirement shall not apply to benefit waivers executed by the participant.

(5) If the order intends to award the participant the full amount of any future benefit increases that are provided or required by the legislature, the order must explicitly state such. TRS, its board of trustees, and its officers and employees shall not be liable for making payment of part of any future benefit increases to any person if the order so requires or if the order awards a percentage of benefits payable and does not explicitly state that future benefit increases are awarded solely and completely to the plan participant.

(6) An order that purports to give to someone other than a member the right to designate a beneficiary or choose any retirement plan available from TRS is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a QDRO.

(7) An order that attaches a lien to any part of amounts payable with respect to a member or retiree is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.

(8) An order that awards an alternate payee a portion of the benefits payable with respect to a member or retiree under TRS and that purports to require TRS to make a lump sum payment of the awarded portion of the benefits to the alternate payee that are not payable in a lump sum is one that requires action contrary to TRS' governing statute and plan provisions and therefore is not a QDRO.

(9) An order shall specify the date of the marriage.

(10) An order that allocates the participant's investment in contract in a manner not in compliance with any requirements of the Internal Revenue Code and applicable regulations is not a QDRO. An order that does not allocate a participant's investment in contract may be determined to be a QDRO if it provides sufficient information for TRS to make the allocation in accordance with applicable laws and regulations.

(11) An order that purports to require a member to terminate employment, to withdraw contributions, or to apply for retirement, is not a QDRO.

(12) The order must satisfy the requirements of Internal Revenue Code §414(p)(1)(A)(i) and 414(p)(1)(B).

(13) The order may contain provisions consistent with Section 824.1012, Government Code, or Section 824.1013, Government Code, and TRS may rely on the provisions of the order as though the provisions were included in the decree of divorce or order accepting a property settlement.

(14) The order may specify an alternative method for the parties to verify their social security numbers to TRS, if the court finds that omission of the numbers in the order is necessary to reduce the risk of identity theft. The order is not a QDRO if TRS finds that the method of verification is insufficient for the purpose of payment of benefits or reporting of income for tax purposes.

§47.17. Calculation for Alternate Payee Benefits Before a Member's Benefit Begins.

(a) A "qualified domestic relations order" (QDRO) means a domestic relations order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member or retiree under a public retirement system, which directs the public

retirement system to disburse benefits to an alternate payee, and which meets the requirements of Government Code, §804.003 and Internal Revenue Code §§414(p)(1)(A)(i) and 414(p)(1)(B).

(b) The retirement system shall pay any eligible alternate payee who has a QDRO approved by the retirement system and who elects such payments, an amount that is the alternate payee's portion of the actuarial equivalent of the accrued benefit of the member of the retirement system, determined as if the member retired on the date of the alternate payee's election. The amount will become payable, upon receipt of a written request and a certified copy of a domestic relations order determined to be qualified, in accordance with the order, and in the form of an annuity payable in equal monthly installments for the life of the alternate payee.

(c) This method of distribution may be elected only when there is a member whose benefits are subject to partial payment under the law, who has not retired; who has attained the greater of either the age of 62 and is eligible to retire without reduction for early age retirement, or normal retirement age and service requirements for service retirement; and who retains credit and contributions in the retirement system attributable to that service.

(d) If an alternate payee elects to be paid under this section, the retirement system shall reduce the benefit payable by the system to the member or the member's beneficiary by the alternate payee's portion of the actuarial equivalent determined under this section.

(e) In figuring these benefits for the alternate payee and the adjusted standard annuity of the member's benefit as set forth in this section, the system shall consider the member's benefit as a normal age standard service retirement annuity, without regard to any optional annuity chosen or beneficiary designated by the member.

(f) The beginning of monthly payments under this section terminates any interest that the alternate payee who receives the payment might otherwise have in benefits that accrue to the account of the member after the date the initial payment to the alternate payee is made.

(g) An alternate payee who elects this method of payment has only a right to receive an annuity for life as calculated in this section and does not have the right to pass on any portion of his/her benefit upon his/her death. There is no reversion of the alternate payee's benefit to the member upon the alternate payee's death, irrespective of whether the death occurs before or after the member's benefit commencement.

(h) TRS will use Tables for Life Annuity Factors, Interest Annuity Factors, and Interest Accumulation Factors furnished by the TRS actuary of record.
Figure 1: 34 TAC §47.17(h) (No change.)
Figure 2: 34 TAC §47.17(h) (No change.)
Figure 3: 34 TAC §47.17(h) (No change.)

(i) To calculate the alternate payee's actuarial equivalent benefit, the following procedure will be followed:

(1) Determine the member's accrued monthly benefit as of the alternate payee's benefit commencement date.

(2) Determine the member's age and the alternate payee's age as of the alternate payee's benefit commencement date.

(3) Determine the appropriate percent of the member's accrued benefit payable to the alternate payee under the terms of the QDRO.

(4) Calculate the alternate payee's actuarial equivalent monthly benefit by multiplying the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent. Then, divide that figure by the life annuity factor at alternate payee's age.

(j) To calculate the member's adjusted standard annuity, there are two scenarios:

(1) the alternate payee elects a monthly income and survives until the member annuity commencement date (MACD); or

(2) the alternate payee elects monthly income and dies before the member annuity commencement date (MACD).

(k) When the alternate payee elects under subsection (j)(1) of this section, the formula used to reduce the member's standard annuity is the member's standard annuity monthly benefit amount minus the figure derived by dividing the total reserve for benefits to the alternate payee by the life annuity factor of the member at the member's age at MACD. The total reserve for the benefits to the alternate payee is the reserve for payments made to the alternate payee prior to MACD plus the reserve for payments made to the alternate payee after MACD. The reserve for payments made to the alternate payee after MACD is the alternate payee monthly benefit amount times the life annuity factor of the alternate payee at the alternate payee age at MACD. The reserve for payments made to the alternate payee prior to MACD is the alternate payee monthly benefit amount times the interest annuity factor to reflect payments of the number of payments before MACD.

(l) When the alternate payee elects under subsection (j)(2) of this section, the formula used to reduce the member's standard annuity monthly benefit amount is the member's standard annuity monthly benefit amount before the reflection of payments to the alternate payee under this section minus the figure derived by dividing the total reserve for payments made to the alternate payee by the life annuity factors of the member at the member's age at MACD. The total reserve for payments made to the alternate payee is the alternate payee monthly benefit amount times the interest annuity factor to reflect payment of the number of payments before death times the interest accumulation factor to reflect interest of the number of full months from the date of death of the alternate payee to the MACD.

(m) If the member dies before MACD and a standard annuity is used to calculate any benefit due after death, benefits payable on behalf of the member must be based on the member's adjusted standard annuity. The balance of the accumulated contributions in the member savings account payable to a beneficiary must also be adjusted to reflect the payment to the alternate payee by reducing the accumulated contributions in the member savings account by the QDRO percentage described in subsection (i)(3) of this section. A benefit of an amount equal to twice the member's annual compensation for the school year immediately preceding the school year in which the member dies, or twice the member's rate of annual compensation for the school year in which the member dies, payable under Government Code, §824.402(a)(1) and (2), or a lump sum payment of $2,500.00 plus an applicable monthly benefit as described in Government Code, §824.404, is not reduced by payments made to the alternate payee under Government Code, §804.005.

(n) If the member dies after MACD, the $10,000.00 lump sum survivor benefits or the $2,500.00 lump sum payment plus an applicable monthly benefit payable to a beneficiary under Government Code, §§824.501 and 824.404, are not reduced as a result of payments to an alternate payee under this rule. Any payments paid pursuant to Government Code, §824.407 must be reduced by first reducing the account balance at the time of retirement by the QDRO percentage described in subsection (i)(3) of this section.

(o) If the member elects to terminate membership in TRS before MACD, the member contributions in the member account before

a refund is processed, must be reduced by the QDRO percentage described in subsection (i)(3) of this section.

(p) When new law provides for an increase in the benefit payable to the member after the commencement of the payment of an annuity to the member, the increase will be distributed by increasing the member's and the alternate payee's benefit as provided by the law for an increase to the member's benefit so long as there is no additional actuarial cost to the system unless provided otherwise by the legislature.

(q) A person, who has previously withdrawn service that was reduced by a QDRO percentage as described in subsection (o) of this section and who wishes to reinstate the service, must deposit the amount withdrawn or refunded and the fees required by law. Benefits payable based even in part on the terminated service will be reduced as described in this section as if the service had not been terminated.

(r) When a member who has an alternate payee drawing benefits enters a Deferred Retirement Option Plan (DROP), TRS will use the adjusted standard annuity in the calculation for the member's DROP.

(s) When a member who is participating in DROP has an alternate payee to begin a distribution under the Government Code, §804.005, the retirement system will use the adjusted standard annuity to calculate all future DROP transfers beginning with the initial month that a distribution is payable to the alternate payee. When calculating the member's adjusted standard annuity, the amount of the annuity paid to the alternate payee that represents the annuitized portion of the DROP balance shall not be included in the calculation. TRS shall use only the portion of the payment to the alternate payee that represents the alternate payee's share of the monthly annuity.

(t) When a member who has an alternate payee drawing benefits elects a partial lump-sum option, TRS will use the adjusted standard annuity in the calculation for the member's partial lump-sum payment.

(u) In the event the total distribution amount awarded to the alternate payee in a QDRO is limited to a specific dollar amount, the following procedure will be followed to calculate the alternate payee's actuarial equivalent benefit:

(1) Determine the alternate payee's age as of the alternate payee's benefit commencement date.

(2) Calculate the alternate payee's actuarial equivalent monthly benefit by dividing the total distribution amount, as limited, awarded to the alternate payee by the life annuity factor at alternate payee's age.

(v) In the event the alternate payee dies prior to receiving the total limited distribution awarded to the alternate payee in a QDRO and before the MACD, calculate the member's adjusted standard annuity as described in subsection (j)(2) of this section.

(w) When a member who is participating in DROP has an alternate payee to begin a distribution under the Government Code, §804.005, TRS will calculate the alternate payee's actuarial equivalent benefit by multiplying the member's accrued benefit times the life annuity factor at member's age plus the balance of the DROP times the alternate payee's percent. That figure shall then be divided by the life annuity factor at alternate payee's age.

(x) When a member who is participating in DROP has an alternate payee to begin a distribution under the Government Code, §804.005, TRS will reduce the DROP account by applying the percentage of the member's accrued benefit payable to the alternate payee under the terms of the qualified domestic relations order beginning with the initial month that a distribution is payable to the alternate payee.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605939
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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CHAPTER 51. GENERAL ADMINISTRATION

34 TAC §51.1

As part of the rule review being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or retirement system) proposes amendments to 34 TAC §51.1 of 34 TAC Chapter 51 relating to general administration. The original notice of intention to review Chapter 51 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884). An expanded notice of intention to review Chapter 51 is published elsewhere in this issue of the *Texas Register*. As part of the rule review, TRS has assessed §51.1 and determined the reasons for initially adopting it continue to exist, with the proposed changes described in this notice.

Section 51.1 concerns advisory and auxiliary committees. The rule describes the committees that advise or otherwise serve the system and that are deemed necessary to assist the Board of Trustees in performing its duties. The recommended amendments delete references to committees, such as credentialing committees for medical providers, that are no longer in use due to changes in TRS programs. The amendments also clarify that members of the Retiree Advisory Committee, unlike members of the Medical Board, do not serve as independent contractors but rather only as members of the committee.

As indicated in the expanded notice of intention to review TRS's rules published elsewhere in this issue of the *Texas Register*, TRS has determined that the reasons for adopting the other rules in Chapter 51 - 34 TAC §§51.2 (relating to vendor protests, dispute resolution, and hearing), 51.5 (relating to waiver of deadline to remit deposits and documentation), 51.7 (relating to assignment of TRS vehicles), 51.11 (relating to historically underutilized businesses), and 51.12 (relating to applicability of certain laws in effect before September 1, 2005) - continue to exist, and the retirement system proposes to readopt that rule without changes.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section. There will not be an effect on small or micro-businesses.

For each year of the first five years that the proposed amended rule would be in effect, Mr. Galaviz and Ronnie Jung, TRS Executive Director, have determined that the public benefit anticipated as a result of enforcing the section will be to provide an updated rule addressing active advisory committees of TRS. There is no

anticipated economic cost to persons who are required to comply with the proposed section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be fully considered, written comments must be received by TRS within 30 days of the publication of this notice of proposed rulemaking.

Statutory Authority: The amendments are proposed under the following sections of the Government Code - §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board; and §825.114, which requires TRS by rule to determine the amount and manner of any compensation or expense reimbursement to be paid members of an advisory committee performing service for the retirement system on an advisory committee.

Cross-reference to Statute: The proposed amendments affect the following statutes - §825.204, Government Code, which requires the TRS Board to appoint a medical board; §825.114, which authorizes the Board to establish advisory committees as it considers necessary; Chapter 1575, Subchapter H (§§1575.351 - 1575.363), Insurance Code, which addresses advisory committees and provides for the appointment of credentialing committees by TRS as trustee of the retirees health benefits program (TRS-Care) and as part of a coordinated care network, which TRS no longer administers; and Chapter 1575, Subchapter I (§§1575.401 - 1575.408), Insurance Code, which provides for the appointment and expense reimbursement of the Retirees Advisory Committee.

§51.1. Advisory and Auxiliary Committees.

(a) The following committees are created for a period which will expire at the end of sunset review for the Teacher Retirement System of Texas (TRS) which is September 1, 2007, unless continued by the outcome of the sunset process, to advise or otherwise serve the retirement system and are deemed necessary to assist the Board of Trustees in performing its duties:

(1) a Medical Board, composed of three licensed physicians as provided by [~~Government Code,~~] §825.204, Government Code; and[~~;~~]

(2) a Retirees Advisory Committee for the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care) [~~Insurance Program~~], composed as provided by Subchapter I of Chapter 1575, [~~the~~] Insurance Code.[~~, Article 3.50-4, Section 6;~~]

[~~(3) regional credentialing committees composed of health care practitioners as provided by the retirement system's health care network policies; and~~]

[~~(4) a Medical Advisory Committee composed of health care practitioners and administrators as provided by the retirement system's health care network policies.~~]

(b) The duties of these committees are established by applicable statute or policies of the Board of Trustees.

(c) The members of the Medical Board shall be paid, as independent contractors, fees and expenses in accordance with contracts negotiated by the executive director or his designee subject to the applicable resolutions, policies, and annual budget adopted by the Board of Trustees. [~~The members of the credentialing committees and the Medical Advisory Committee may be paid fees and expenses in accordance with contracts negotiated by the executive director or his designee subject to the applicable resolutions, policies, and annual budget adopted by the Board of Trustees.~~] To the extent advisory committees are composed of independent contractors they are to be considered consultants employed by the retirement system under the authority recognized by [~~the Government Code,~~] §2254.024, Government Code.

(d) Members of the Retirees Advisory Committee for TRS-Care do not serve as independent contractors and [~~the Texas Public School Retired Employees Group Insurance Program~~] are entitled only to reimbursement for actual and reasonable expenses incurred in performing functions as members of the committee.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605940
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 542-6438

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER E. ADVISORY OVERSIGHT COMMUNITY OUTREACH COMMITTEE

37 TAC §4.71

The Texas Department of Public Safety proposes new Subchapter E, §4.71, in Title 37, Chapter 4, Commercial Vehicle Regulations and Enforcement Procedures, of the Texas Administrative Code concerning the Advisory Oversight Community Outreach Committee.

New §4.71 is necessary in order to establish the Advisory Oversight Community Outreach Committee in accordance with House Bill 925 (79th Texas Legislature- Regular Session). The purpose of the Advisory Oversight Community Outreach Committee is to document to the Public Safety Commission trade-related incidents involving department personnel; to develop recommendations and strategies to improve community relations, department personnel conduct, and the truck inspection process at the ports-of-entry on the Texas-Mexico border; and to act as ombudsman between the department and the residents and communities in the Texas-Mexico border area and between the department and the department's personnel.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be some fiscal implications for state or local government, or local economies. House Bill 925 (79th Texas Legislature- Regular Session) does not provide that a member of the Advisory Over-

sight Community Outreach Committee is entitled to compensation nor reimbursement of the member's travel expenses, so it is likely that these costs related to the committee's work will be borne by the local government entities that employ the committee members.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure a forum is created for the residents and communities on the Texas-Mexico border to make recommendations and voice concerns about the Department's truck inspection processes at the border. There is some adverse economic impact anticipated for individuals, small businesses, or micro-businesses. House Bill 925 (79th Texas Legislature- Regular Session) does not provide that a member of the Advisory Oversight Community Outreach Committee is entitled to compensation nor reimbursement of the member's travel expenses, so it is likely that these costs related to the committee's work will be borne by the individuals, small businesses, or micro-businesses that employ the committee members.

Comments on this proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.0197(a), which authorizes the Public Safety Commission to adopt rules for the implementation and operation of the Advisory Oversight Community Outreach Committee.

Texas Government Code, §411.004(3) and §411.0197(a) are affected by this proposal.

§4.71. Advisory Oversight Community Outreach Committee.

(a) The Advisory Oversight Community Outreach Committee is created as provided in Texas Government Code, §411.0197.

(b) The purpose of the Advisory Oversight Community Outreach Committee is to document to the Public Safety Commission trade-related incidents involving department personnel; to develop recommendations and strategies to improve community relations, department personnel conduct, and the truck inspection process at the ports-of-entry on the Texas-Mexico border; and to act as ombudsman between the department and the residents and communities in the Texas-Mexico border area and between the department and the department's personnel.

(c) The Advisory Oversight Community Outreach Committee shall consist of nine members that are appointed by the Public Safety Commission. The Public Safety Commission shall designate the presiding officer of the committee from among the committee's members. Five members of the committee constitute a quorum sufficient to conduct the meetings and business of the committee.

(1) Members of the Advisory Community Outreach Committee will serve staggered terms as follows:

(A) the presiding officer shall serve a three-year term;

(B) four of the committee members shall serve a three-year term; and

(C) four of the committee members shall serve a two-year term.

(2) All committee members serve at the will of the Public Safety Commission and may be reappointed by the Public Safety Commission. If a committee member resigns, becomes incapacitated, or is removed by the Public Safety Commission, or otherwise vacates his or her position prior to the end of his or her term, then the Public Safety Commission shall appoint a replacement who shall serve the remainder of the unexpired term. Except as otherwise provided by law, if a member of the Advisory Oversight Community Outreach Committee misses three consecutive regularly scheduled meetings, that member automatically vacates his or her position on the committee.

(d) The Advisory Oversight Community Outreach Committee shall meet at least on a quarterly basis or at the call of the presiding officer or any two members. The location of any meeting of the committee will be determined by the presiding officer. All meetings of the Advisory Oversight Community Outreach Committee shall be open to the public.

(e) The Advisory Oversight Community Outreach Committee may elect an assistant presiding officer from among its members.

(f) The presiding officer or the assistant presiding officer shall prepare a meeting agenda for each meeting of the Advisory Oversight Community Outreach Committee. A copy of the agenda shall be provided to the department fifteen working days before any scheduled meeting so that the department can arrange for the necessary staff to be in attendance and provide notification to the committee members and the public.

(g) The presiding officer or the assistant presiding officer of the Advisory Oversight Community Outreach Committee shall ensure that the minutes of each meeting of the committee are recorded and that a record of attendance for each meeting of the committee shall be made. The department shall have the necessary staff present at each committee meeting to assist with the recording of the meeting minutes, preparation of the attendance record, and to provide information concerning any department operation under lawful consideration by the committee. The department shall prepare and distribute copies of the minutes, attendance record, any other committee documents, or committee recommendations to each committee member after each meeting. The presiding officer or the assistant presiding officer shall present the minutes, attendance record, any other committee documents, and committee recommendations to the Public Safety Commission at the next regularly scheduled meeting of the Public Safety Commission that follows any meeting of the Advisory Oversight Community Outreach Committee. All documents submitted to the Public Safety Commission shall be of sufficient detail to allow the Public Safety Commission to properly evaluate the committee's work in accordance with Texas Government Code, §411.0197(e).

(h) Recommendations and advice given by the Advisory Oversight Community Outreach Committee are not binding on the Public Safety Commission. The Advisory Oversight Community Outreach Committee has no executive or administrative powers or duties with respect to the operation of the department, and all such powers and duties rest solely with the Public Safety Commission.

(i) Members of the Advisory Oversight Community Outreach Committee are not entitled to compensation for their service nor reimbursement of the member's travel expenses.

(j) As provided in Government Code, §2110.006, by January 1 of each year, department staff, in consultation with the presiding officer, shall evaluate the previous fiscal year and report to the Public Safety Commission, on:

(1) the committee's work;

(2) the committee's usefulness; and

(3) the costs related to the committee's existence, including the cost of the department's staff time spent in support of the committee's activities.

(k) As provided in Government Code, §2110.008, the Advisory Oversight Community Outreach Committee is abolished on January 1, 2011, unless the Public Safety Commission establishes a different date by rule.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605784
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 424-2135

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER C. STANDARDS

37 TAC §35.34

The Texas Department of Public Safety proposes amendments to §35.34, concerning Standards of Conduct. Amendments to the section delete current subsection (a), reformat the remaining subsections and add a new subsection (n) which provides for additional standards of conduct for regulated businesses. The department believes the deletion of subsection (a) is necessary as it needlessly involves the Private Security Bureau in contractual disputes between licensees and clients, which are more appropriately a matter for private civil litigation.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the anticipated public benefit resulting from adoption of the section will be a higher standard of conduct for security-related businesses and more efficient use of the Bureau's resources in administering Chapter 1702. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Written comments on the proposed amendment are requested and may be sent to Cliff Grumbles, Manager, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-7711.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.34. Standards of Conduct.

(a) [~~Licensees shall carry out fully any contract for services entered into with a client except for reasons deemed to be unlawful.~~]

[~~(b)~~] Licensed companies may use the phrase "Licensed by the Texas Private Security Board" on stationery [~~stationary~~], business cards, and in advertisements, but no licensee shall have a badge, shield or insignia as part of any uniform, identification card or markings on a motor vehicle containing the State Seal of Texas, except those identification and license items that are prepared or issued by the board. No licensee shall use the State Seal of Texas or the seal of the Department of Public Safety to advertise or publicize a commercial undertaking.

(b) [~~(c)~~] No licensee shall have a badge, shield or insignia as part of any uniform, identification card or markings on a motor vehicle containing the Flag of the State of Texas, except those identification and license items that are prepared or issued by the board. No licensee shall use the Flag of the State of Texas to advertise or publicize a commercial undertaking.

(c) [~~(d)~~] Licensees shall cooperate fully with any investigation conducted by the Bureau, including but not limited to, providing employee records upon reasonable request by the Bureau or its investigators, and shall comply with any subpoena issued by the Bureau pursuant to §1702.367.

(d) [~~(e)~~] Commissioned security officers or personal protection officers shall carry only a firearm of the category with which they have been formally trained and of which training documentation is on file with the board. Firearm categories will be shown on the individual's registration card and will be:

(1) SA: any handgun, whether semi-automatic or not,

(2) NSA: handguns that are not semi-automatic,

(3) STG: any shotgun.

(e) [~~(f)~~] No commissioned security officer or personal protection officer shall carry an inoperative, unsafe, replica or simulated firearm while in the course and scope of their employment.

(f) [~~(g)~~] No commissioned security officer or personal protection officer shall brandish, point, exhibit, or otherwise display a firearm at anytime, except as authorized by law.

(g) [~~(h)~~] The discharge of a firearm while in the performance of their duty by any person registered, or commissioned by a licensee shall be reported to the Austin office of the board. Notification of the discharge of a firearm shall be in writing within 24 hours of the incident, and shall be faxed by the licensee, or manager. The fax shall be addressed to the manager of the bureau at (512) 424-7728. The fax shall include:

(1) name of the person discharging the firearm;

(2) name of the employer;

(3) location of the incident;

(4) a brief narrative of what happened;

(5) whether death, personal injury or property damaged resulted; and

(6) whether the incident is being or was investigated by a law enforcement agency.

(h) [~~(i)~~] No licensee shall engage in any business activity in violation of §38.11 or §38.12 of the Texas Penal Code (Barratry and Solicitation of Professional Employment.)

(i) [~~(j)~~] Licensees shall not perform any service regulated by the board if a Letter of Summary Suspension or Letter of Summary Denial has been forwarded in accordance with the Act and these rules. After Summary Suspension or Summary Denial, a Letter of Reinstatement must be received by the licensee prior to performing any services regulated by the board.

(j) [~~(k)~~] All licensees, if arrested, charged, or indicted for a criminal offense above the level of Class C misdemeanor shall within 72 hours notify their employer, who shall then notify the board by fax at (512) 424-7729 or in writing at the Austin office of the board within 72 hours of notification by licensee, including the name of the arresting agency, the offense, court, and cause number of the charge or indictment, if any.

(k) [~~(l)~~] All licensees shall report any name changed by marriage, divorce or other reason to the board within 30 days of the effective date of change. The notice of the change shall be in writing, and shall include a certified copy of the legal document ordering the name change.

(l) [~~(m)~~] No licensee shall engage in conduct that would constitute a Class C misdemeanor or higher offense under any Texas statute, nor engage or threaten to engage in any act of violence, aggression, destruction of property, or lewd, lascivious, obscene or otherwise offensive behavior, arising from or in any way related to the performance of one's duties or one's employment under the Act, or at any time while wearing a uniform associated with one's employment under the Act or while otherwise representing oneself as acting within the scope of one's duties or employment under the Act.

(m) [~~(n)~~] When an employee of a licensee is terminated for any conduct as described in §1702.361 of the Act, the licensee shall notify the board of such conduct within 14 days of termination. The notification shall be mailed to the board, to the attention of the Criminal Investigation division. The notification shall include but not be limited to:

(1) a completed board complaint form (form#022); and

(2) any and all documents or evidence concerning the alleged offense.

(n) No provider of a regulated activity or service shall engage in any unconscionable action or course of action, or engage in any false, misleading, or deceptive act or practice, as these are defined in §§17.45(5) and 17.46 (respectively) of the Texas Business and Commerce Code.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605783
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 424-2135

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37 TAC §35.41

The Texas Department of Public Safety proposes amendments to §35.41, concerning Company Name Selection. Amendments to the section add new subsections (b) and (c) and are necessary in order to clarify the criteria used by the Bureau in evaluating company name requests and to reduce the confusion that occurs when substantially similar company names are used by unrelated entities. In addition, the title of the section has also been changed.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the anticipated public benefit resulting from adoption of the section will be less confusion and potential for deception resulting from stricter controls on the names available to applicants for company licenses. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Written comments on the proposed amendment are requested and may be sent to Cliff Grumbles, Manager, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-7711.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.41. Company Name [~~Names~~] Selection.

(a) No entity regulated by Chapter 1702 may use a name that contains the phrase "law enforcement," or substantially similar terms; or any other terms, name or combination of names, or a name for which the acronym is intended to or could reasonably give the impression that the entity is in any way associated with a governmental body or agency, or a branch or political subdivision of any government.

(b) No entity name will be approved that is identical or substantially similar to that of a company whose license is currently under suspension or whose license has been revoked within the past five (5) years.

(c) No entity name will be approved that is identical or substantially similar to that of a currently licensed company, without documentary proof either that the entities in question are owned by a common majority of individuals, or that the currently licensed company has consented to the use of the name by the prospective licensee.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605782
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 424-2135

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SUBCHAPTER M. COMPANY RECORDS

37 TAC §35.205

The Texas Department of Public Safety proposes to amend §35.205, concerning Records Required on Commissioned Security Officers. The amendment to paragraph (1) of this section is necessary in order to shift the burden from the employer to the officer/employee to ensure the accuracy of the employer's record of the officer's current residence. The amendment acknowledges that employers do not have independent information on their employees in this regard and must rely on what the employee provides to them.

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the rule is in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that, for each year of the first five-year period the rule is in effect, the anticipated public benefit resulting from adoption of the section will be greater accuracy in the records kept by employers on their commissioned security officer/employees. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Written comments on the proposed amendment are requested and may be sent to Cliff Grumbles, Manager, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-7711.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.205. Records Required on Commissioned Security Officers.

The employer of a commissioned security officer shall maintain current records on all persons issued a security officer commission for board inspection. The records shall contain:

(1) most current residence of the security officer as reported by the officer;

(2) - (4) (No change.)

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605780
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 424-2135

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SUBCHAPTER Q. TRAINING

37 TAC §35.251

The Texas Department of Public Safety proposes to amend §35.251, concerning Application for a Training School Approval. Amendment to subsection (c) is necessary in order to update the cross-references that appear in the rule. This is a non-substantive change.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the anticipated public benefit resulting from adoption of the section will be greater accuracy in the textual cross-references. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Written comments on the proposed amendment are requested and may be sent to Cliff Grumbles, Manager, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-7711.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.251. Application for a Training School Approval.

(a) An application for training school approval shall be on a form prescribed by the board to show proof that the applicant has:

(1) developed an adequate training course or is using the board's most current version training manual as its curriculum;

(2) adequate space, qualified instructors, and proper instructional material; and

(3) appointed a qualified manager who will be responsible for training.

(b) The letter of approval shall be valid for one year and may be renewed by submitting an application for renewal 30 days prior to the expiration date.

(c) An entity having a private business letter of authority or a governmental letter of authority may seek approval for a training school approval by meeting requirements of §§35.171, 35.172 [~~35.81,~~ ~~35.55~~], or 35.251 [~~35.56~~] of this chapter where applicable. A training school approval granted under this section shall be limited to training employees of the letter of authority only.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605781
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 424-2135

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.5

(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 Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Criminal Justice files this notice of intent to repeal Title 37, Part 6, Chapter 159, Special Programs, §159.5, Continuity of Care System for Offenders with Physical Disabilities.

The purpose of the repeal is to consolidate memoranda of understanding concerning the continuity of care system for offenders with physical disabilities, the elderly, significantly or terminally ill, and mentally retarded.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that, for each year of the first five (5) year period, the repeal will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that, for the first five (5) year period, there will not be an economic impact on persons as a result of the repeal. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of the repeal, will be the consolidation and coordination of care for special needs offenders.

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

The repeal is proposed under Texas Health and Safety Code, §614.015.

Cross Reference to Statutes: Texas Health and Safety Code, §§614.003, 614.007, 614.008, 614.013, and 614.014.

§159.5. Continuity of Care System for Offenders with Physical Disabilities.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605921
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-0422

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37 TAC §159.7

(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 Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Criminal Justice files this notice of intent to repeal Title 37, Part 6, Chapter 159, Special Programs, §159.7, Continuity of Care System for Elderly Offenders.

The purpose of the repeal is to consolidate memoranda of understanding concerning the continuity of care system for offenders with physical disabilities, the elderly, significantly or terminally ill, and mentally retarded.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that, for each year of the first five (5) year period, the repeal will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that, for the first five (5) year period, there will not be an economic impact on persons as a result of the repeal. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of the repeal, will be the consolidation and coordination of care for special needs offenders.

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

The repeal is proposed under Texas Health and Safety Code, §614.014.

Cross Reference to Statutes: Texas Health and Safety Code, §§614.003, 614.007, 614.008, 614.013, and 614.015.

§159.7. Continuity of Care System for Elderly Offenders.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605922

Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-0422

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37 TAC §159.19

The Texas Board of Criminal Justice (TBCJ) files this notice of intent to propose new §159.19, Continuity of Care and Service Program for Offenders with Physical Disabilities, the Elderly, the Significantly or Terminally Ill and the Mentally Retarded which authorizes the Agency to adopt a memorandum of understanding (MOU) between the Texas Department of Criminal Justice (TDCJ), the Texas Department of Assistive and Rehabilitative Services (DARS), the Texas Department of Aging and Disability Services (DADS) and the Texas Department of State Health Services (DSHS).

The purpose of the rule is to establish a continuity of care and service program for offenders with physical disabilities, the elderly, the significantly or terminally ill and the mentally retarded involved in the criminal justice system.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each of the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that for the first five (5) year period there will not be an economic impact on persons required to comply with the rule. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the rule, will be the consolidation and coordination of services for special needs offenders.

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

The new rule is proposed under Texas Health and Safety Code, §§614.013, 614.014, and 614.015.

Cross Reference to Statutes: Texas Health and Safety Code, §§614.003, 614.007, and 614.008.

§159.19. Continuity of Care and Service Program for Offenders with Physical Disabilities, the Elderly, the Significantly or Terminally Ill and the Mentally Retarded.

(a) The Texas Department of Criminal Justice (TDCJ) adopts the following memorandum of understanding (MOU) with the Texas Department of Assistive and Rehabilitative Services (DARS), the Texas Department of Aging and Disability Services (DADS) and the Texas Department of State Health Services (DSHS) concerning a continuity of care and service program for offenders with physical disabilities, the elderly, the significantly or terminally ill and the mentally retarded involved in the criminal justice system.
Figure: 37 TAC §159.19(a)

(b) The MOU is required by the Texas Health and Safety Code, §§614.013, 614.014 and 614.015.

(c) Copies of the MOU are filed in the Texas Correctional Office on Offenders with Medical or Mental Impairments, 8610 Shoal Creek Boulevard, Austin, Texas 78758 and may be reviewed during regular business hours.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605923
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-0422

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37 TAC §159.21

The Texas Board of Criminal Justice (TBCJ) files this notice of intent to propose new §159.21, Continuity of Care and Service Program for Offenders with Mental Impairments, Elderly, Physically Disabled, Terminally or Significantly Ill, which authorizes the Agency to adopt a memorandum of understanding (MOU) between the Texas Department of Criminal Justice, through the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and the Texas Commission on Jail Standards (TCJS).

The purpose of the rule is to establish a continuity of care and service program for offenders with mental impairments, the elderly, the physically disabled, the terminally ill and the significantly ill.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each of the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that for the first five (5) year period there will not be an economic impact on persons required to comply with the rule. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the rule, will be the identification and exchange of information between law enforcement agencies on offenders who are mentally impaired, elderly, physically disabled, terminally ill and significantly ill.

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

The new rule is proposed under Texas Health and Safety Code, §614.016

Cross Reference to Statutes: Texas Health and Safety Code, §§614.013, 614.014, and 614.015.

§159.21. Continuity of Care and Service Program for Offenders with Mental Impairments, the Elderly, Physically Disabled, Terminally Ill or Significantly Ill.

(a) The Texas Department of Criminal Justice (TDCJ), through the Texas Correctional Office on Offenders with Medical or

Mental Impairments (TCOOMMI), adopts the following memorandum of understanding (MOU) with the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and the Texas Commission on Jail Standards (TCJS) concerning a continuity of care and service program for offenders with mental impairments, the elderly, the physically disabled, the terminally ill and the significantly ill.

Figure: 37 TAC §159.21(a)

(b) The MOU is required by the Texas Health and Safety Code, §614.016.

(c) Copies of the MOU are filed in the Texas Correctional Office on Offenders with Medical or Mental Impairments, 8610 Shoal Creek Boulevard, Austin, Texas 78758 and may be reviewed during regular business hours.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605924
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 463-0422

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.701 - 700.703 and 700.1713; the repeal of §700.704 and §700.705; and new §§700.704 - 700.706, concerning family-based safety services and family reunification services, in its Child Protective Services (CPS) chapter. The purpose of the proposal is to separate family-based safety services (currently "family preservation services") from family reunification services. Particularly in regions where outsourcing is implemented, where DFPS will retain responsibility for family-based safety services and other entities will provide family reunification services, separate rules for these different services will clarify roles and responsibilities. Throughout the proposal, "family-based safety services" replaces "family preservation services," to reflect the new designation for these services. Also, the agency's name is updated, and CPS is changed to CPS Division.

Section 700.701 is revised to delete "reunification support services" from the list of services.

In §700.702, the time frames currently included in the criteria used to classify these services are deleted. Since the adoption of these rules, DFPS practice has changed to include a risk and safety assessment tool. This tool rates child vulnerability, caregiver capability, and home environment, as well as other factors. The resulting information is then used to categorize cases based on the assessed degree of risk to a child. The current rules, which categorize cases based on the time period services are offered, restrict DFPS's flexibility and, in some circumstances, prevent services from being provided.

In §700.703, the time frames currently used to distinguish regular, intensive early, and intensive family reunification services are deleted. To best serve families during the transition to outsourcing, when both DFPS and private entities will be responsible for service delivery in different parts of the state, DFPS will address specific time frames in policy and contract.

Section 700.704 is a new rule that outlines the requirements for family service plans for family-based safety services and family reunification services. Sections 700.705 and 700.706 are the new rules that outline the circumstances when family-based safety services and family reunification services are to be closed.

Section 700.1713 is amended to reflect corresponding changes to §§700.701, 700.702, 700.704, and 700.705. In addition, the amendment proposes deletion of the charts contained in subsections (g) and (h) of this section, with the relevant criteria inserted in the text. In subsection (g) of this section, examples of specialized services that may be provided are added to the text. In subsection (h) of this section, current minimum qualifications for contractors are inserted into the text and the remainder is deleted. Also, selected provisions of §700.1713, which are more appropriately addressed in contracts or program policy, are deleted.

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

Ms. Brown also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be that the rules will clarify DFPS's procedures and practices. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Stacy Lake at (512) 438-3392 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-353, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER G. SERVICES FOR FAMILIES

40 TAC §§700.701 - 700.706

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code

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

The amendments and new sections implement HRC §40.002.

§700.701. Services to Families.

(a) Definition. The [~~Texas~~] Department of Family and Protective [~~and Regulatory~~] Services' (DFPS) [~~(TDPRS's)~~] Child Protective Services (CPS) Division [~~department~~] provides family-based safety services [~~family-preservation~~] and family reunification [~~family-reunification~~] services for families. These services are provided to families and children [~~in their own homes~~] to:

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

(3) either:

(A) (No change.)

(B) make it possible for the children to return home and live there safely after DFPS [~~TDPRS~~] has removed them and placed them in [~~temporary~~] substitute care as specified in Subchapters K and M of this chapter (relating to Court-Related Services and Substitute-Care Placement Services).

(b) Criteria. CPS provides family-based safety services [~~family preservation~~] or family reunification services when:

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

(c) Family-based safety services and family reunification services. CPS's family-based safety services [~~family preservation~~] and family reunification services include:

(1) regular, moderate, and intensive family-based safety [~~family preservation~~] services; and

(2) regular, early intensive, and intensive family reunification services. [~~; and~~]

[~~(3) reunification support services.~~]

§700.702. Family-Based Safety [~~Family-Preservation~~] Services.

Family-based safety [~~Family-preservation~~] services are protective services provided to a family whose children are not in the managing conservatorship of the Department of Family and Protective Services' (DFPS) [~~have not been removed from the home~~]. DFPS's [~~The Texas Department of Protective and Regulatory Services' (TDPRS's)~~] Child Protective Services (CPS) Division [~~department~~] may provide family-based safety [~~family preservation~~] services to any family that needs CPS [~~Protective Services for Families and Children (PSFC)~~] assistance to reduce the likelihood that a child in the family will be abused or neglected in the foreseeable future. There are three levels of family-based safety [~~family-preservation~~] services--regular, moderate, and intensive [~~family preservation services~~]. The level of service is determined by the degree of [~~the~~] riskto the child [~~of removal~~]. Any of these services may be provided directly or through contracts.

(1) Regular family-based safety [~~family-preservation~~] services.

(A) Definition. Regular family-based safety [~~family-preservation~~] services are protective services provided to [~~a family whose children are not in a court-ordered placement. CPS may provide family-preservation services to~~] any family that needs CPS assistance to reduce the likelihood that a child in the family will be abused or neglected in the foreseeable future.

(B) Objectives. The objectives of family-based safety [~~family preservation~~] services are to:

(i) (No change.)

(ii) enable the family to function without CPS [~~PSFC~~] assistance after the case is closed.

[~~(C) Criteria. All of the criteria specified in clauses (i) - (iv) of this subparagraph must be satisfied before CPS provides family-preservation services:~~]

[~~(i)~~] ~~reducing the risk of abuse or neglect to a child is likely to be achieved with CPS services within 180 to 270 days;~~]

[~~(ii)~~] ~~at least one child is at risk of abuse or neglect in the foreseeable future or may be at risk of removal from the home and a written, viable safety plan is in place;~~]

[~~(iii)~~] ~~services are likely to protect the family's children from abuse or neglect in the immediate or short-term future; and~~]

[~~(iv)~~] ~~services are likely to provide a safe alternative to TDPRS obtaining conservatorship.~~]

(2) Moderate family-based safety [~~family-preservation~~] services.

(A) Definition. Moderate family-based safety [~~family-preservation~~] services are designed to be more intensive than regular family-based safety services, and are [~~a form of intensive family-preservation services~~] provided to families that need assistance to protect a child from abuse or neglect in the foreseeable future. Families receiving moderate services have a higher [~~high~~] risk for [~~of~~] abuse or neglect than families receiving regular services. [~~and the~~] The alternative to providing moderate services may be to obtain a court order to remove the child from the home.

(B) Objectives. The objectives of moderate family-based safety [~~family-preservation~~] services are to:

(i) - (iii) (No change.)

[~~(C) Criteria. All of the criteria specified in clauses (i) - (v) of this subparagraph must be satisfied before CPS provides moderate family-preservation services:~~]

[~~(i)~~] ~~the family is willing and able to participate in the services;~~]

[~~(ii)~~] ~~reducing the risk of abuse or neglect to a child is likely to be achieved in 90 to 180 days;~~]

[~~(iii)~~] ~~at least one child is at risk of abuse or neglect in the foreseeable future or may be at risk of removal from the home and a written, viable safety plan is in place;~~]

[~~(iv)~~] ~~moderate services are likely to protect the family's children from abuse or neglect in the immediate or short-term future; and~~]

[~~(v)~~] ~~services are likely to provide a safe alternative to TDPRS obtaining conservatorship.~~]

(3) Intensive family-based safety [~~family-preservation~~] services.

(A) Definition. CPS provides intensive family-based safety [~~family-preservation~~] services to families that need the most [~~intensive~~] assistance to protect a child from abuse or neglect in the immediate or short-term future. The alternative to providing intensive services is to obtain a court order to remove the child from the home.

(B) Objectives. The objectives of intensive family-based safety [~~family-preservation~~] services are to:

(i) - *(iii)* (No change.)

[~~(C) Criteria. All of the criteria specified in clauses (i) - (v) of this subparagraph must be satisfied before CPS provides intensive family-preservation services:~~]

[~~*(i)* the family is willing and able to participate in the services;~~]

[~~*(ii)* the objectives specified in subparagraph (B) of this paragraph are likely to be achieved in 60 to 120 days;~~]

[~~*(iii)* at least one child is at risk of removal from the home and a written, viable safety plan is in place;~~]

[~~*(iv)* intensive services are likely to protect the family's children from abuse or neglect in the immediate or short-term future; and~~]

[~~*(v)* services are likely to provide a safe alternative to TDPRS obtaining conservatorship.~~]

§700.703. Family Reunification Services.

The [~~Texas~~] Department of Family and Protective [~~and Regulatory~~] Services' (DFPS's) [~~(TDPRS's)~~] Child Protective Services (CPS) Division [~~department~~] provides reunification services to families whose children are returning home at the end of their stay [~~court-ordered placements~~] in substitute care. It does not include [~~describe~~] the services that CPS provides to families over the general course of a child's stay in substitute care, even though those services are usually directed towards family reunification. The purpose of the services is to provide support to the family and the child during the child's transition from living in substitute care to living at home. There are three levels of family reunification services--regular, intensive early, and intensive, all distinguished by the level of risk in the home [~~family-reunification services~~]. Any of these services may be provided directly or through contracts.

(1) Regular reunification services.

(A) Definition. CPS provides regular reunification [~~support~~] services to families whose children are returning home at the end of their stay [~~court-ordered placements~~] in substitute care. The purpose of the services is to provide support to the family and the child during the child's transition from living in substitute care to living at home.

(B) Objectives. The objectives of regular reunification [~~support~~] services are to:

(i) - *(iii)* (No change.)

(C) Criteria. All of the criteria specified in clauses (i) - (iv) [~~(i) - (iii)~~] of this subparagraph must be satisfied before CPS provides regular reunification services:

(i) at least one child was removed from the home;

(ii) [~~(i)~~] parents must have a reasonably stable living arrangement;

(iii) [~~(ii)~~] parents are working to complete goals listed on the family service [~~services~~] plan; and

(iv) [~~(iii)~~] a target date has been set for the child's transition home [~~will occur within the next 30-60 days~~] or the transition is in process.

(2) Intensive early reunification services.

(A) Definition. Intensive early reunification services are provided to families when a child has been in short-term substitute care [~~no longer than 30 days~~]. In many of these cases the children are returned home by the "14-Day Show Cause Hearing." Risk factors are high in these cases and intensive support services are needed.

(B) Objectives. The objectives of intensive early reunification services are to:

(i) (No change.)

(ii) ensure the earliest possible safe return home of children who [~~are have~~] come into DFPS [~~TDPRS~~] conservatorship; and

(iii) (No change.)

(C) Criteria. All of the criteria specified in clauses (i) - (iv) [~~(i) - (v)~~] of this subparagraph must be satisfied before CPS provides intensive early reunification services:

[~~*(i)* the family is willing and able to participate in the services;~~]

[~~*(ii)* the objective specified in subparagraph (B) of this paragraph must be achieved in 90 to 120 days;~~]

(i) [~~(iii)~~] at least one child was removed from the home;

(ii) [~~(iv)~~] a plan is in place to ensure the safety of the child; [~~and~~]

(iii) [~~(v)~~] intensive services are likely to improve the level of functioning of these families; and

(iv) the parents must have a reasonably stable living arrangement.

(3) Intensive family reunification [~~family-reunification~~] services.

(A) Definition. CPS provides intensive family reunification [~~family-reunification~~] services to families whose children have been placed in substitute care for a longer period of time than intensive early reunification cases [~~30-day period of time or longer~~]. Depending on the length of time a child has been in substitute care, the family may need various levels of support to rebuild the parent-child relationship. These families should be provided with a continuum of services through community agencies, CPS services, and extended family support. These resources should be used to assist the child and family through the reunification process.

(B) Objectives. The objectives of intensive family reunification [~~family-reunification~~] services are to:

(i) - *(iii)* (No change.)

(C) Criteria. All of the criteria specified in clauses (i) - (v) of this subparagraph must be satisfied before CPS provides intensive family reunification services:

(i) at least one child was removed from the home;

(ii) [~~(i)~~] the situation is high risk and the permanency plan is family reunification;

(iii) [~~(ii)~~] the parents must have a reasonably stable living arrangement;

(iv) [~~(iii)~~] the parents are working to complete goals listed on the family service [~~services~~] plan; and

~~*[(iv)* the child's transition home will occur within the next 30-60 days or is in process; and]~~

(v) (No change.)

§700.704. Family Service Plan for Family-Based Safety Services Cases and Family Reunification Services Cases.

(a) Initial time frame. Within 45 days after the case is opened for family-based safety services, as defined in §700.702 of this title (relating to Family-Based Safety Services), or family reunification services, as defined in §700.703 of this title (relating to Family Reunification Services), the Department of Family and Protective Services' (DFPS's) Child Protective Services (CPS) Division must establish a detailed written plan of service for the family.

(b) Purposes. The purposes of the family service plan for families receiving family-based safety services or family reunification services are to:

(1) establish a structured, time-limited process for providing services; and

(2) ensure that services progress as quickly as possible towards enabling the family to:

(A) reduce the risk of abuse or neglect; and

(B) function effectively without CPS assistance.

(c) Required content. The family service plan must:

(1) include the reasons CPS is involved with the family;

(2) include an assessment, developed with the family, of family problems and strengths and resources that can be utilized to help the family reduce the risk of child abuse and neglect;

(3) identify the goals or changes needed to reduce the level of risk;

(4) specify the tasks the family must complete during the effective period of the plan in order to make the needed changes;

(5) describe the services CPS must provide to help the family complete those tasks;

(6) indicate how CPS will evaluate the family's progress in completing each task and individual goal;

(7) indicate the period of time and frequency of the tasks and services; and

(8) meet federal and state laws, including the DFPS Licensing Minimum Standards as outlined in the CPS Handbook, Section 6400, Case Planning.

(d) Parents' participation. The worker must attempt to work with the parents to develop the family service plan. After completing the plan, the worker must ask the parents to sign it, and give them a copy of it. If either parent will not sign the plan, the worker must document on the plan the reasons why a parent will not sign and must give the parent a copy of the plan.

(e) Plan review. After completing the initial service plan, the worker must review the plan with the family and update it when significant changes occur within the family. At a minimum, the worker must review and update the plan every six months.

§700.705. Case Closure of Family-Based Safety Services Cases.

(a) Case closure. The Department of Family and Protective Services' (DFPS's) Child Protective Services (CPS) Division closes family-based safety services cases in the two situations specified in paragraphs (1) and (2) of this subsection:

(1) CPS services no longer needed. The worker and supervisor close a family-based safety services case when CPS services are no longer needed because the family:

(A) has reduced the risk to the child so that the child is safe from abuse and neglect and the family appears capable of managing the remaining risk without outside assistance; or

(B) appears capable of reducing the risk to the child with assistance from sources other than CPS, and the family is willing and able to rely on that assistance.

(2) Administrative closure. The worker and supervisor may close the case if:

(A) the family has moved and after reasonable efforts to locate the family, they cannot be found; or

(B) there is not enough evidence of a threat to the child's immediate and short-term safety for legal intervention and either:

(i) the family refuses to accept further services; or

(ii) CPS has already offered or provided all the services that:

(I) are appropriate to the family's needs;

(II) CPS can provide or arrange; or

(III) the family has requested and is eligible to receive.

(b) Transfer from family-based safety services to substitute care.

(1) Whenever possible, CPS staff, together with the family, make the decision to remove the child from the home. CPS staff explore every reasonable alternative for keeping the child safe from abuse and neglect in the home. The child is removed only when there is no other reasonable way to protect the child from abuse or neglect in the immediate or short-term future.

(2) When family-based safety services are provided and the family is still unable to protect a child from abuse or neglect in the immediate or short-term future, CPS staff initiate an emergency or court-ordered removal of the child from the home. Substitute care services are then provided to the child and family.

§700.706. Case Closure of Family Reunification Services Cases.

(a) Case closure. If the court has dismissed the Department of Family and Protective Services as conservator, Child Protective Services (CPS) Division may close the case if:

(1) the family has reduced the risk to the child so that the child is safe from abuse and neglect and the family appears capable of managing the remaining risk without outside assistance; or

(2) the family appears capable of reducing the risk to the child with assistance from sources other than CPS, and is willing and able to rely on that assistance.

(b) Transfer from family reunification to substitute care. When possible, CPS staff, together with the family, make the decision to remove the child from the home. CPS staff, together with the family, explore every reasonable alternative for keeping the child safe from abuse and neglect in the home to eliminate the need to remove. When the family is still unable to protect a child from abuse or neglect in the immediate or short-term future, CPS staff initiate a removal of the child from the home. This may or may not require new legal intervention de-

pending on the legal status at the time. Substitute care services are then provided to the child and family.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605853
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 438-3437

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40 TAC §700.704, §700.705

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

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

The repeals implement HRC §40.002.

§700.704. Case Closure of Family Preservation or Reunification Cases.
§700.705. Family Service Plan.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605854
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER Q. PURCHASED PROTECTIVE SERVICES

40 TAC §700.1713

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

The amendment implements HRC §40.002.

§700.1713. Purchased Family-Based Safety [~~Family-Preservation~~] Services.

(a) Types of providers. The [~~Texas~~] Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(TDPRS)~~] has the authority to contract with any of the following types of providers for purchased family-based safety [~~family-preservation~~] services:

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

(b) Definition. Purchased family-based safety [~~family-preservation~~] services consist of the contracted casework necessary to plan, deliver, and coordinate regular, moderate, and intensive family-based safety services [~~"family preservation services" and "intensive family-preservation services"~~] as those terms are defined in §700.702 [~~§§700.702(a) and 700.703(a)~~] of this title (relating to Family-Based Safety [~~Family Preservation~~] Services [~~and Intensive Family-Preservation Services~~]).

(c) General purpose. The purposes of family-based safety [~~family preservation~~] services are to:

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

(d) Purpose of contracting. The Child Protective Services (CPS) Division [~~Office of Protective Services for Families and Children (PSFC)~~] contracts for family-based safety [~~family preservation~~] services to reach families and children who need such services when CPS [~~PSFC~~] lacks the resources to provide them directly.

(e) Basis of payment. To reimburse contractors for family-based safety [~~family preservation~~] services, DFPS [~~TDPRS~~] uses either the cost-reimbursement method or the unit-rate method, or a combination of both, as specified in §700.1707 of this title (relating to Reimbursement).

(f) Liability. Contractors for family-based safety [~~family preservation~~] services must provide liability coverage for their staff. The liability protections available to CPS [~~PSFC~~] staff as state employees, including representation by the Texas Attorney General's [~~attorney general's~~] office in lawsuits, do not extend to contractors.

(g) Mandatory and optional services.

(1) Primary services. When CPS [~~PSFC~~] refers a family to a contractor for family-based safety [~~family preservation~~] services, the contractor must provide the services that CPS [~~PSFC~~] ordinarily provides to such families, including the services specified in:

(A) §700.702 of this title (relating to Family-Based Safety [~~Family Preservation~~] Services); and

[~~(B) §700.703 of this title (relating to Intensive Family-Preservation Services), when applicable; and~~]

(B) [~~(C)~~] §700.704 [~~§700.705~~] of this title (relating to Family Service Plan for Family-Based Safety Services Cases [~~the Family Service Plan~~]).

(2) Specialized services. In addition to providing the services specified in paragraph (1) of this subsection, family-based safety services [~~family-preservation-services (FPS)~~] contractors may also provide [~~the following array of~~] specialized services including:

[~~Figure: 40 TAC §700.1713(g)(2)~~]

(A) appropriate family and individual evaluations and treatments as specified in §700.1714 of this title (relating to Evaluation and Treatment Services);

(B) homemaker services as specified in §700.1711 of this title (relating to Homemaker Services);

(C) child-care training as specified in §700.1712 of this title (relating to Child-Care Training);

(D) home assessments, social studies as specified in §700.1715 of this title (relating to Social Studies), and related evaluations; and

(E) depositions and court appearances when necessary.

(h) Staff requirements.

(1) Assigning staff to cases. Whenever CPS [~~(PSFC)~~] refers a family to a contractor for family-based safety [~~family preservation~~] services, the contractor must assign:

(A) (No change.)

(B) a supervisor to advise and support the worker, as specified in CPS' [~~(PSFC's)~~] policies and procedures for providing family-based safety [~~family preservation~~] services directly, including:

(i) §700.702 of this title (relating to Family-Based Safety [~~Family Preservation~~] Services); and

~~*[(ii)* §700.703 of this title (relating to Intensive Family-Preservation Services); and]~~

(ii) [~~(iii)~~] §700.704 [~~§700.705~~] of this title (relating to Family Service Plan for Family-Based Safety Services Cases [~~the Family Service Plan~~]).

(2) Additional supervisory requirement. In every purchased family-based safety services [~~intensive-services~~] case, in addition to conferring with the worker at each staffing specified in CPS' [~~PSFC's~~] policies and procedures for providing family-based safety [~~intensive family-preservation~~] services directly, the supervisor must review the worker's activities in the case at least once a month.

(3) Qualifications. The workers and supervisors assigned to contracted family-based safety services [~~family-preservation-services~~] cases must have the following minimum qualifications: [~~Figure: 40 TAC §700.1713(h)(3)~~]

(A) Worker--A bachelor's degree from an accredited college or university;

(B) Supervisor--A bachelor's degree from an accredited college or university, and two years of full-time, supervised social work with families and children that have diverse problems; and

(C) Any further qualifications specified in the contract.

~~[(4) Basic job training. Contractors must provide new workers and supervisors with basic job training within 30 days of their first day of employment. The topics covered in the training must include PSFC's policies and procedures for:]~~

~~[(A) intake and investigation of reports of child abuse and neglect;]~~

~~[(B) risk assessment and service planning;]~~

~~[(C) family preservation services; and]~~

~~[(D) intensive family-preservation services, when applicable.]~~

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605855
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 438-3437

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CHAPTER 700. CHILD PROTECTIVE SERVICES
SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

40 TAC §700.1341

(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 Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §700.1341, concerning Requesting Termination of Parental Rights, in its Child Protective Services chapter. The section is no longer needed because state and federal permanency legislation provide DFPS staff guidance on when termination of parental rights is appropriate.

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

Ms. Brown also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that staff will have more flexibility to make appropriate recommendations to the court, consistent with current practice. There will be no effect on large, small, or micro-businesses because the proposed repeal does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons resulting from the proposed repeal of this rule.

Questions about the content of the proposal may be directed to Larry Burgess at (512) 438-5320 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-358, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, there-

fore, does not constitute a taking under §2007.043, Government Code.

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

The repeal implements Texas Family Code, Chapter 161.

§700.1341. Requesting Termination of Parental Rights.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605856
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 10, 2006
For further information, please call: (512) 438-3437

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.72

The Texas Board of Veterinary Medical Examiners withdraws the proposed repeal of §573.72 which appeared in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5538).

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605788
Julie A. Barker
Interim Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: October 24, 2006
For further information, please call: (512) 305-7555

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ADOPTED RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

4 TAC §19.3

The Texas Department of Agriculture (the department) adopts an amendment to §19.3, concerning inspection and testing fees, without changes to the proposal published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7075).

The amendment is adopted to add a nematode laboratory analysis testing fee and to change the section title. In certain cases, a phytosanitary certificate is issued by the Department after evidence is available that the premises or media where plants are grown are free of quarantined nematode species. A sample is collected from the premises, media or article and tested for the presence of a quarantined nematode species by a specialist or laboratory under contract with the department for this purpose. This testing provides a method for mitigating the risk of introduction of a quarantined pest from infested areas to free areas. It is necessary for the department to charge $30 per sample to recover the costs associated with nematode laboratory analysis. The amendment adds "and Testing" to the section title to clarify that there is a testing fee as well as an inspection fee provided for in the section, and adds language authorizing the department to collect a $30 per sample testing fee for nematode laboratory analysis.

No comments were received on the proposal.

The amendment to §19.3 is adopted under the Texas Agriculture Code (the Code), §12.018 which authorizes the department to collect fees for laboratory analysis; the Code, §12.0144 which provides that the department shall set fees in an amount which offsets, when feasible, the direct and indirect state costs of administering its regulatory activities; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605801
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: November 13, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.417, §26.420

The Public Utility Commission of Texas (commission) adopts, with no changes to the proposed text as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6611), amended §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), and amended §26.420, relating to Administration of Texas Universal Service Fund (TUSF).

These amendments make minor non-policy affecting changes to Chapter 26 Substantive Rules to bring them into conformity with associated minor changes in the Public Utility Regulatory Act brought about by Senate Bill 5, 79th Legislature, Second Called Session. Project Number 32136 is assigned to this proceeding.

The commission received no comments on these proposed amendments.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §§54.251, 56.021 and 56.026(e), which provide the authority for the various rule changes made herein.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 54.251, 56.021 and 56.026(e).

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605975
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: November 19, 2006
Proposal publication date: August 25, 2006
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.3

The Texas Higher Education Coordinating Board adopts amendments to §4.3 concerning definitions for rules applying to all public institutions of higher education in Texas, with changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7080). Specifically, this amendment will include definitions for College-Readiness Standards and Statewide College-Readiness Vertical Teams necessary for implementation of §5.01 of House Bill 1, Third Called Session 2006, concerning the development of college-readiness standards and related activities for implementation of these standards statewide. These amendments also arrange all definitions within this section into alphabetical order.

The following comments were received regarding the amendments:

Comment: Staff of the Governor's Office provided comments that recommended changes to §4.3 (8) concerning the definition of College-Readiness Standards to include pursuit of entry-level work interests.

Response: The Board staff collaborated with the Governor's Office staff to address the concerns about including work-readiness without creating two different standards in the definition. The change adds "in the workplace and" to the entry-level courses offered at institutions of higher education for which students must be prepared to successfully perform.

The amendments are adopted under the Texas Education Code, §28.008(c), which provides the Coordinating Board with the authority to adopt rules to establish the composition and duties of statewide college-readiness teams.

§4.3. Definitions.

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

(1) Active military service--Active service in the armed forces of the United States or in the National Guard or the Texas State Guard.

(2) Associate of Science degree and the Associate of Arts degree--collegiate degrees consisting of lower-division courses designed to prepare students for transfer to a bachelor's degree program.

(3) Associate of Applied Science degree and the Associate of Applied Arts degree--technical certificates issued to students who complete workforce education curricula of collegiate level.

(4) Associate of Arts in Teaching degree--Board-approved collegiate degree programs consisting of lower-division courses intended for transfer to baccalaureate programs that lead to initial Texas teacher certification.

(5) Bachelor of General Studies degree--a program designed principally for mature students who seek a flexible degree program and who do not desire or may not meet prerequisites of a highly structured traditional degree program, and to permit students to plan, with advisement, an individualized program with access to a wide range of academic disciplines and fields of professional study.

(6) Bachelor of Applied Arts and Sciences degree--a program designed to provide a path to a bachelor's degree for students who have earned previous collegiate credit through workforce education curricula. The degree program combines general education requirements and a professional component designed to complement the student's technical or vocational competence.

(7) Board--The Texas Higher Education Coordinating Board.

(8) College-Readiness Standards--The knowledge and skills expected of students to perform successfully in the workplace and in entry-level courses offered at institutions of higher education.

(9) Commissioner--The Commissioner of Higher Education.

(10) Common calendar--dates and information pertaining to the beginning and ending (and lengths) of academic semesters and sessions, applicable to all Texas public universities and community, technical and state colleges.

(11) Consulting or testifying expert witness--any non-fact witness whose name must be disclosed during litigation as required by the Texas Rules of Civil Procedure.

(12) Degree program--any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to a degree from an institution of higher education.

(13) Faculty or professional staff of an institution of higher education--a non-classified, full-time employee who is a member of the faculty or staff and whose duties include teaching, research, administration or performing professional services, including professional library services.

(14) Fiscal year--the State of Texas' fiscal year, September 1 through August 31.

(15) Institution of higher education or institution--any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(16) Interdisciplinary baccalaureate degrees--the Bachelor of General Studies degree (defined in paragraph (4) of this section) and such general degrees as liberal arts or humanities. These broad-based degrees vary in the amount of prescriptive structure but share the

characteristics of flexibility for the student and interdisciplinary course selection.

(17) Non-classified--an employee whose position is not controlled by the institution's classified personnel system or a person employed in a similar position if the institution does not have a classified personnel system.

(18) Religious holy day--A holy day observed by a religion whose places of worship are exempt from property taxation under the Texas Tax Code, §11.20.

(19) Statewide Discipline-Based College-Readiness Vertical Teams--Teams composed of public school educators and higher education faculty whose duties are consistent with those provided under §28.008(b) of the Texas Education Code .

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605944
Bill Franz
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Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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SUBCHAPTER H. P-16 COLLEGE-READINESS AND SUCCESS

19 TAC §§4.171 - 4.174

The Texas Higher Education Coordinating Board adopts new §§4.171 - 4.174, concerning P-16 college-readiness and success standards and statewide vertical teams which apply to all public institutions of higher education in Texas. Sections 4.171, 4.172, and 4.174 are being adopted without changes and will not be republished. Section 4.173 is being adopted with changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7081). Specifically, these new sections will establish the composition and duties of the statewide vertical teams required to develop and recommend college-readiness standards to the Texas Higher Education Coordinating Board and the Commissioner of Education necessary for implementation of §5.01 of House Bill 1, Third Called Session 2006, concerning the development of college-readiness standards and related activities for implementation of these standards statewide.

The following comments were received regarding the new sections:

Comment: Staff of the Governor's Office provided comments that recommended changes to §4.173 concerning the Composition and Duties of Statewide Discipline-Based College-Readiness Vertical Teams. Specifically, the recommended changes would ensure faculty from two-year community colleges and technical institutions are represented on the vertical teams. In addition, the Governor's Office staff requested that a new subsection (e) and (f) be added to create validation teams made up of representatives from each of the six targeted cluster industries to validate the college-readiness standards. The validation teams would be appointed by the Commissioner of Higher Education from recommendations provided by the Governor.

Response: The Board staff concurs with the comment that faculty representation on the vertical teams include specific references to the types of institutions represented, including the two-year community colleges and technical institutions, and has made changes accordingly. Concerning the creation of validation teams made up of representatives from the cluster industries, the Board staff collaborated with the staff of the Governor's Office to make certain that input from the cluster industries in the development of the college-readiness standards be provided throughout the development process to ensure workplace issues are addressed. This would ensure that business and industry concerns are considered as part of the process and not apart from or at the conclusion of the college-readiness standards development process. Appropriate language was agreed upon and included as new subsection (e).

The new sections are adopted under the Texas Education Code, §28.008(c), which provides the Coordinating Board with the authority to adopt rules to establish the composition and duties of statewide college-readiness teams.

§4.173. Composition and Duties of Statewide Discipline-Based College-Readiness Vertical Teams.

(a) There shall be a total of four statewide discipline-based college-readiness vertical teams: one each in English/Language Arts, Mathematics, Science, and Social Studies. All teams shall be composed of a minimum of 8 and a maximum of 20 members per subject area who represent the following:

(1) All levels of public school educators;

(2) Faculty from higher education to include public junior colleges, public community colleges, public technical institutes, public state colleges, public senior colleges or universities, and private or independent institutions of higher education as defined in Texas Education Code, §61.003;

(3) A balance between small and large districts;

(4) Various geographic regions of the state; and

(5) Overall demographics of the state.

(b) A maximum of 60 percent of the statewide discipline-based college-readiness vertical teams shall be composed of faculty from institutions of higher education.

(c) The statewide discipline-based college-readiness vertical teams shall develop college-readiness standards as defined in Texas Education Code, §28.008(b)(1). The teams may create an interdisciplinary vertical team composed of one public education member and one higher education member from each discipline-based college-readiness vertical team to review the standards and determine commonalities among the disciplines. The statewide discipline-based college-readiness vertical teams shall recommend the college-readiness standards to the commissioner of education and the commissioner.

(d) Upon completion of the development of college-readiness standards, the statewide discipline-based college-readiness vertical teams shall develop recommendations for curriculum alignment with college-readiness standards and other materials as defined in Texas Education Code, §28.008(b)(2) - (5). The teams shall be re-constituted at that time to ensure that a maximum of 60 percent of each of the re-constituted statewide discipline-based college-readiness vertical

teams shall be composed of secondary public education teachers employed full-time in Texas public school districts.

(e) In conjunction with the vertical teams, the Commissioner shall appoint an advisory committee of no fewer than 12 members and no greater than 15 members that include representatives from each of the six targeted cluster industries as defined by the governor, to review and make recommendations regarding development of college-readiness standards in each of the four subject matter areas.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605945
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §13.108

The Texas Higher Education Coordinating Board adopts amendments to §13.108 concerning Financial Planning, without changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7082). Specifically, these adopted amendments to §13.108(d) clarify that the exemption from higher tuition applies only to students in the semester or term before graduation and is applicable to only one semester.

No comments were received regarding the adopted amendments.

The amendments are adopted under the Texas Education Code, §54.0015, which gives the Coordinating Board the authority to adopt rules.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605946
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General Counsel
Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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CHAPTER 17. CAMPUS PLANNING
SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS

19 TAC §17.21, §17.22

The Texas Higher Education Coordinating Board adopts amendments to §17.21 and §17.22 concerning Campus Planning. Section 17.21 is being adopted without changes and will not be republished. Section 17.22 is being adopted with changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7083). Specifically, these adopted amendments to §17.21 add new language to include the Assistant/Associate Commissioner as part of the project application process. A new provision is being proposed requiring that the Board of Regents Certification for a project application be dated no more than two years prior to the date the project application is submitted to the Coordinating Board for approval. A new provision for real property purchases has also been added allowing for a Board of Regents certification that is older than two years if an executive officer of the institution certifies that certification is still in effect. The amendments to §17.22 reflect the definition of the criteria that allows a project to be considered for emergency approval.

The following comment was received regarding the amendments:

Comment: A comment was received from the Committee on Strategic Planning that the last word in §17.22(a)(3) should be changed from function to mission.

Response: Board agrees and recommends that §17.22(a)(3) be changed to read as follows: (3) there is an unavoidable circumstance whereby the delay would critically impair the institution's mission.

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules and §61.0572.

§17.22. Emergency Approval of Projects.

(a) An emergency project may be approved by the Commissioner or the Committee on Strategic Planning between regularly scheduled meetings of the Board. If necessary to address the emergency, the Commissioner may approve emergency projects between regularly scheduled meetings of the Board in consultation with the Chair of the Committee on Strategic Planning. A project would be eligible to submit a request for Emergency Approval if:

(1) delaying the project would result in an unacceptable cost to the state; or

(2) the project is necessary because of a natural disaster; or

(3) there is an unavoidable circumstance whereby the delay would critically impair the institution's mission.

(b) If an emergency project is approved by the Commissioner, the project shall be reported to the next regularly scheduled Committee on Strategic Planning meeting.

(c) The application of each emergency project shall be signed by the president of the institution. The president of the institution may not delegate this authority within the requesting institution.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605947
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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SUBCHAPTER F. RULES APPLYING TO REAL PROPERTY ACQUISITION PROJECTS

19 TAC §17.51, §17.52

The Texas Higher Education Coordinating Board adopts amendments to §17.51 and §17.52 concerning Campus Planning. Section 17.51 is being adopted with changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7084). Section 17.52 is being adopted without changes and will not be republished. Specifically, adopted amendments to §17.51 provide for a current appraisal dated one year or less for real property purchases with a cost greater than $300,000. The adopted rule also provides clarification of the rules regarding the credentials of an appraiser and adds the State of Texas appraiser licensing and certification as acceptable credentials for an appraiser. The adopted amendment includes additional requirements for the Texas State Technical College System regarding project application for the acquisition of real property. Specifically, these amendments to §17.52 make a provision for eminent domain cases that are settled by the court at a cost higher than ten percent of the Board approved cost to allow notification to the Coordinating Board and not require re-approval of the project.

The following comments were received regarding the amendments:

Comment: A comment was received from the Committee on Strategic Planning regarding the two-year time frame for current appraisals in §17.51(a)(2). Because property values are rapidly changing, the Committee on Strategic Planning made a motion and voted on that motion that the time frame should be revised to six months.

Comment: A comment was received from The University of Texas (UT) System regarding the motion and vote taken at the Committee on Strategic Planning meeting to change the time frame for current appraisals in §17.51(a)(2) to six months. The first step typically taken by an institution when it seeks to acquire real property is to obtain an appraisal. Oftentimes, that appraisal is obtained in advance of serious negotiations with the landowner; and most of the time, it is obtained before a contract with the landowner is signed. Consequently, it is not unlikely that an appraisal will be more than six months old by the time the purchase transaction had been negotiated, a contract entered into and that contract approved by the Board of Regents and then submitted to the Coordinating Board for its approval. The UT System requests that the rule be revised so that an appraisal will be considered current if it is completed no more than one year prior to the date that the application is submitted to the Coordinating Board. An appraisal that is no older than one year allows for adequate time for the negotiating, contracting, and approval processes without imposing an undue additional cost on the institution associated with updating existing appraisals or obtaining new appraisals to meet the six-month time frame.

Response: Board does not recommend the six-month time frame for current appraisals because the negotiations for property, the need to allow adequate time from negotiations to approval by the institution's Board of Regents, and the submission of the property purchase project application to the Coordinating Board may take longer than six months. Board recommends the time frame for current appraisals of one year prior to the date the project application is submitted to the Coordinating Board. Section 17.51(a)(2) has been changed to one year.

Comments: Comments were received from The University of Texas (UT) System regarding the proposed rule change in §17.52(c), and the concern of the Committee on Strategic Planning that the court may set a price that is unacceptably high.

The UT System commented that the primary purpose of the eminent domain process, which is specified by statute, is to determine the fair market value that will adequately compensate the landowner for the condemnation of the owner's land. The value set by the judgment is the value that the condemning authority must pay, subject, of course, to the condemning authority successfully appealing the judgment to a higher court. The UT System further commented that the current rule requires re-approval of the Coordinating Board if the judgment sets a price ten percent higher than the price approved by the Board. That rule places the institution in jeopardy, inasmuch as if the Coordinating Board does not approve the price set by the judgment, the institution has no authority to purchase the property and must then dismiss the suit. A dismissal of the condemnation suit will result in the institution being assessed significant penalties, court cost, and the property owner's attorneys' fees, which will total thousands, if not tens of thousands, of dollars. The UT System also commented that, because the statutory process for condemnation is specifically established to determine fair market value, that the rule be revised as is currently proposed. Requiring re-approval by the Coordinating Board places the institution at risk of being assessed significant expenses by the court if the Board does not re-approve the acquisition.

Response: Board agrees with the comment that the eminent domain process is to determine fair market value. There were no revisions made to the proposed rule.

Comment: Comments were received from the American Society of Farm Managers and Rural Appraisers, Texas Chapter, and the Foundation Appraisers Coalition of Texas, Inc., regarding the proposed rule change in §17.51(b), with the addition of another appraiser designation that would be appropriate and a wording clarification in §17.51(b)(7). These comments were received after the 30 day time frame of receiving comments from interested parties.

Response: Staff agrees with the comments of listing an additional appraiser designation and the wording clarification. Although these comments were received after the 30 day time frame, the inclusion of the additional items would be beneficial. The changes were made to §17.51(b)(7).

The amendments are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules and §61.0572.

§17.51. Additional Requirements.

(a) Appraisals.

(1) If the cost of the real property is $300,000 or more, an institution shall provide two current appraisal reports providing a current value of the property. The most recent appraisal of the local property tax appraisal district may be used for one of these reports.

(2) Appraisals shall be considered current if the appraisal was completed no more than one year prior to the date the project application is submitted to the Coordinating Board for approval.

(3) If the cost of the real property is less than $300,000, an institution shall submit a brief description of the information that it has relied upon to determine the current market value or provide an appraisal report estimating the current market value of the property.

(b) Appraiser Credentials. Any appraisal report provided to the Board under this section shall certify that the appraiser(s) meets one of the following requirements:

(1) Is designated an Accredited Senior Appraiser by the American Society of Appraisers (A.S.A.) with the professional designation in real estate;

(2) Is a member of the Appraisal Institute designated M.A.I. by the Appraisal Institute and is experienced in the valuation and evaluation of commercial, industrial, residential, and other types of properties, and who advise clients on real estate investment decisions;

(3) Is a member of the Appraisal Institute designated S.R.P.A. and is experienced in the valuation of commercial, industrial, residential, and other types of property;

(4) Is a member of the Appraisal Institute designated S.R.A. and is a real estate solutions provider who is experienced in the analysis and valuation of residential real property;

(5) Is a senior member of the National Association of Independent Fee Appraisers designated IFAS;

(6) Is an appraiser-counselor member of the National Association of Independent Fee Appraisers designated IFAC; or

(7) Is a licensee of the Texas Appraiser Licensing and Certification Board in good standing and certified or licensed at the appropriate level for the project and must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser must also state that they have the knowledge and experience to complete the assignment competently.

(8) Is a member of the American Society of Farm Managers and Rural Appraisers (ASFMRA) designated as an Appraisal Rural Appraiser, or ARA, who is experienced to value rural property matters as they relate to rural property acquisitions, dispositions or condemnation needs.

(c) The requirement for appraisals in no way obligates the institution to release the figures to property owners during the acquisition process, nor does the requirement of appraisals deny the institution the right to settle a purchase at a price below the appraisals.

(1) An institution may place the word "Confidential" on each appraisal submitted to the Board under this section.

(2) The Board shall refer any public request for an appraisal that is marked "Confidential" or related project application materials to the Office of the Attorney General and provide notice to the institution that a request for the appraisal has been made under the Public Information Act found in Texas Government Code, Chapter 552.

(d) Special requirements for the Texas State Technical College System. Proposed real property acquisitions by the Texas State Technical College System in Cameron, Potter, Harrison, and Nolan Counties must be approved by the Office of the Governor after Board approval and prior to acquisition in compliance with Texas Education Code §135.02(c). The Board shall provide the Office of the Governor a copy of the approval letter and analysis. The System shall provide any additional documentation to the Office of the Governor. The System shall provide a copy of the Governor's approval to the Board for inclusion in the project application file within 30 days of the approval.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605948
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Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §21.126

The Texas Higher Education Coordinating Board adopts an amendment to §21.126 concerning the Texas B-On-Time Loan Program, without changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7085). Specifically, §21.126 states that the amount of the B-On-Time loan may not exceed the difference between the cost of attendance and other forms of student assistance for which the student is eligible, with the exception of Federal PLUS loans. The amendment clarifies that this requirement applies only to loans funded by tax-exempt bonds. Loans funded by tuition set-aside or general revenue funds are not subject to this requirement.

No comments were received regarding the amendment.

The amendments are adopted under the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605949

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General Counsel
Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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SUBCHAPTER CC. EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM

19 TAC §21.954

The Texas Higher Education Coordinating Board adopts amendments to §21.954 concerning the Early High School Graduation Scholarship Program, without changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7085). Specifically, the amendment to §21.954(f) will encourage institutions to use the Coordinating Board's "Eligibility Verification" web site to confirm student eligibility for awards and will help alleviate delays in the delivery of awards to students. The addition of §21.954(i) will eliminate conflicts regarding funds available by limiting using the award at only one institution in a given term.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.209, which states that the Coordinating Board is authorized to adopt rules to administer Texas Education Code, Chapter 56, Subchapter K, relating to the Early High School Graduation Scholarship Program.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605950
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1083, 21.1084, 21.1086, 21.1088

The Texas Higher Education Coordinating Board adopts amendments to §§21.1083, 21.1084, 21.1086, and 21.1088 concerning the Educational Aide Exemption Program, without changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7086). Specifically, the adopted amendment to §21.1083(2) reflects the need for eligible students to have been employed as educational aides on a full-time basis for at least a year; and amendments to §21.1083(3) clarify that current employment while receiving an award must be for the full term for which an award is made unless the student is granted a hardship waiver of this requirement. Adopted amendments to §21.1084 indicate the Coordinating Board will use its web site as an auxiliary source of information for institutions to use in verifying student awards. This should speed up the delivery of the awards by decreasing the demand for paper copies of award letters. The adopted amendment to §21.1086 indicates the program will provide funding to cover resident tuition, not non-resident tuition. Although the program is limited to residents of Texas, Texas Education Code, §61.0595 and §54.068 authorize institutions to charge students a tuition rate up to the non-resident rate for courses they take in excess of 30 hours beyond the requirements of their degrees or for courses they take for the third time. The adopted amendment to §21.1086 would allow the program to make such students an award up to the resident tuition rate, but would leave the additional tuition charges as the students' responsibility. Adopted amendments to §21.1088(b) do not add new information but clarify the information given in §21.1088(a) that, in order to be exempt from student teaching, the student must have been in the Educational Aides Exemption Program prior to the receipt of his/her bachelor's degree. This is in keeping with program statutes TEC §21.050(c).

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.214, which states that the Coordinating Board is authorized to adopt rules to implement this section.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605953
Bill Franz
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Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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19 TAC §21.1089

The Texas Higher Education Coordinating Board adopts the repeal of §21.1089 concerning the Educational Aide Exemption Program, without changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7087). Specifically, §21.1089 is repealed and §21.1089 is proposed as Hardship Provisions.

No comments were received regarding the repeal.

The repeal of the rules is adopted under the Texas Education Code, §54.214, which states that the Coordinating Board is authorized to adopt rules to implement this section.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605951

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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19 TAC §21.1089, §21.1090

The Texas Higher Education Coordinating Board adopts new §21.1089 and §21.1090 concerning the Educational Aide Exemption Program, without changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7087). Specifically, new §21.1089 would dedicate this section to the subject of Hardship Provisions, under which an otherwise eligible student may receive an exemption if his or her employment by a school district is terminated prior to the end of the term for which the exemption is awarded. New §21.1090 is added due to the addition of §21.1089 regarding Hardship Provisions. The section regarding Dissemination of Information and Rules is renumbered as §21.1090.

No comments were received regarding the new sections.

The rules are adopted under the Texas Education Code, §54.214, which states that the Coordinating Board is authorized to adopt rules to implement this section.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605952
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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SUBCHAPTER MM. DOCTORAL INCENTIVE LOAN REPAYMENT PROGRAM

19 TAC §21.2084

The Texas Higher Education Coordinating Board adopts amendments to §21.2084 concerning the Doctoral Incentive Loan Repayment Program, without changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7088). Specifically, the adopted amendments to §21.2084 would allow applicants to be considered eligible for participation if, in addition to meeting all other program requirements, they attended (or resided in an area near) a high school from which only 50 percent or less of the graduating class enrolled in an institution of higher education following graduation. The amendments to §21.2084 would also extend program eligibility to individuals who began employment as a faculty member or administrator in an eligible institution no earlier than 12 months prior to the service period for which application for loan repayment has been made.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.091, which authorizes the Coordinating Board to establish and administer the Doctoral Incentive Loan Repayment Program and adopt rules as necessary.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605954
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 427-6114

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER D. FIRE AND ALLIED LINES INSURANCE

DIVISION 9. VOLUNTARY INSPECTION PROGRAM PLAN OF OPERATION

28 TAC §5.3800

The Commissioner of Insurance adopts amendments to §5.3800, concerning the Voluntary Inspection Program fees charged for initial residential property inspections and follow-up inspections. The amendments are adopted with changes to the proposed text published in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6463).

The Voluntary Inspection Program (VIP) was created in 1995 by the 74th Legislature to provide a mechanism for any person having an insurable interest in real or tangible personal property at a fixed location to procure an independent inspection of the condition of the property for purposes of purchasing residential property insurance. The amendments to §5.3800(e) are necessary to increase the fees that may be charged by inspectors in the program to individuals who request an inspection of their residential property and to provide for automatic annual increases in the fees based on the Consumer Price Index of the U.S. Department of Labor, Bureau of Labor Statistics. The former fees were established in 1996 when the Plan of Operation was first adopted and are now too low to attract enough inspectors to perform inspections for the VIP. Many inspectors are certified real estate inspectors, and based on an informal survey of various areas of the state, the Department determined that these inspectors generally charge approximately $150 to $400 for a real estate inspection. The Department has also determined that in many instances the VIP fee is added on to the real estate fee when an in-

spection is conducted for purposes of VIP certification of insurability. Despite this fact, an informal Department survey indicates that the current VIP fee of $50 does not provide enough financial incentive for qualified inspectors to participate. The informal Department survey of qualified inspectors also indicates that many more inspectors would be willing to conduct the inspections if the fee were set at $100 or more. Therefore, the Department is adopting a new fee structure, increasing fees from an amount not to exceed $50 to an amount not to exceed $100 for initial inspections, and from an amount not to exceed $25 to an amount not to exceed $50 for follow-up inspections. The new fee structure will be effective January 1, 2007. In order to ensure that inspection fees are competitive enough to ensure the continued availability of inspectors for homeowners who want to utilize the inspection program, the Department is also adopting a provision to provide for automatic annual increases in the fees by the same percentage of increase as the increase in the Consumer Price Index established by the U.S. Department of Labor, Bureau of Labor Statistics for the prior calendar year for all urban consumers for all items and for all regions combined, rounded to the nearest dollar. Under this adopted provision, the maximum amount that could be charged for the initial VIP inspections and follow-up inspections would be automatically increased annually in accordance with the Consumer Price Index beginning on January 1, 2008. For purposes of convenience and accuracy, also beginning January 1, 2008, persons interested in requesting inspections and in conducting inspections will be able to obtain the latest fee amounts, along with the method for computing the fees, at the Department's VIP website, www.TDI.state.tx.us/consumer/VIPcommish.html, as well as from the Department by U.S. Postal Service mail. Additionally, in order to ensure adequate financial incentive for inspectors to perform the inspections, the adopted provision will allow inspectors to charge the individual requesting the inspection for mileage for the most direct route to and from the residential property that is inspected; such fees are required to be the same as the federal standard mileage rate for business use established by the Internal Revenue Service. The mileage fees are adopted to be effective January 1, 2007, and if the Internal Revenue Service adjusts the mileage rate for business use, the VIP inspector mileage rate will change to remain equivalent. Beginning January 1, 2007, the latest mileage rate will be available at the Department's VIP website www.tdi.state.tx.us/consumer/VIPcommish.html and will also be available from the Department by U.S. Postal Service mail.

The adopted amendments to §5.3800(i)(1)(A)(iii), (iv), (v) and (j)(2)(C) are necessary to delete obsolete statutory citations and correct a typographical error. Insurance Code Article 21.07-4, which is referenced in §5.3800(i)(1)(A)(iii), was repealed in the non-substantive Insurance Code revision, Acts 2003, 78th Legislature, Chapter 1274, §26(a)(1), effective April 1, 2005. Article 21.07-4 was re-adopted as Chapter 4101 in the same non-substantive Insurance Code revision. Insurance Code Article 21.14, which is referenced in §§5.3800(i)(1)(A)(iv) and (v), was repealed in the non-substantive Insurance Code revision, Acts 2003, 78th Legislature, Chapter 1274, §26(a)(1), effective April 1, 2005. Article 21.14 was re-adopted as §§4051.001 - 4051.303 in the same non-substantive Insurance Code revision. Article 1.10E of the Insurance Code, which is referenced in §5.3800(j)(2)(C), was repealed in the non-substantive Insurance Code revision, Acts 1999, 76th Legislature, Ch. 101, §5, effective September 1, 1999. Article 1.10E was re-adopted as Chapter 84 in the same non-substantive Insurance Code revision. Therefore, all current references to the repealed articles are deleted, and the updated and correct references are substituted. The adopted amendment to §5.3800(j)(2)(C) is necessary to correct a typographical error, the change of the word of to the word or.

Minor editorial changes to the text of the existing rule not included in the rule proposal are made in §5.3800(i)(1)(B)(v), (2)(A)(i), and (4)(C) to correct erroneous cross references. Also, in §5.3800(i)(4)(C), a verb is corrected from have to has.

In response to a written comment received from an interested party, the Department has changed some of the proposed language in the text of the rule as adopted. The change, however, does not introduce new subject matter or affect persons in addition to those subject to the proposal as published. One commenter stated that the Department should codify standards that include a requirement that any inspector charging mileage fees should disclose that fact to the consumer prior to the inspection. The agency agrees with the comment, and has modified the adoption order to contain this change as well as the necessary concomitant provision of the disclosure of the rate used for computing the mileage fee. The following sentence is added to Section 5.3800(e)(6) as adopted: Prior to undertaking an inspection, the inspector must inform the individual requesting the inspection that a mileage fee will be charged and the rate used for computing the mileage fee.

The adopted amendment to §5.3800(e)(2) increases the inspection fee for a homeowner procuring the initial independent inspection of the condition of property for purposes of purchasing residential property insurance to an amount not to exceed $100, effective January 1, 2007. Under the adopted amendments to §5.3800(e)(3), the inspector may charge a follow-up fee not to exceed $50 in the event repairs are made within 90 days of the initial inspection.

New §5.3800(e)(5) provides that the maximum fees that may be charged for an inspection and a follow-up inspection shall be automatically increased on an annual basis on January 1 of each year, beginning January 1, 2008, by the percentage annual increase in the Consumer Price Index established by the U.S. Department of Labor, Bureau of Labor Statistics. New §5.3800(e)(5) also provides that the current inspector fees will be made available at the Department's VIP website, www.tdi.state.tx.us/consumer/vipcommish.html, effective January 1, 2008, and will also be available by mail. Under new §5.3800(e)(6), the inspector is entitled to charge a reasonable fee for mileage for each trip to and from the residential property risk, taking the most direct route. New §5.3800(e)(6) also provides that the mileage fee is set by reference to the mileage rate for business use as established by the Internal Revenue Service and will change to remain equivalent to the federal standard mileage rate charged by the Internal Revenue Service. New §5.3800(e)(6) also requires that prior to undertaking an inspection, the inspector must inform the individual requesting the inspection that a mileage fee will be charged and the rate used for computing the mileage fee. Under §5.3800(e)(6), the current mileage rate will be available also on the VIP web site, effective January 1, 2007.

Comment: One commenter stated that the Department should codify standards that include a requirement that any inspector charging mileage fees should disclose that fact to the consumer prior to the inspection.

Agency Response: The agency agrees with the comment and has modified the text as adopted to contain this change.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: Office of Public Insurance Counsel.

Against: None.

The amendments are adopted under the Insurance Code Articles 5.33B and 5.98 and §36.001. Article 5.33B authorizes the Commissioner to adopt a Plan of Operation for the Voluntary Inspection Program which shall include rules setting the fee which may be charged to the person requesting the inspection. Article 5.98 provides that the Commissioner may adopt reasonable rules to accomplish the purposes of Chapter 5 of the Insurance Code. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.3800. Voluntary Inspection Program Plan of Operation.

(a) Purpose and Scope. The purpose and scope of this section is to adopt a plan of operation for the Voluntary Inspection Program which specifies procedures, standards and forms for the implementation of the inspection program. This section addresses the following:

(1) Procedures, standards and forms governing the independent inspection of the condition of residential property to determine insurability, pursuant to the Insurance Code, Article 5.33B;

(2) Procedures and forms governing the licensing or certification of qualified inspectors to conduct inspections of the condition of residential property to determine the insurability of such property;

(3) Enforcement provisions to protect the integrity of the inspection program; and

(4) Procedures for handling complaints relating to these inspections.

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

(1) Article 5.33B--Article 5.33B of the Texas Insurance Code entitled Voluntary Inspection Program.

(2) Certificate of insurability--A certificate issued by an inspector pursuant to Article 5.33B indicating that the condition of the property meets or exceeds the minimum standards for insurability that are specified in subsection (f) of this plan of operation.

(3) Commissioner--Commissioner of Insurance of the State of Texas.

(4) Department--Texas Department of Insurance.

(5) Inspection--The physical inspection of the property for which residential property insurance is sought whether the inspection is for a new or renewal certificate of insurability.

(6) Inspector--A person authorized by the Commissioner to perform inspections under Article 5.33B.

(7) Program--Voluntary Inspection Program pursuant to Article 5.33B of the Insurance Code.

(8) Residential property condition evaluation report--The form completed by an inspector which provides specific information regarding the condition of the property and is used to determine the insurability of the property.

(c) Eligibility for Inspection.

(1) Any person having an insurable interest in real or tangible personal property at a fixed location may request an independent inspection of the condition of the property proposed to be insured.

(2) The independent inspection must be performed by an inspector authorized to perform inspections under Article 5.33B, Insurance Code and this plan of operation.

(d) Procedures to Obtain Inspection.

(1) An individual may request inspection from an inspector licensed or certified by the Department in accordance with Article 5.33B, Insurance Code and this plan of operation. The purpose of the inspection is to complete the Residential Property Condition Evaluation Report (Form VIP-2) to determine the insurability of the residential property.

(2) An individual may obtain names and phone numbers of licensed or certified inspectors from the Inspections and Fire Safety Section of the Department by telephone, fax, or mail.

(e) Fees.

(1) Individuals requesting an inspection of their residential property may be required to pay a fee for the inspection in accordance with this subsection. The fee may be required to be paid prior to the inspection.

(2) An inspector may charge a reasonable fee not to exceed $100 per inspection for the inspection of a residential property risk effective January 1, 2007.

(3) An inspector may charge a reasonable fee not to exceed $50 per follow-up inspection in the event repairs are made within 90 days of the initial inspection effective January 1, 2007.

(4) Inspection fees shall include the cost of photographs.

(5) The maximum fees that may be charged for an inspection and a follow-up inspection shall be automatically increased on an annual basis on January 1 of each year, beginning on January 1, 2008, by the same percentage of increase as the increase in the Consumer Price Index established by the U.S. Department of Labor, Bureau of Labor Statistics for the prior calendar year for all urban consumers for all items and for all regions combined, rounded to the nearest dollar. Current inspector fees and the method used to compute the current inspector fees will be available at the Department's VIP website www.tdi.state.tx.us/consumer/VIPcommish.html effective January 1, 2008, and may be obtained by mail from the Inspections Division, Mail Code 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(6) An inspector may charge, in addition to the inspection fee and the follow-up inspection fee, a reasonable fee for mileage for each trip to and from the residential property risk, taking the most direct route. The mileage fee shall not exceed the federal standard mileage rate for business use as established by the Internal Revenue Service effective January 1, 2007. The maximum mileage rate for VIP inspectors will change to remain equivalent to the federal standard mileage rate for business use as established by the Internal Revenue Service if the federal standard mileage rate is changed by the Internal Revenue Service. Prior to undertaking an inspection, the inspector must inform the individual requesting the inspection that a mileage fee will be charged and the rate used for computing the mileage fee. The current mileage rate will be available at the Department's VIP website www.tdi.state.tx.us/consumer/VIPcommish.html, effective January 1, 2007, and may be obtained by mail from the Inspections Division, Mail Code 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(f) Minimum Standards for Insurability. The residential property shall comply with the following requirements for average or better condition of the property to qualify for a certificate of insurability.

(1) The general physical condition of residential property shall indicate:

(A) Good maintenance of structure;

(B) No unrepaired previous damage; and

(C) Any construction, installation and repair to the residential structure have been made in accordance with generally accepted standards applicable at the time of the construction, installation or repair.

(2) Good housekeeping is maintained throughout the residential premises.

(3) The residential property proposed for insurability must meet the requirements for average or better condition, as specified in this subsection. Determination of the condition shall be based on the following criteria:

(A) Exterior.

(i) Structural.

(I) Only minor cosmetic foundation related cracks on the slab or above windows and doors;

(II) No major cracks, separation or evidence of shifting or movement in walls, walks and driveway;

(III) No missing window or door panes;

(IV) No signs of active termites or unrepaired insect damage;

(V) Exposed wood (siding, fascia, soffit, doors, steps, etc.) in good condition with no evidence of significant deterioration or significant peeling of paint;

(VI) Pier and beam foundations enclosed under all outside walls; and

(VII) Additions, modifications, or repairs to the exterior made in accordance with generally accepted standards at the time of construction.

(ii) Premises. No accumulation of trash, brush or other debris in yard.

(B) Roof.

(i) No roof coverings that are curling, cracking or have missing shingles;

(ii) No roof coverings that show signs of significant deterioration; and

(iii) No roofs that have been improperly installed or repaired.

(C) Interior.

(i) No visible water damage;

(ii) No major cracks or separation in interior walls, flooring and ceiling;

(iii) Major appliances in good working condition; and

(iv) Additions, modifications or repairs to the interior made in accordance with generally accepted standards at the time of construction.

(D) Electrical.

(i) Electrical wiring in good working condition;

(ii) No evidence of fuses repeatedly blowing or breakers tripping;

(iii) No flickering lights or evidence of overheating wiring; and

(iv) Additions, modifications, or repairs to electrical wiring made in accordance with generally accepted standards applicable at the time of installation.

(E) Plumbing, Heating, Cooling Systems.

(i) Plumbing, heating and cooling systems in good working condition;

(ii) Free from leaks;

(iii) Space heaters and hot water heaters properly vented and appropriate distance maintained from walls and furnishings; and

(iv) Additions, modifications, or repairs to plumbing, heating and cooling systems made in accordance with generally accepted standards applicable at the time of installation.

(F) Other Conditions.

(i) Outbuildings and fences in good condition;

(ii) No business or commercial exposures on premises;

(iii) No vacancy of the property;

(iv) Property accessible to fire equipment; and

(v) No unfenced swimming pools, hot tubs, fish ponds, bodies of water or trampolines.

(g) Inspection Certification Process.

(1) An inspection for residential property insurability shall be made within 30 days from the date of the request and payment of any applicable fee.

(2) The inspection process shall include the completion and issuance of a Residential Property Condition Evaluation Report (Form VIP-2) promulgated by the Department.

(3) The information obtained in the Residential Property Condition Evaluation Report (Form VIP-2) shall be used to determine the insurability of the residential property. This information includes general information on the age and construction of the risk, the condition of the property, identifiable hazards of the property, and diagrams and photographs of the property.

(4) The individual requesting the residential property inspection shall be provided a copy of the Residential Property Condition Evaluation Report (Form VIP-2) within ten days of the completion of the inspection.

(5) If the residential property inspected meets the minimum standards provided in subsection (f) of this plan of operation, the inspector shall issue within ten days of completion of the inspection a Certificate of Insurability (Form VIP-1).

(6) The Certificate of Insurability (Form VIP-1) is promulgated by the Department.

(7) A Certificate of Insurability (Form VIP-1) is valid for a term of three years from the date of issuance to the individual requesting the inspection so long as no substantial changes have been made to

the property. If substantial changes are made to the property, an additional inspection may be required by the insurer.

(h) Insurer Processing.

(1) An individual receiving a Certificate of Insurability (Form VIP-1) may provide to an insurer a copy of the certificate as part of the application for residential property insurance coverage.

(2) The existence of a Certificate of Insurability (Form VIP-1) issued under this program creates a presumption that the property condition is adequate for residential property insurance to be issued.

(3) If a Certificate of Insurability (Form VIP-1) is provided to an insurer as part of an application for residential property insurance, the insurer may not use property condition as grounds for refusing to issue or renew a residential property insurance policy unless the insurer reinspects the property and specifies in its declination letter the conditions of deficiency causing the residential property risk to be uninsurable.

(4) As a condition of issuing a policy, when a Certificate of Insurability (Form VIP-1) is used in whole or in part to determine insurability, an insurer may require a written statement by the applicant for residential property insurance stating that there have been no material or substantial changes to the property condition since the date of the inspection certificate.

(i) Certification or Licensing of Inspectors.

(1) Certification.

(A) The following individuals may be certified by the Department as qualified inspectors under this program:

(i) Persons licensed to perform real property inspections under the Real Estate Licensing Act;

(ii) Designated employees or agents of a county or municipality which elects to establish a voluntary inspection program for the inspection of residential properties within the territorial limits of the county or municipality. These employees or agents must be Certified Building Officials or Building Inspectors certified by a model code organization;

(iii) Persons holding an insurance adjusters license pursuant to the Insurance Code Chapter 4101;

(iv) Persons holding a local recording agents license pursuant to the Insurance Code §§4051.001 - 4051.303;

(v) Persons holding a solicitors license pursuant to the Insurance Code §§4051.001 - 4051.303;

(vi) Licensed Texas Professional Engineers.

(B) Certification procedures shall be as follows:

(i) Each applicant for a certification to act as a qualified inspector for the Voluntary Inspection Program shall file with the Department a completed Application for Residential Property Inspector Licensing/Certification (Form VIP-3) accompanied by such documents and attachments necessary to support the application;

(ii) No certification shall be approved by the Department until a completed Application for Residential Property Inspector Licensing/Certification (Form VIP-3) has been filed with the Department;

(iii) Upon review and approval of each completed application, a certification will be issued by the Department to the applicant;

(iv) If an applicant is disapproved the Department shall issue to the applicant a letter of disapproval specifying the reasons for such disapproval; and

(v) Certification remains valid so long as the applicant remains qualified under subparagraph (A) of this paragraph.

(2) Licensing.

(A) The following individuals may be licensed by the Department as qualified inspectors under this program.

(i) Designated employees or agents of a county or municipality which elects to establish a voluntary inspection program for the inspection of residential property located within the territorial limits of a county or municipality and having at least one year of experience actively performing field inspections of residential property and not licensed as specified in paragraph (1)(A) of this subsection;

(ii) Individuals who complete at least 60 college semester hours of Engineering, Safety, or related fields and one year experience of actively performing inspections of real property for the purpose of rating, underwriting, building code compliance or real estate appraisals;

(iii) Individuals who have two years experience actively performing inspections of real property for the purpose of rating, underwriting, building code compliance or real estate appraisals; or

(iv) Individuals who are employed by an entity that is responsible for and specializes in rating, underwriting, building code compliance or real estate appraisal and who have been actively performing inspections of real property for those purposes for a minimum of one year.

(B) Licensing procedures shall be as follows:

(i) Each applicant for a license to act as a qualified inspector for the Voluntary Inspection Program shall file with the Department a completed Application For Residential Property Inspector License/Certification (Form VIP-3) accompanied by such documents and attachments necessary to support the application;

(ii) No license shall be approved by the Department until a completed Application for Residential Property Inspector Licensing/Certification (Form VIP-3) has been filed with the Department;

(iii) Upon review and approval of each completed application a license will be issued by the Department to the applicant; and

(iv) If an applicant is disapproved the Department shall issue to the applicant a letter of disapproval specifying the reasons for the disapproval.

(3) Expiration and Renewal of Certification or License.

(A) Each license or certification issued to an inspector under the Voluntary Inspection Program shall expire two years following the date of issue unless it is suspended or revoked by the Commissioner prior to this expiration date.

(B) A person may renew an unexpired license or certification by filing a Renewal Application (Form VIP-6) with the Department.

(C) If a person's license or certification has been expired for 90 days or less, the person may renew the license or certification by filing a Renewal Application (Form VIP-6) with the Department.

(D) If a person's license or certification has been expired for longer than 90 days, the person may not renew the license.

The person may obtain a new license or certification by complying with the requirements and procedures, as outlined in subsection (i), for obtaining an original license or certification.

(E) At least 30 days before the expiration of a person's license or certification, the Department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the Department.

(F) Each inspector shall at all times keep the Department informed of the inspector's current address. Such address shall be included in each original application and renewal application. In the absence of the submission of a specific written request to change that address, which must be separate from any other submission, the inspector's current address is presumed to be the address on the most recent renewal or original application form, whichever is latest. Such address shall be considered the inspector's last known address for the purposes of notice to the inspector by the Department. Any request for a change of address shall be addressed to the Inspections and Fire Safety Section of the Property and Casualty Program, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104.

(4) Persons Not Eligible for Certification or Licensing. The following individuals may not be certified or licensed as qualified inspectors under this program.

(A) Individuals employed by an insurance company except local recording agents, solicitors or insurance adjusters;

(B) Individuals employed by the Department; or

(C) Individuals whose qualifying license under paragraph (1)(A) of this subsection has been revoked or suspended.

(5) Persons Authorized To Perform Inspections. An inspection of residential property for the purposes of determining property condition insurability pursuant to Article 5.33B, Insurance Code, and this plan of operation shall only be performed by an individual licensed or certified by the Department as a qualified inspector in accordance with this subsection.

(j) Denial, Suspension, Cancellation or Revocation of an Inspector's Certification or License.

(1) The Commissioner may discipline a licensee or certificate holder or deny an application for inspector's license or certification if the Commissioner finds that the licensee or applicant:

(A) Has knowingly, willfully, fraudulently, or with gross negligence, signed or cause to be prepared an inspection report or issued a Certificate of Insurability that contains a false, fictitious, or fraudulent statement or entry;

(B) Has willfully violated any provision of the insurance laws of this State;

(C) Has intentionally made a material misstatement in the application for such license or certification;

(D) Has obtained, or attempted to obtain, such license or certification by fraud or misrepresentation;

(E) Has been guilty of fraudulent or dishonest acts; or

(F) Is convicted of a felony.

(2) After notice and opportunity for a hearing, the Commissioner may cancel or revoke any license or certification issued under this section if the holder or possessor of the license or certification is found to be in violation of, or to have failed to comply with, any provisions of this section or any other rule or regulation of the Department or any specific provision of the Texas Insurance Code. In lieu of cancellation or revocation, the Commissioner, upon determination from the facts that it would be fair, reasonable or equitable, may order one or more of the sanctions specified in subparagraphs (A) - (D) of this paragraph.

(A) The Commissioner may order the suspension of the license or certification for a specific period, not to exceed one year.

(B) The Commissioner may issue an order directing the holder or possessor of the license or certification to cease and desist from the specified activity determined to be in violation of any provisions of this section or any rule or regulation of the Department or any specific provision of the Texas Insurance Code.

(C) The Commissioner may issue an order directing the holder or possessor of the certification or license to pay an administrative penalty in accordance with Chapter 84 of the Insurance Code.

(D) The Commissioner may order any other statutory sanction that may be enacted pursuant to the Insurance Code, Article 5.33B.

(3) If it is found after notice and hearing that any person approved and appointed by the Commissioner to conduct inspections pursuant to this section and Article 5.33B of the Insurance Code has failed to comply with an order lawfully issued by the Commissioner pursuant to this section or Article 5.33B of the Insurance Code, the Commissioner shall, unless the Commissioner's order is lawfully stayed, cancel the license or certification.

(4) The Commissioner may informally dispose of any matter under this subsection by consent order or default.

(k) Complaint Procedures.

(1) The Department shall have the responsibility for handling and processing all complaints relating to property inspections conducted under the Voluntary Inspection Program that have not been resolved within 30 days after receipt by the qualified inspector.

(2) All complaints as specified in paragraph (1) of this subsection shall be forwarded by the qualified inspector to the Department's Inspections and Fire Safety Section. The Inspections and Fire Safety Section shall immediately notify the complainant that the complaint has been forwarded to the Department's Inspections and Fire Safety Section.

(3) All forwarded complaints and all complaints submitted directly to the Department shall be assigned to and handled by the Department's Inspections and Fire Safety Section.

(4) The qualified inspector shall provide assistance in handling complaints as requested by the Department's Inspections and Fire Safety Section.

(5) Until final disposition of any complaint that is forwarded to the Department by a qualified inspector or that is submitted directly to the Department, the complainant shall be notified by the Department's Inspections and Fire Safety Section of the status of the complaint at 30-day intervals.

(6) Any affected insured, any affected insurer, or any affected qualified inspector may appeal the Inspections and Fire Safety Section staff disposition of any complaint to the Commissioner within 30 days after such disposition.

(l) Forms. The Department adopts by reference the Voluntary Inspection Program forms. Specimen copies of these forms are available from the Inspections and Fire Safety Section of the Property and Casualty Program, Texas Department of Insurance, 333 Guadalupe

Street, P.O. Box 149104, Austin, Texas 78714-9104. The forms are more specifically identified as follows:

(1) Form VIP-1, Certificate of Insurability.

(2) Form VIP-2, Residential Property Condition Evaluation Report.

(3) Form VIP-3, Application for Residential Property Inspector License/Certification.

(4) Form VIP-4, License.

(5) Form VIP-5, Certificate.

(6) Form VIP-6, Renewal Application.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605867
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 14, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

The Commissioner of Insurance adopts amendments to §§11.1, 11.2, 11.203, 11.204, 11.301, 11.302, 11.501, 11.503 - 11.506, 11.508 - 11.511, 11.602, 11.706, 11.801, 11.804, 11.810, 11.901, 11.902, 11.904, 11.1201, 11.1206, 11.1301, 11.1302, 11.1401, 11.1403, 11.1600, 11.1605, 11.1607, 11.1702, 11.1703, 11.1801, 11.1901, 11.1902, 11.2103, 11.2201, 11.2207, 11.2303, 11.2315, 11.2402, 11.2405, 11.2406, 11.2501 - 11.2503, 11.2601 - 11.2604, 11.2608, and 11.2609, concerning the regulation of health maintenance organizations (HMOs).

All of these sections are adopted without changes to the proposed text as published in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6465), except for §11.506, which is adopted with changes.

The adopted amendments are necessary to implement changes requested by the Commissioner of the Health and Human Services Commission, pursuant to statute, related to the waiver of access requirements for certain HMOs providing covered services to participants in the CHIP Perinatal Program; to amend the definitions of adverse determination and institutional provider; to provide for the use of matrix filings; to clarify fee amounts for evidence of coverage filings; to remove restrictions on variable language in evidence of coverage documentation; to delete certain minimum worth requirements; to amend certain copayment requirements; to clarify enrollee participation in quality improvement programs; to require compliance with nationally recognized standards for physician and provider credentialing; to amend specialty care to include specialty hospitals and single healthcare service plan physicians and providers; to update statutory references; to correct typographical errors and incorrect cross references within Chapter 11; and to replace references to the "Texas Health Maintenance Organization Act" with references to Insurance Code chapters and other applicable insurance laws and regulations of this state that apply to HMOs.

The Health and Human Services Commission recently implemented a new program, the CHIP Perinatal Program. Eligible participants in this program will receive health care from HMOs for certain covered services. Pursuant to the Health and Safety Code §62.051(c) and (d), the Commissioner of the Health and Human Services Commission requested that the access of care requirements for HMOs participating in this program be waived. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission oversee the implementation of a child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Insurance. Additionally, the Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of the Texas Department of Insurance, delegate to the Texas Department of Insurance the authority to adopt, with the approval of the Health and Human Services Commission, any rules necessary to implement the program. The adopted new §11.1607(i), which has been approved by the Health and Human Services Commission, is necessary to allow the waiver of access of care requirements for an HMO that has a contract with the Health and Human Services Commission and provides covered services to participants in the CHIP Perinatal Program.

The Legislature amended the definition of adverse determination in the Insurance Code §843.002(1) by Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003. Accordingly, the adopted amendment to §11.2(b)(2) is necessary for consistency with the statutory definition of adverse determination.

The adopted amendment to §11.2(b)(23) deletes the terms infusion services centers and urgent care centers from the definition of institutional provider. Section 11.1902(4) and (7) and §11.2207(d)(4) and (7) as adopted require compliance with the National Committee for Quality Assurance (NCQA) credentialing standards. The NCQA credentialing standards require providers to meet all state and federal licensing and regulatory requirements. Consequently, if a state's regulatory law does not require an entity to be licensed or authorized to provide a health care service in the state, those portions of the NCQA credentialing standards will not apply to that entity. Under the Insurance Code §843.002(24), a "provider" must be either licensed or authorized to provide a health care service in this state. Infusion services centers and urgent care centers are not licensed entities under Texas law and are not otherwise authorized under Texas law to provide a health care service in this state. Therefore, the amended definition of the term institutional provider is necessary for consistency with the adopted credentialing requirements and with the Insurance Code §843.002(24).

The adopted amendment to §11.2(b)(26) adds a definition for the term matrix filing, which is necessary for internal consistency and implementation of the adopted amendment to §11.501(a) and the adopted new §11.501(b) and (c), which for the first time, provide for the use of matrix filings in conjunction with HMO evidence of coverage filings.

The adopted amendment to §11.301(4)(A) is necessary for consistency with adopted §11.501 and §11.503 regarding the use of the term evidence of coverage filings.

The adopted amendment to §11.501(a) and new subsection (c) are necessary because the existing rule does not address matrix filings, and this adoption is the first formal recognition of their acceptability for HMO evidence of coverage filings. Unlike the current structure for single evidence of coverage filings that require an HMO to refile the entire document whenever any provision within the document must be changed to accommodate new business needs, matrix filings will allow HMOs to file various individual provisions at one time that may be combined in a variety of ways to create new evidences of coverage. Once the various provisions are approved by the Department, an HMO has much more flexibility to create new evidences of coverage by combining the approved provisions into new documents, and this flexibility will contribute to increased speed to market for new products.

An additional benefit of the Department's authorization of matrix filings is the potential cost savings to HMOs. Currently, the Department only accepts single evidence of coverage filings and assesses a fee of $100 per filing. Therefore, an HMO filing 12 single evidence of coverage filings will be assessed filing fees totaling $1,200. However, under the matrix filing approach, if the HMO files more than 10 evidence of coverage provisions in its matrix filing, it will only be assessed $500, since the maximum fee allowed for a matrix filing is $500. The adopted amendment actually allows an HMO to better manage its filing costs by taking advantage of filing multiple evidence of coverage provisions in a matrix filing for a single maximum fee of $500, resulting in potential savings. In addition, the Department anticipates that the use of matrix filings will streamline and expedite the Department's overall review process.

Newly adopted §11.501(b) is also necessary to provide clarification, fairness, and consistency regarding the amount of the filing fees that will be charged for the filing of evidence of coverage form filings. A review of all evidence of coverage form filings received by the Department from five major HMOs during the past year reveals that all of the evidence of coverage filings were received as individual filings, rather than as one filing containing multiple evidence of coverage form filings linked together under one form number. While some HMOs may have filed a small number of their evidence of coverage filings as one document linked together under a single form number in order to pay one fee for the entire filing, this does not appear to be the standard practice. Therefore, the adopted amendment does not substantially alter the current practice of the Department or the industry. Additionally, adopted §11.501(b) provides for a reduced filing fee of $50 per filing for HMOs that re-submit an evidence of coverage filing after withdrawal or disapproval of the filing. Initial evidence of coverage filings are subject to a $100 filing fee per filing. In situations in which an HMO has paid the initial filing fee of $100 for an evidence of coverage filing, but the filing has been disapproved by the Department or has been withdrawn by the HMO, the HMO is allowed to resubmit the filing for the reduced fee. This amendment provides a filing fee cost reduction for every resubmitted evidence of coverage filing.

The adopted amendment to §11.503 is necessary for consistency with adopted §11.301(4)(A) and §11.501 regarding the use of the term evidence of coverage filings.

The adopted amendment to §11.505(f) is necessary to eliminate the restrictions on variable language in evidence of coverage filings so that an HMO may utilize the benefits of matrix filings. Because matrix filings will always include variable language, and because the adopted amendments specifically authorize the use of matrix filings, it is necessary to remove the current restrictions regarding the use of variable language in evidence of coverage filings.

The adopted new subsection (h)(1) and (2) in §11.505 is necessary to specify what items must be included in a matrix filing.

The adopted amendment to §11.801(a) is necessary to reflect the fact that Insurance Code §843.4031 is no longer law. Insurance Code §843.4031 was enacted by the 76th Texas Legislature as a temporary provision and expired on January 1, 2003. In addition, the adopted amendment to §11.810(b)(20) deletes the reference to the Insurance Code §843.4031 for the same reason.

The adopted amendments to §11.1206(b) are necessary for consistency with the Insurance Code §843.105, which provides for the use of management and exclusive agency contracts, but does not define these terms. Accordingly, the adopted amendment to §11.1206(b) replaces the phrase defined with the phrase provided for and replaces a general statutory reference with a more specific statutory reference to the Insurance Code §843.105.

The adopted amendment to §11.1605(c) is necessary to clarify that small employer plans, as defined by the Insurance Code §1501.002, are exempt from the requirement that HMOs that provide coverage for prescription drugs under an individual or group health benefit plan must comply with the Insurance Code Chapter 1369 Subchapter A and Department rules.

The adopted amendment to §11.1607(h)(2) is necessary to clarify that the term specialty care includes specialty hospitals and single healthcare service plan physicians and providers, such as vision and dental care. In the past, there has been some industry confusion and Department inconsistency in the treatment of vision and dental care providers regarding access of care requirements. The adopted amendment is necessary to make clear that vision and dental care providers are subject to the access of care requirements prescribed in §11.1607(h)(2), and not those access of care requirements prescribed in subsection (h)(1).

The adopted amendments to §11.1901(a) and (b)(1) are necessary to allow for flexibility in enrollee participation in an HMO's quality improvement program. Because the amendments allow an enrollee to participate in the HMO's program in other ways besides being included in the quality improvement committee, there is better flexibility for both the enrollee and the HMO. Additionally, the amendments still require an enrollee's active participation in the HMO's quality improvement program to ensure better service for all enrollees in the plan.

The adopted amendments to §11.1902(4) and (7) are necessary to eliminate the current requirements relating to the credentialing process for contracted physicians and providers. In lieu of these requirements, the Department is requiring that the credentialing process required by §11.1902 comply with the standards promulgated by the NCQA to the extent that those standards do not conflict with other laws of this state. Section 1452.006 of the Insurance Code requires rules adopted by the Commissioner under the Insurance Code §843.102 and related to the implementation and maintenance by an HMO of a process for selecting and retaining affiliated physicians and providers to comply with the Insurance Code Chapter 1452 Subchapter A and standards adopted by the NCQA, to the extent those standards do not conflict with other laws of this state. The Department has determined that at this time the NCQA standards do not conflict with the laws of this state. Additionally, as a result of the Department requiring

compliance with the NCQA credentialing standards, the Department will not need to update its regulations each time the NCQA amends its standards, which is approximately once a year. This will ensure that the Department's credentialing regulations for contracted physicians and providers are current and accurate, resulting in more efficient industry regulation and better service to plan enrollees. In addition, the adopted amendments will ensure continued plan accountability.

The adopted amendments to §11.2207(a) and (b)(1) are necessary for consistency with the adopted amendments to §11.1901(a) and (b)(1) and to provide flexibility in enrollee participation in an HMO's quality improvement program.

The adopted amendments to §11.2207(d)(4) and (d)(7) are necessary for consistency with the adopted amendment to §11.1902(4) and (7) and to eliminate the current credentialing requirements relating to contracted physicians and providers, and in lieu of those requirements, to require that the credentialing process required by §11.1902 comply with the standards promulgated by the NCQA, to the extent that those standards do not conflict with other laws of this state.

The adopted amendments also delete references to the terms "Texas Health Maintenance Organization Act" and "Act" as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, which reorganized the regulatory statutes that apply to HMOs into multiple statutes that are no longer organized as a single "Act." In order to address this issue, the adopted amendments replace the terms "Texas Health Maintenance Organization Act" and "Act" with references to the applicable chapters of the Insurance Code, including Chapters 843 (Health Maintenance Organizations), 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), 1452 (Physician and Provider Credentials), and other applicable insurance laws and regulations of this state that apply to HMOs. Since all statutory references to the "Act" no longer accurately identify all of the statutory regulations that apply to HMOs, this deletion and replacement is being made throughout Chapter 11, including those references in §§11.1, 11.2(a) and (b)(1), 11.203(d), 11.204, 11.301, 11.302, 11.504, 11.506, 11.508 - 11.511, 11.602, 11.706, 11.804, 11.810(b)(5), 11.901, 11.902, 11.904, 11.1201, 11.1301, 1302(a)(3) and (d)(4), 11.1401, 11.1600, 11.1605(c), (d), and (e), 11.1607, 11.1702, 11.1703, 11.1801, 11.2103, 11.2303, 11.2315, 11.2405, 11.2406, 11.2501 - 11.2503, 11.2601(a) and (b), 11.2602(1) and (2), (4)(A), and (B), 11.2603(a), (e), and (g), 11.2604, 11.2608(b), and 11.2609.

The Department is making two separate changes to the proposed language in §11.506(2)(A) of the rule as adopted. Neither change, however, introduces new subject matter or affects persons in addition to those subject to the proposal as published. The first change to the proposed language in §11.506(2)(A) of the rule as adopted is made in response to a written comment received from an interested party. The Department proposed to amend §11.506(2)(A) to remove the prohibition that a basic service HMO may not impose copayment charges that exceed 50 percent of the total cost of providing any single service to its enrollees, nor in the aggregate more than 20 percent of the total cost to the HMO of providing all basic health care services. The proposed amendment to §11.506(2)(A) also removed the prohibition that a basic service HMO may not impose copayment charges on any enrollee in any calendar year, when the copayments made by the enrollee in that calendar year total 200 percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee. The proposed amendment to §11.506(2)(A) also removed the provision that this limitation applies only if the enrollee demonstrates that copayments in that amount have been paid in that year. In lieu of these prohibitions, the Department proposed that an HMO could continue to establish one or more copayment options but that the option had to be "reasonable" and specified that a reasonable copayment option may not exceed 50 percent of the total covered amount applicable to the medical or health care services.

The commenter objected to the deletion of the limitation on an enrollee's yearly out-of-pocket copayment expenditures. Additionally, the commenter suggested setting the maximum copayment for HMO enrollees at 20 percent and setting a reasonable maximum out-of-pocket amount for HMO enrollees, such as $500 to $1,000 for an individual and $1,500 to $2,500 for a family. The Department does not agree with the commenter's proposed specific dollar limits for an individual and a family but does agree that it is necessary to have a limitation on an enrollee's yearly out-of-pocket copayment expenditures. However, the Department has determined that any new maximum out-of-pocket copayment expenditure limit for HMO enrollees must be addressed through a separate rulemaking process. The Department will publish a notice of proposal with a 30-day comment period before proceeding further on this matter. Therefore, §11.506(2)(A) as adopted restores the provision, which was proposed for deletion, relating to a basic service HMO not being allowed to impose copayment charges on any enrollee in any calendar year, when the copayments made by the enrollee in that calendar year total 200 percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee. The adoption also restores the provision that was proposed for deletion that specifies that this limitation applies only if the enrollee demonstrates that copayments in that amount have been paid in that year.

Additionally, because the proposal removed the prohibitions in §11.506(2)(A) relating to a basic service HMO not imposing copayment charges under the specified circumstances and not imposing copayment charges on any enrollee in any calendar year under the specified circumstances, the Department's proposal did not include the term basic service HMO in the second sentence of §11.506(2)(A). As proposed, this second sentence provided that each HMO may establish one or more reasonable copayment options. However, because the adoption restores the prohibition in §11.506(2)(A) relating to a basic service HMO not imposing copayment charges on any enrollee in any calendar year under the specified circumstances, it is necessary for purposes of clarification and consistency to change the second sentence of §11.506(2)(A) as proposed to provide in the adoption that each basic service HMO may establish one or more reasonable copayment options. This change does not alter the meaning or the intent of the proposed language in the second sentence of §11.506(2)(A).

The second change to the proposed language in §11.506(2)(A) results from the Department's determination that the proposed language in the third sentence of §11.506(2)(A), which provides that a reasonable copayment option may not exceed 50 percent of the total covered amount applicable to the medical or health care services, could cause confusion. For consistency with the fact that an HMO provides enrollees with access to covered services on a prepaid basis, as distinguished from a pre-

ferred provider benefit plan which provides access for insureds to contracted physicians and health care providers and reimburses the insured a particular amount of a particular billed charge, the proposed language is changed in the adoption to provide that a reasonable copayment option may not exceed 50 percent of the total cost of services provided. This change is for purposes of clarification only and does not alter the meaning or intent of the proposed language.

In its entirety, as adopted, §11.506(2)(A) provides that an HMO may require copayments to supplement payment for health care services; that each basic service HMO may establish one or more reasonable copayment options; that a reasonable copayment option may not exceed 50 percent of the total cost of services provided; that a basic service HMO may not impose copayment charges on any enrollee in any calendar year, when the copayments made by the enrollee in that calendar year total 200 percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee, and that this limitation applies only if the enrollee demonstrates that copayments in that amount have been paid in that year.

The adopted amendment to §11.2(b)(2) modifies the definition of adverse determination by replacing the term furnished with the term provided, by replacing the term adopted with the term proposed, by substituting the term enrollee for the term patient, and by adding the phrase by a health maintenance organization. The adopted amendment to §11.2(b)(23) deletes the terms infusion services centers and urgent care centers from the definition of institutional providers. Adopted §11.2(b)(26) adds a definition for the term matrix filing. The adopted amendment also re-numbers the remaining definitions accordingly.

The adopted amendments to §11.301(4)(A) and §11.503 revise the term evidence of coverage to evidence of coverage filings.

The adopted amendment to §11.501 designates the current text as subsection (a) and adds new subsections (b) and (c). Additionally, the adopted amendment to newly designated §11.501(a) adds matrix filings to the list of forms that are considered part of an evidence of coverage. New §11.501(b) requires that each of the listed forms in subsection (a) of the section be identified with a unique form number and be individually approved by the Commissioner before being issued, delivered, or used in Texas. Additionally, new §11.501(b) provides that each of the forms listed in subsection (a) of the section, except for matrix filings, are considered individual evidence of coverage filings and are subject to the filing fees prescribed in 28 Texas Administrative Code §7.1301(g)(4) (relating to Regulatory fees). New §11.501(b) also makes clear that a fee of $100, as prescribed in §7.1301(g)(4), will be assessed for each form listed in subsection (a) of the section, except for a matrix filing, that is filed with the Department, and that a fee of $50 will be assessed for each form that is resubmitted to the Department after withdrawal or disapproval. New §11.501(c) prescribes the fees for matrix filings as $50 per individual evidence of coverage provision, with a maximum fee of $500, whether the filing be an initial filing or a resubmission.

While variable language must still be enclosed in brackets and must include the range of variable information or amounts, the adopted amendment to §11.505(f) eliminates the remaining restrictions on variable language allowed in evidence of coverage filings. Adopted new §11.505(h)(1) and (2) specify what items must be included in a matrix filing.

The adopted amendment to §11.506(2)(A) removes the prohibition that a basic service HMO may not impose copayment charges that exceed 50 percent of the total cost of providing any single service to its enrollees, nor in the aggregate more than 20 percent of the total cost to the HMO of providing all basic health care services. Instead, the amendment to §11.506(2)(A) provides that each basic service HMO may establish one or more reasonable copayment options and specifies that a reasonable copayment option may not exceed 50 percent of the total cost of services provided. Section 11.506(2)(A) as adopted also provides that a basic service HMO may not impose copayment charges on any enrollee in any calendar year, when the copayments made by the enrollee in that calendar year total two hundred percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee. Lastly, §11.506(2)(A) as adopted provides that this limitation applies only if the enrollee demonstrates that copayments in that amount have been paid in that year. The adopted amendment to §11.801(a) eliminates the requirement that an HMO licensed before September 1, 1999, must comply with the minimum net worth requirements specified in the Insurance Code §843.4031. The adopted amendment to §11.810(b)(20) deletes the reference to the Insurance Code §843.4031.

The adopted amendment to §11.1206(b) replaces a reference to the term "Act" with a more specific reference to the Insurance Code §843.105 and replaces the phrase defined with the phrase provided for.

The adopted amendment to §11.1403 corrects a typographical error in the toll-free complaint number in the Spanish language notice and corrects the misspelling of the term complaint.

The adopted amendment to §11.1605(c) clarifies that small employer plans, as defined by the Insurance Code §1501.002, are exempt from the requirement that HMOs that provide coverage for prescription drugs under an individual or group health benefit plan must comply with the Insurance Code Chapter 1369 Subchapter A and Department rules.

The adopted amendment to §11.1607(h)(2) clarifies that the term specialty care includes specialty hospitals and single healthcare service plan physicians and providers, such as vision and dental care. Adopted new §11.1607(i) waives the access of care requirements for an HMO that has a contract with the Health and Human Services Commission and provides covered services to participants in the CHIP Perinatal Program. The adopted amendment to §11.1607 also re-designates remaining subsections.

The adopted amendments to §11.1901(a) and (b)(1) specify that an enrollee, unless the HMO has no enrollees, must be actively involved in an HMO's quality improvement program, but eliminate the requirement that an enrollee must be appointed to the HMO's quality improvement committee.

The adopted amendments to §11.1902(4) and (7) eliminate the current credentialing requirements for contracted physicians and providers, and in lieu of those requirements, require that the credentialing process comply with the standards promulgated by the NCQA, to the extent that those standards do not conflict with other laws of this state.

The adopted amendments to §11.2201(b) and §11.2402(b) correct cross references to other rule provisions within Chapter 11.

The adopted amendments to §11.2207(a) and (b)(1) mirror the adopted amendments to §11.1901(a) and (b)(1) specifying that an enrollee, unless the HMO has no enrollees, must be actively involved in an HMO's quality improvement program but does not

have to be appointed to the HMO's quality improvement committee.

The adopted amendments to §11.2207(d)(4) and (7) mirror the adopted amendments to §11.1902(4) and (7) and eliminate the current credentialing requirements relating to contracted physicians and providers, and in lieu of those requirements, require that the credentialing process comply with the standards promulgated by the NCQA, to the extent that those standards do not conflict with other laws of this state

The definitions in §11.2602 as adopted are renumbered as necessary in accordance with the adopted amendments that delete and add terms to the definitions. The adopted amendments to §§11.1, 11.2(a) and (b)(1), 11.203(d), 11.204, 11.301, 11.302, 11.504, 11.506, 11.508 - 11.511, 11.602, 11.706, 11.804, 11.810(b)(5), 11.901, 11.902, 11.904, 11.1201, 11.1301, 1302(a)(3) and (d)(4), 11.1401, 11.1600, 11.1605(c), (d), and (e), 11.1607, 11.1702, 11.1703, 11.1801, 11.2103, 11.2303, 11.2315, 11.2405, 11.2406, 11.2501 - 11.2503, 11.2601(a) and (b), 11.2602(1) and (2), (4)(A), and (B), 11.2603(a), (e), and (g), 11.2604, 11.2608(b), and 11.2609 replace the terms "Texas Health Maintenance Organization Act" and "Act" with references to applicable chapters of the Insurance Code and other applicable insurance laws and regulations of this state that apply to HMOs.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§11.506(2)(A)

Comment: A commenter expressed concern that, while the current regulations limit an enrollee's copayments to 200 percent of the enrollee's annual premium, the proposed amendment would allow for copayments up to 50 percent of the cost of the health care provided with no maximum limit on out-of-pocket costs for the enrollee. Additionally, the commenter states that staff's explanation for the proposed amendment indicates that the proposed language is modeled after Preferred Provider Organization (PPO) legislation contained in HB 1030 passed by the 79th Texas Legislature. The commenter suggests that, while an argument can be made that HMOs should be allowed to compete on a level playing field with PPOs, it would be more equitable to require HMOs to pay benefits at a rate that is comparable to PPO in-network rates. The commenter suggests setting an HMO enrollee's maximum copayment amount at 20 percent and establishing a reasonable maximum out-of-pocket limit, such as $500 to $1,000 for an individual and $1,500 to $2,500 for a family.

Agency Response: The Department agrees in part and disagrees in part. The Department has retained the limitation of 50 percent copayment charges as it has been determined to be a reasonable limitation. The Department does not agree with the commenter's proposed specific dollar limits for an individual and a family but does agree that it is necessary to have a limitation on an enrollee's yearly out-of-pocket copayment expenditures. However, the Department has determined that any new maximum out-of-pocket copayment expenditure limit for HMO enrollees must be addressed through a separate rulemaking process. The Department will publish a notice of proposal with a 30-day comment period before proceeding further on setting any new maximum out-of-pocket copayment expenditure limit for HMO enrollees. Therefore, the adoption restores the provision, which was proposed for deletion, relating to a basic service HMO not being allowed to impose copayment charges on any enrollee in any calendar year, when the copayment made by the enrollee in that calendar year totals 200 percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee. The adoption also restores the provision that was proposed for deletion that specifies that this limitation applies only if the enrollee demonstrates that copayments in that amount have been paid in that year. As a result of the restoration of this prohibition, which has been made to the proposal in response to the commenter, the Department has determined that it is necessary to make another change to §11.506(2)(A) as proposed for purposes of clarification and consistency. In the second sentence of §11.506(2)(A) as adopted, the terminology "Each HMO" has been changed to "Each basic service HMO". Therefore, as a result of these changes, as well as a minor editorial change identified by the Department, §11.506(2)(A) as adopted provides that an HMO may require copayments to supplement payment for health care services; that each basic service HMO may establish one or more reasonable copayment options; that a reasonable copayment option may not exceed 50 percent of the total cost of services provided; that a basic service HMO may not impose copayment charges on any enrollee in any calendar year, when the copayments made by the enrollee in that calendar year totals 200 percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee, and that this limitation applies only if the enrollee demonstrates that copayments in that amount have been paid in that year.

Lastly, it is the Department's understanding that the commenter interpreted the term modeled, as used in the notice of the proposed rule, to indicate that the Department intended to base its amendments to this section on the intent and applicability of certain preferred provider organization legislation. This was not the Department's intent. Rather, the Department's intent was more narrow, i.e., consistency in the wording of the amendment to §11.506(2)(A) with the wording in the Insurance Code §1301.0046, to the extent possible. The Department considered this consistency desirable because the wording in §1301.0046 accurately reflects the proposed amendment. The Department regrets any confusion resulting from the use of the term modeled in the notice of the proposed rule.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For with changes: Office of Public Insurance Counsel.

Against: None.

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §11.1, §11.2

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations),

1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605874
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

SUBCHAPTER C. APPLICATION FOR CERTIFICATE OF AUTHORITY

28 TAC §11.203, §11.204

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151

provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605875
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER D. REGULATORY REQUIREMENTS FOR AN HMO SUBSEQUENT TO ISSUANCE OF CERTIFICATE OF AUTHORITY

28 TAC §11.301, §11.302

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties

of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605876
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER F. EVIDENCE OF COVERAGE

28 TAC §§11.501, 11.503 - 11.506, 11.508 - 11.511

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

§11.506. Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate.

Each enrollee residing in this state is entitled to an evidence of coverage under a health care plan. By agreement between the issuer of the evidence of coverage and the enrollee, the evidence of coverage approved under this subchapter and required by this section may be delivered electronically. Each group, individual and conversion contract and group certificate must contain the following provisions.

(1) Name, address, and phone number of the HMO--The toll-free number referred to in the Insurance Code §521.102 , where applicable, must appear on the face page.

(A) The face page of an agreement is the first page that contains any written material.

(B) If the agreements or certificates are in booklet form the first page inside the cover is considered the face page.

(C) The HMO must provide the information regarding the toll-free number referred to in the Insurance Code Chapter 521 Subchapter C, in accordance with §1.601 of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures).

(2) Benefits--A schedule of all health care services that are available to enrollees under the basic, limited, or single health care service plan, including any copayments or deductibles and a description of where and how to obtain services. An HMO may use a variable copayment or deductible schedule. The copayment schedule must clearly indicate the benefit to which it applies.

(A) Copayments. An HMO may require copayments to supplement payment for health care services. Each basic service HMO may establish one or more reasonable copayment options. A reasonable copayment option may not exceed 50 percent of the total cost of services provided. A basic service HMO may not impose copayment charges on any enrollee in any calendar year, when the copayments made by the enrollee in that calendar year total two hundred percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee. This limitation applies only if the enrollee demonstrates that copayments in that amount have been paid in that year. The HMO shall state the copayment in the group, individual or conversion agreement and group certificate.

(B) Deductibles. A deductible shall be for a specific dollar amount of the cost of the basic, limited, or single health care service. An HMO shall charge a deductible only for services performed out of the HMO's service area or for services performed by a physician or provider who is not in the HMO's delivery network.

(C) Immunizations. An HMO shall not charge a copayment or deductible for immunizations as described in the Insurance Code Chapter 1367 Subchapter B for a child from birth through the date the child is six years of age, except that a small employer health benefit plan, as defined by the Insurance Code §1501.002, that covers such immunizations may charge a copayment or deductible.

(3) Cancellation and non-renewal--A statement specifying the following grounds for cancellation and non-renewal of coverage and the minimum notice period that will apply.

(A) An HMO may cancel a subscriber in a group and subscriber's enrolled dependents under circumstances described in clauses (i) - (vii) of this subparagraph, so long as the circumstances do not include health status related factors:

(i) For nonpayment of amounts due under the contract, coverage may be cancelled after not less than 30 days written notice, except no written notice will be required for failure to pay premium.

(ii) In the case of fraud or intentional misrepresentation of a material fact, except as described in paragraph (14) of this section, coverage may be cancelled after not less than 15 days written notice.

(iii) In the case of fraud in the use of services or facilities, coverage may be cancelled after not less than 15 days written notice.

(iv) For failure to meet eligibility requirements other than the requirement that the subscriber reside, live, or work in the service area, coverage may be cancelled immediately, subject to continuation of coverage and conversion privilege provisions, if applicable.

(v) In the case of misconduct detrimental to safe plan operations and the delivery of services, coverage may be cancelled immediately.

(vi) For failure of the enrollee and a plan physician to establish a satisfactory patient-physician relationship if it is shown that the HMO has, in good faith, provided the enrollee with the opportunity to select an alternative plan physician, the enrollee is notified in writing at least 30 days in advance that the HMO considers the patient-physician relationship to be unsatisfactory and specifies the changes that are necessary in order to avoid termination, and the enrollee has failed to make such changes, coverage may be cancelled at the end of the 30 days.

(vii) Where the subscriber neither resides, lives, or works in the service area of the HMO, or area for which the HMO is authorized to do business, but only if the HMO terminates coverage uniformly without regard to any health status-related factor of enrollees, coverage may be cancelled after 30 days written notice. An HMO shall not cancel coverage for a child who is the subject of a medical support order because the child does not reside, live or work in the service area.

(B) An HMO may cancel a group under circumstances described in clauses (i) - (vi) of this subparagraph:

(i) For nonpayment of premium, all coverage may be cancelled at the end of the grace period as described in paragraph (13) of this section.

(ii) In the case of fraud on the part of the group, coverage may be cancelled after 15 days written notice.

(iii) For employer groups, violation of participation or contribution rules, coverage may be cancelled in accordance with §26.8(h) and §26.303(j) of this title (relating to Guaranteed Issue; Contribution and Participation Requirements and Coverage Requirements).

(iv) For employer groups, in accordance with §26.16 and §26.309 of this title (relating to Refusal to Renew and Application to Reenter Small Employer Market and Refusal to Renew and Application to Reenter Large Employer Market), coverage may be cancelled upon discontinuance of:

(I) each of its small or large employer coverages; or

(II) a particular type of small or large employer coverage.

(v) Where no enrollee resides, lives, or works in the service area of the HMO, or area for which the HMO is authorized to do business, but only if the coverage is terminated uniformly without regard to any health status-related factor of enrollees, the HMO may cancel the coverage after 30 days written notice.

(vi) If membership of an employer in an association ceases, and if coverage is terminated uniformly without regard to the health status of an enrollee, the HMO may cancel the coverage after 30 days written notice.

(C) In the case of a material change by the HMO to any provisions required to be disclosed to contract holders or enrollees pursuant to this chapter or other law, a group or individual contract holder may cancel the contract after not less than 30 days written notice to the HMO.

(D) An HMO may cancel an individual contract under circumstances described in clauses (i) - (vi) of this subparagraph.

(i) For nonpayment of premiums in accordance with the terms of the contract, including any timeliness provisions, coverage may be cancelled without written notice, subject to paragraph (13) of this section.

(ii) In the case of fraud or intentional material misrepresentation, except as described in paragraph (14) of this section, the HMO may cancel coverage after not less than 15 days written notice.

(iii) In the case of fraud in the use of services or facilities, the HMO may cancel coverage after not less than 15 days written notice.

(iv) Where the subscriber neither resides, lives, or works in the service area of the HMO, or area for which the HMO is authorized to do business, but only if coverage is terminated uniformly without regard to any health status-related factor of enrollees, coverage may be cancelled after 30 days written notice. An HMO shall not

cancel the coverage for a child who is the subject of a medical support order because the child does not reside, live or work in the service area.

(v) In case of termination by discontinuance of a particular type of individual coverage by the HMO in that service area, but only if coverage is discontinued uniformly without regard to health status-related factors of enrollees and dependents of enrollees who may become eligible for coverage, the HMO may cancel coverage after 90 days written notice, in which case the HMO must offer to each enrollee on a guaranteed-issue basis any other individual basic health care coverage offered by the HMO in that service area.

(vi) In case of termination by discontinuance of all individual basic health care coverage by the HMO in that service area, but only if coverage is discontinued uniformly without regard to health status-related factors of enrollees and dependents of enrollees who may become eligible for coverage, the HMO may cancel coverage after 180 days written notice to the commissioner and the enrollees, in which case the HMO may not re-enter the individual market in that service area for five years beginning on the date of discontinuance at the last coverage not renewed.

(4) Claim payment procedure--A provision that sets forth the procedure for paying claims, including any time frame for payment of claims which must be in accordance with the Insurance Code Chapter 542 Subchapter B and §1271.005 and the applicable rules.

(5) Complaint and appeal procedures--A description of the HMO's complaint and appeal process available to complainants.

(6) Continuation of coverage--Group agreements must contain a provision providing for mandatory continuation of coverage for enrollees who were continuously covered under a group certificate for three months prior to termination of the group coverage, or newborn or newly adopted children of enrollees with three months prior continuous coverage, that is no less favorable than provided by the Insurance Code Chapter 1271 Subchapter G.

(A) An enrollee shall have the option to continue coverage as provided for by the Insurance Code Chapter 1271 Subchapter G upon completion of any continuation of coverage provided under The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Public Law Number 99-272, 100 stat. 222) and any amendments thereto.

(B) A dependent, upon completion of any continuation of coverage provided under the Insurance Code Chapter 1251 Subchapter G, shall have the privilege to continue coverage for the six months prescribed by the Insurance Code Chapter 1271 Subchapter G.

(C) If an HMO offers conversion coverage, it must be offered to the enrollee not less than 30 days prior to the expiration of the COBRA or the Insurance Code Chapter 1251 Subchapter G continuation coverage period.

(D) A basic service HMO shall notify the enrollee not less than 30 days before the end of the six months from the date continuation under the Insurance Code Chapter 1271 Subchapter G was elected that the enrollee may be eligible for coverage under the Texas Health Insurance Risk Pool, as provided under the Insurance Code Chapter 1506, and shall provide the address and toll-free number of the pool.

(7) Definitions--A provision defining any words in the evidence of coverage which have other than the usual meaning. Definitions must be in alphabetical order.

(8) Effective date--A statement of the effective date requirements of various kinds of enrollees.

(9) Eligibility--A statement of the eligibility requirements for membership, including:

(A) that the subscriber must reside, live or work in the service area and the legal residence of any enrolled dependents must be the same as the subscriber, or the subscriber must reside, live or work in the service area and the residence of any enrolled dependents must be:

(i) in the service area with the person having temporary or permanent conservatorship or guardianship of such dependents, including adoptees or children who have become the subject of a suit for adoption by the enrollee, where the subscriber has legal responsibility for the health care of such dependents;

(ii) in the service area under other circumstances where the subscriber is legally responsible for the health care of such dependents;

(iii) in the service area with the subscriber's spouse; or

(iv) anywhere in the United States for a child whose coverage under a plan is required by a medical support order.

(B) the conditions under which dependent enrollees may be added to those originally covered;

(C) any limiting age for subscriber and dependents;

(D) a clear statement regarding the coverage of newborn children:

(i) No evidence of coverage may contain any provision excluding or limiting coverage for a newborn child of the subscriber or the subscriber's spouse.

(ii) Congenital defects must be treated the same as any other illness or injury for which coverage is provided.

(iii) The HMO may require that the subscriber notify the HMO during the initial 31 days after the birth of the child and pay any premium required to continue coverage for the newborn child.

(iv) An HMO shall not require that a newborn child receive health care services only from network physicians or providers after the birth if the newborn child is born outside the HMO service area due to an emergency, or born in a non-network facility to a mother who does not have HMO coverage. The HMO may require that the newborn be transferred to a network facility at the HMO's expense and, if applicable, to a network provider when such transfer is medically appropriate as determined by the newborn's treating physician.

(v) A newborn child of the subscriber or subscriber's spouse is entitled to coverage during the initial 31 days following birth. The HMO shall allow an enrollee 31 days after the birth of the child to notify the HMO, either verbally or in writing, of the addition of the newborn as a covered dependent.

(E) a clear statement regarding the coverage of the enrollee's grandchildren up to the age of 25 under the conditions under which such coverage is required by the Insurance Code §1201.062 and §1271.006.

(10) Emergency services--A description of how to obtain services in emergency situations including:

(A) what to do in case of an emergency occurring outside or inside the service area;

(B) a statement of any restrictions or limitations on out-of-area services;

(C) a statement that the HMO will provide for any medical screening examination or other evaluation required by state or federal law that is necessary to determine whether an emergency medical condition exists in a hospital emergency facility or comparable facility;

(D) a statement that necessary emergency care services will be provided, including the treatment and stabilization of an emergency medical condition; and

(E) a statement that where stabilization of an emergency condition originated in a hospital emergency facility or comparable facility, as defined in subparagraph (F) of this paragraph, treatment subject to such stabilization shall be provided to enrollees as approved by the HMO, provided that the HMO is required to approve or deny coverage of poststabilization care as requested by a treating physician or provider. An HMO shall approve or deny such treatment within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, but in no case shall approval or denial exceed one hour from the time of the request.

(F) For purposes of this paragraph, "comparable facility" includes the following:

(i) any stationary or mobile facility, including, but not limited to, Level V Trauma Facilities and Rural Health Clinics which have licensed and/or certified personnel and equipment to provide Advanced Cardiac Life Support (ACLS) consistent with American Heart Association (AHA) and American Trauma Society (ATS) standards of care;

(ii) for purposes of emergency care related to mental illness, a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(I) a facility operated by the Texas Department of State Health Services;

(II) a private mental hospital licensed by the Texas Department of State Health Services;

(III) a community center as defined by the Texas Health and Safety Code, §534.001;

(IV) a facility operated by a community center or other entity the Texas Department of State Health Services designates to provide mental health services;

(V) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of State Health Services; or

(VI) a hospital operated by a federal agency.

(11) Entire contract, amendments--A provision stating that the form, applications, if any, and any attachments constitute the entire contract between the parties and that, to be valid, any change in the form must be approved by an officer of the HMO and attached to the affected form and that no agent has the authority to change the form or waive any of the provisions.

(12) Exclusions and limitations--A provision setting forth any exclusions and limitations on basic, limited, or single health care services.

(13) Grace period--A provision for a grace period of at least 30 days for the payment of any premium falling due after the first premium during which the coverage remains in effect. A charge may be added to the premium by the HMO for late payment received within the grace period. If payment is not received within the 30 days, coverage may be cancelled after the 30th day and the terminated members may be held liable for the cost of services received during the grace period, if this requirement is disclosed in the agreement.

(14) Incontestability:

(A) All statements made by the subscriber on the enrollment application shall be considered representations and not warranties. The statements are considered to be truthful and are made to the best of the subscriber's knowledge and belief. A statement may not be used in a contest to void, cancel or non-renew an enrollee's coverage or reduce benefits unless:

(i) it is in a written enrollment application signed by the subscriber; and

(ii) a signed copy of the enrollment application is or has been furnished to the subscriber or the subscriber's personal representative.

(B) An individual contract may only be contested because of fraud or intentional misrepresentation of material fact made on the enrollment application. A group certificate may only be contested because of fraud or intentional misrepresentation of material fact on the enrollment application. For small employer coverage, the misrepresentation shall be other than a misrepresentation related to health status.

(C) For a group contract or certificate, the HMO may increase its premium to the appropriate level if the HMO determines that the subscriber made a material misrepresentation of health status on the application. The HMO must provide the contract holder 31 days prior written notice of any premium rate change.

(15) Out-of-network services--Each contract between an HMO and a contract holder must provide that if medically necessary covered services are not available through network physicians or providers, the HMO must, upon the request of a network physician or provider, within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, but in no event to exceed five business days after receipt of reasonably requested documentation, allow a referral to a non-network physician or provider and shall fully reimburse the non-network provider at the usual and customary or an agreed rate.

(A) For purposes of determining whether medically necessary covered services are available through network physicians or providers, the HMO shall offer its entire network, rather than limited provider networks within the HMO delivery network.

(B) The HMO shall not require the enrollee to change his or her primary care physician or specialist providers to receive medically necessary covered services that are not available within the limited provider network.

(C) Each contract must further provide for a review by a specialist of the same or similar specialty as the type of physician or provider to whom a referral is requested before the HMO may deny a referral.

(16) Schedule of charges--A statement that discloses the HMO's right to change the rate charged with 60 days written notice pursuant to the Insurance Code Chapter 1254.

(17) Service area--A description and a map of the service area, with key and scale, which shall identify the county, or counties, or portions thereof, to be served indicating primary care physicians, hospitals, and emergency care sites. A ZIP code map and a provider list may be used to meet the requirement.

(18) Termination due to attaining limiting age--A provision that a child's attainment of a limiting age does not operate to terminate the coverage of the child while that child is incapable of self-sustaining employment due to mental retardation or physical disability, and chiefly dependent upon the subscriber for support and maintenance. The HMO may require the subscriber to furnish proof of such incapacity and dependency within 31 days of the child's attainment of the limiting age and subsequently as required, but not more frequently than annually following the child's attainment of such limiting age.

(19) Termination due to student dependent's change in status--Each group agreement and certificate that conditions dependent coverage for a child twenty-five years of age or older on the child's being a full-time student at an educational institution shall contain a provision in accordance with the Insurance Code Chapter 1503.

(20) Conformity with state law--A provision that if the agreement or certificate contains any provision not in conformity with the Insurance Code Chapter 1271 or other applicable laws it shall not be rendered invalid but shall be construed and applied as if it were in full compliance with the Insurance Code Chapter 1271 and other applicable laws.

(21) Conformity with Medicare supplement minimum standards and long-term care minimum standards--Each group, individual and conversion agreement and group certificate must comply with Chapter 3, Subchapter T of this title (relating to Minimum Standards for Medicare Supplement Policies), referred to in this paragraph as Medicare supplement rules, and Chapter 3, Subchapter Y of this title (relating to Standards for Long-Term Care Insurance Coverage Under Individual and Group Policies), referred to in this paragraph as long-term care rules, where applicable. If there is a conflict between the Medicare supplement rules and/or the long-term care rules and the HMO rules, the Medicare supplement rules or long-term care rules shall govern to the exclusion of the conflicting provisions of the HMO rules. Where there is no conflict, an HMO shall follow both the Medicare supplement rules and/or the long-term care rules and the HMO rules where applicable.

(22) Nonprimary care physician specialist as primary care physician--A provision that allows enrollees with chronic, disabling, or life threatening illnesses to apply to the HMO's medical director to utilize a nonprimary care physician specialist as a primary care physician as set forth in the Insurance Code §1271.201.

(23) Selected obstetrician or gynecologist--Individual, conversion and group agreements and certificates, except small employer plans as defined by the Insurance Code §1501.002, must contain a provision that permits an enrollee to select, in addition to a primary care physician, an obstetrician or gynecologist to provide health care services within the scope of the professional specialty practice of a properly credentialed obstetrician or gynecologist, and subject to the provisions of the Insurance Code Chapter 1451 Subchapter F. An HMO shall not preclude an enrollee from selecting a family physician, internal medicine physician, or other qualified physician to provide obstetrical or gynecological care.

(A) An HMO shall permit an enrollee who selects an obstetrician or gynecologist direct access to the health care services of the selected obstetrician or gynecologist without a referral by the enrollee's primary care physician or prior authorization or precertification from the HMO.

(B) The access to health care services of an obstetrician or gynecologist, includes:

(i) one well-woman examination per year;

(ii) care related to pregnancy;

(iii) care for all active gynecological conditions; and

(iv) diagnosis, treatment, and referral to a specialist within the HMO's network for any disease or condition within the scope of the selected professional practice of a properly credentialed obstetrician or gynecologist, including treatment of medical conditions concerning breasts.

(C) An HMO may require an enrollee who selects an obstetrician or gynecologist to select the obstetrician or gynecologist from within the limited provider network to which the enrollee's primary care physician belongs.

(D) An HMO may require a selected obstetrician or gynecologist to forward information concerning the medical care of the patient to the primary care physician. However, the HMO shall not impose any penalty, financial or otherwise, upon the obstetrician or gynecologist by the HMO for failure to provide this information if the obstetrician or gynecologist has made a reasonable and good faith effort to provide the information to the primary care physician.

(E) An HMO may limit an enrollee in the plan to self-referral to one participating obstetrician and gynecologist for both gynecological care and obstetrical care. Such limitation shall not affect the right of the enrollee to select the physician who provides that care.

(F) An HMO shall include in its enrollment form a space in which an enrollee may select an obstetrician or gynecologist as set forth in the Insurance Code Chapter 1451 Subchapter F. The enrollment form must specify that the enrollee is not required to select an obstetrician or gynecologist, but may instead receive obstetrical or gynecological services from her primary care physician or primary care provider. Such enrollee shall have the right at all times to select or change a selected obstetrician or gynecologist. An HMO may limit an enrollee's request to change an obstetrician or gynecologist to no more than four changes in any 12-month period.

(G) An enrollee that elects to receive obstetrical or gynecological services from a primary care physician (i.e., a family physician, internal medicine physician, or other qualified physician) shall adhere to the HMO's standard referral protocol when accessing other specialty obstetrical or gynecological services.

(24) Diagnosis of Alzheimer's disease--An HMO that provides for the treatment of Alzheimer's disease must provide that a clinical diagnosis of Alzheimer's disease by a physician licensed in this state pursuant to the Insurance Code Chapter 1354 shall satisfy any requirement for demonstrable proof of organic disease.

(25) Drug Formulary--A group agreement and certificate, except small employer plans as defined by the Insurance Code §1501.002, that covers prescription drugs and uses one or more formularies must comply with the Insurance Code Chapter 1369 Subchapter B and Chapter 21, Subchapter V of this title (relating to Pharmacy Benefits).

(26) Inpatient care by non-primary care physician--If an HMO or limited provider network provides for an enrollee's care by a physician other than the enrollee's primary care physician while the enrollee is in an inpatient facility (e.g., hospital or skilled nursing facility), a provision that upon admission to the inpatient facility a physician other than the primary care physician may direct and oversee the enrollee's care.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605877
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER G. ADVERTISING AND SALES MATERIAL

28 TAC §11.602

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605878
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER H. SCHEDULE OF CHARGES

28 TAC §11.706

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Orga-

nizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605879
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

SUBCHAPTER I. FINANCIAL REQUIREMENTS

28 TAC §§11.801, 11.804, 11.810

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151

provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605880
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER J. PHYSICIAN AND PROVIDER CONTRACTS AND ARRANGEMENTS

28 TAC §§11.901, 11.902, 11.904

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605881
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER M. ACQUISITION OF, CONTROL OF, OR MERGER OF, A DOMESTIC HMO

28 TAC §11.1201, §11.1206

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605882
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER N. HMO SOLVENCY SURVEILLANCE COMMITTEE PLAN OF OPERATION

28 TAC §11.1301, §11.1302

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term

provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605883
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

SUBCHAPTER O. ADMINISTRATIVE PROCEDURES

28 TAC §11.1401, §11.1403

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapters 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts

small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605884
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER Q. OTHER REQUIREMENTS

28 TAC §§11.1600, 11.1605, 11.1607

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission

may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605885
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER R. APPROVED NONPROFIT HEALTH CORPORATIONS

28 TAC §11.1702, §11.1703

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605886
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER S. SOLVENCY STANDARDS FOR MANAGED CARE ORGANIZATIONS PARTICIPATING IN MEDICAID

28 TAC §11.1801

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605887
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER T. QUALITY OF CARE

28 TAC §11.1901, §11.1902

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved

by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605888
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER V. STANDARDS FOR COMMUNITY MENTAL HEALTH CENTERS

28 TAC §11.2103

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply

to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605889
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER W. SINGLE SERVICE HMOS

28 TAC §11.2201, §11.2207

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605890
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER X. PROVIDER SPONSORED ORGANIZATIONS

28 TAC §11.2303, §11.2315

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605891
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER Y. LIMITED SERVICE HMOS

28 TAC §§11.2402, 11.2405, 11.2406

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an

amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605892
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General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER Z. POINT-OF-SERVICE RIDERS

28 TAC §§11.2501 - 11.2503

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply

to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605893
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER AA. DELEGATED ENTITIES

28 TAC §§11.2601 - 11.2604, 11.2608, 11.2609

The amendments are adopted pursuant to the Insurance Code §§843.002(1), 843.002(24), 843.008, 843.102, 843.151, 843.154, 1271.101, 1271.104, 1369.003, 1452.006, 36.001, and the Health and Safety Code §62.051(c) and (d). The Insurance Code §843.002(1) defines the term adverse determination. The Insurance Code §843.002(24) defines the term provider. The Insurance Code §843.008 provides that the money collected under the Insurance Code Chapter 843 must be sufficient to administer the Insurance Code Chapter 843 and Chapter 20A, re-adopted as a result of the enactment of the non-substantive Insurance Code revisions, Acts 2001, 77th Legislature, Regular Session, Chapter 1419 §1, effective April 1, 2003, and Acts 2003, 78th Legislature, Regular Session, Chapter 1274 §3, effective April 1, 2005, as Insurance Code Chapters 1271 (Benefits Provided by Health Maintenance Organizations; Evidence of Coverage; Charges), 1272 (Delegation of Certain Functions by Health Maintenance Organizations), 1367 (Coverage of Children), and 1452 (Physician and Provider Credentials) and other applicable insurance laws of this state that apply to HMO regulation. The Insurance Code §843.102 authorizes the Commissioner to establish by rule minimum standards and requirements for the quality assurance programs of health maintenance organizations, including standards for ensuring availability, accessibility, quality, and continuity of care. The Insurance Code §843.154 requires the Commissioner to prescribe a filing fee for an evidence of coverage that requires approval in an amount not to exceed $200. The Insurance Code §1271.101 provides that an evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the Commissioner. The Insurance Code §1271.104 provides that the Commissioner may require the submission of any relevant information the Commissioner considers necessary in determining whether to approve or disapprove the form of the evidence of coverage. The Insurance Code §1369.003 excepts small employer health benefit plans from providing coverage of prescription drugs pursuant to the provisions of the Insurance Code Chapter 1369 Subchapter A. The Insurance Code §1452.006 provides that a rule adopted by the Commissioner under the Insurance Code §843.102, which regulates HMO quality assurance, relating to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with standards adopted by the National Committee for Quality Assurance (NCQA), to the extent those standards do not conflict with other laws of this state. The Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement the Insurance Code Chapter 843 and Chapter 20A, including rules to ensure that enrollees have adequate access to health care services and rules to establish minimum physician-to-patient rations, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment. As stated previously, Insurance Code Chapter 20A was re-adopted as part of the enactment of the non-substantive Insurance Code revisions by the 77th Legislature, Regular Session, effective April 1, 2003, and by the 78th Legislature, Regular Session, effective April 1, 2005, as Insurance Code Chapters 1271, 1272, 1367, 1452, and other applicable insurance laws of this state that apply to HMO regulation. The Health and Safety Code §62.051(c) provides that the Health and Human Services Commission shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Health, Texas Department of Human Services, and Texas Department of Insurance. The Health and Safety Code §62.051(d) provides that the Health and Human Services Commission may, with the consent of another agency, including the Texas Department of Insurance, delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the child health plan program. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

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Filed with the Office of the Secretary of State on October 26, 2006.

TRD-200605894
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 15, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

The Texas Parks and Wildlife Commission adopts the repeal of §57.157 and new §57.157, concerning Mussels and Clams, with changes to the proposed text as published in the June 9, 2006, issue of the *Texas Register* (31 TexReg 4699).

The adopted change to §57.157 alters several paragraphs within subsection (d)(2) of this section to clarify a boundary description and to correct typographical errors in the boundary descriptions of three stream segments.

As proposed, subsection (d)(2)(B) of this section prohibited the take of mussels and clams from the Sabine River between FM 14 and State Highway 155 in Smith County. The Sabine River between FM 14 and State Highway 155 also is the county boundary for Wood and Upshur counties, as well.

As proposed, subsection (d)(2)(E) of this section identified SH 10 in Walker and Trinity counties as a boundary of a stream segment on the Trinity River in which the take of mussels and clams is prohibited. The description should have identified State Highway 19 as the boundary. There is no State Highway 10 in Walker or Trinity counties.

As proposed, subsection (d)(2)(G) of this section identified FM 258 in Parker County as a boundary of a stream segment on the Brazos River in which the take of mussels and clams is prohibited. The description should have identified FM 2580 as the boundary. There is no FM 258 in Parker County.

As proposed, subsection (d)(2)(J) of this section identified the US 87 bridge in Menard County as a boundary of a stream segment on the San Saba River in which the take of mussels and clams is prohibited. The description should have identified the US 83 bridge in Menard County. There is no US 87 bridge in Menard County.

The adopted change to subsection (d)(2) of this section also standardizes punctuation and grammatical structure for the sake of uniformity.

REASONED JUSTIFICATION AND FINDINGS.

1. The Ecology of Freshwater Mussels. Freshwater mussels (unionids) are an important component of healthy aquatic ecosystems, both as a food source for many other aquatic and terrestrial organisms, and as an important indicator species. In early life stages, mussels are food sources for a variety of aquatic insects, small fishes, and water birds; as they mature they become significant food sources for larger fishes, waterfowl, and terrestrial animals. Protection of this resource will preserve and enhance the hunting, fishing, and outdoor recreation opportunities that are part of Texas heritage.

Freshwater mussel populations have declined throughout North America. They are sensitive to disturbance because they are relatively immobile organisms, sometimes staying in a single spot for their entire lives. They have a complex life cycle that is easily disrupted, causing reproductive failure. Habitat alteration and loss, illegal and over harvesting, and competition from introduced species are some of the factors in their decline. Mussels are extremely sensitive to toxic substances, since they encounter toxins more immediately than most organisms above them in the food chain and at higher concentrations relative to body mass. Minute levels of some types of toxic substances (e.g., ammonia) or chronic environmental stresses such as low oxygen levels or siltation caused by bed scouring can quickly devastate mussel communities, in many cases long before the environmental change is reflected by other aquatic species.

Nationwide, more species of freshwater mussels are listed as threatened and endangered than any other group of animals. Of the nearly 300 species known to have lived in the U.S., 18 are believed to be extinct, and 60 are currently listed as federally endangered or threatened, including one species occurring in Texas (the Ouachita rock-pocketbook mussel). Texas is home to more than 50 species of freshwater mussels.

Scientific data and studies used and considered in the development of this rule include the following, as well as surveys of the industry:

Howells, R.G. 1995. Distributional surveys of freshwater bivalves in Texas. Status survey for 1993. Texas Parks and Wildlife Department, Management Data Series 119, Austin.

Howells, R.G. 1996. Distributional surveys of freshwater bivalves in Texas. Status survey for 1994. Texas Parks and Wildlife Department, Management Data Series 120, Austin.

Howells, R.G. 1997. Distributional surveys of freshwater bivalves in Texas. Status survey for 1996. Texas Parks and Wildlife Department, Management Data Series 144, Austin.

Howells, R.G. 1998. Distributional surveys of freshwater bivalves in Texas. Status survey for 1997. Texas Parks and Wildlife Department, Management Data Series 147, Austin.

Howells, R.G. 1999. Distributional surveys of freshwater bivalves in Texas. Status survey for 1998. Texas Parks and Wildlife Department, Management Data Series 161, Austin.

Howells, R.G. 2000. Distributional surveys of freshwater bivalves in Texas. Status survey for 1999. Texas Parks and Wildlife Department, Management Data Series 170, Austin.

Howells, R.G. 2001. Distributional surveys of freshwater bivalves in Texas. Status survey for 2000. Texas Parks and Wildlife Department, Management Data Series 187, Austin.

Howells, R.G. 2002. Distributional surveys of freshwater bivalves in Texas. Status survey for 2001. Texas Parks and Wildlife Department, Management Data Series 200, Austin.

Howells, R.G. 2003. Distributional surveys of freshwater bivalves in Texas. Status survey for 2002. Texas Parks and Wildlife Department, Management Data Series 214, Austin.

Howells, R.G. 2004. Distributional surveys of freshwater bivalves in Texas. Status survey for 2003. Texas Parks and Wildlife Department, Management Data Series 222, Austin.

Howells, R.G. 2005. Distributional surveys of freshwater bivalves in Texas. Status survey for 2004. Texas Parks and Wildlife Department, Management Data Series 233, Austin.

Howells, R.G., C.M. Mather, and J.A.M. Bergmann. 2000. Impacts of dewatering and cold on freshwater mussels (Unionidae) in B.A. Steinhagen Reservoir, Texas. The Texas Journal of Science, Special Supplement 52(4):93-104.

Howells, R.G., J.L. Dobie, W.L. Lindermann, and J.A. Crone. 2003. Discovery of a new population of endemic Lampsilis

bracteata in Central Texas, with comments on species status. Ellipsaria 5(2):5-6.

Neck, R.W., and R.G. Howells. 1994. Status of the Texas heelsplitter, Potamilus amphichaenus (Frierson, 1898). Texas Parks and Wildlife Department, Special Report, Ingram.

Strenth, N.E., R.G. Howells, and A. Correa-Sandoval. 2004. New records of the Texas hornshell Popenaias popeii (Bivalvia: Unionidae) from Texas and Mexico. The Texas Journal of Science 56(3):223-230.

2. The Commercial Mussel Harvest Industry. Although the commercial demand for freshwater mussels in the United States has historically been for ornamental uses such as buttons, jewelry, and decorative arts, recent commercial activity has centered on Asian demand for mussel shell for the creation of seed pearls for the cultured pearl industry.

Commercial harvest of freshwater mussels in Texas has been relatively intense at times, (e.g., 488 commercial licenses sold in 1996); however, pressure during the last several years has declined considerably in response to a contracting market. Only 13 resident and non-resident mussel harvest licenses were sold in the current license year. The department sold no shell-buyer licenses last year, leading to the conclusion that commercial activity involving mussel shell is at or near historic lows, which is confirmed by anecdotal information from the regulated community. At the present time, the commercial harvest of mussels and clams (within specified size limits) in public waters is essentially unrestricted. Any recurrence of high demand, given the continued observed habitat degradation and documented decline in mussel populations, would subject mussel populations to unsustainable increases in additive harvest pressure. Mussels are very long-lived animals, some living over 100 years, and are very slow-growing. Some species valued in commercial trade take as long as 10 years to reach the size at which they may be legally harvested. Therefore, it is axiomatic that mussels do not recover quickly from over harvest or reductions in populations caused by environmental degradation. Failure to acknowledge the adverse impact of overharvest could lead to more serious biological problems and potential listing activities by the federal government. The new rule is intended to stabilize commercial harvest at current levels while increasing the department's knowledge about and ability to manage mussel populations. The new rule will minimize cost and avoid unnecessary duplication by using commercial collectors to assist the department in monitoring efforts, allowing the department to coordinate and allocate various department assets in the most productive manner.

3. The New Regulations. The new regulations are designed to protect freshwater mussel populations in Texas from overharvest. These regulations control means and methods of harvest, legal sizes, times and places, and quantities harvested. These are the means prescribed by statute (TPW Code §78.006) for achieving TPWD's mission of preventing depletion of this important resource. In determining the need for this proclamation, the TPW Commission considered and adopted measures based on the best scientific information available, measures to manage mussels, measures that will minimize cost and avoid unnecessary duplication in their administration, and measures that will enhance enforcement. How the rules address these criteria is described below.

Adopted new §57.157(a) prohibits taking or possession of mussels (or clams) except as provided elsewhere in the subchapter. New §57.157(b) establishes size limits for take and possession of mussels under either a commercial license or a recreational fishing license. The size limits reflect the age at which various species of mussels, especially those species that are popular with commercial collectors, have reached maturity. Mussels are very long-lived and slow-growing animals, often taking up to 10 years to reach reproductive maturity. The minimum size limits are necessary to ensure that mussels are able to grow until they reach reproductive maturity, thus ensuring the ability of mussel populations to perpetuate themselves. These size limits are intended to prevent the depletion of mussels and are based on the best scientific information available about age of reproductive maturity of unionids. The "ring" method for size determination is easy to apply and widely accepted, and accordingly minimizes cost.

Adopted new §57.157(c) allows the harvest of mussels and clams only by hand. Hand harvesting is the only way to ensure that the only those mussels of legal size are harvested. Mechanical harvesting negatively affects non-target species and water quality. The provision is necessary to protect mussels and clams that have not yet reached reproductive maturity. This limitation on means and methods of mussel harvest is intended to manage mussels, prevent depletion, and is based on the best available scientific information.

Adopted new §57.157(d) prohibits the harvest of mussels at night and on certain named stream segments and reservoirs. The prohibition on night musseling is necessary for law enforcement purposes. Because musseling is an underwater activity, it is difficult to impossible for law enforcement personnel to detect persons engaged in musseling at night. The new provision also prohibits the harvest of mussels and clams on 16 named stream segments and reservoirs where, based on biological data, the department has determined that mussel populations should be protected from harvest. These locations were selected because they support populations of rare and endemic mussel species, or are important for maintaining, repopulating, or allowing recovery of mussels in watersheds where they have been depleted. These sanctuaries will manage mussels by providing for repopulation after harvest or other use, or loss due to environmental conditions. They will help prevent depletion by allowing for unharvested populations of mature mussels of both rare and commercially valuable species, and they are based on the most current scientific survey data available about the occurrence of mussel populations. They are:

Big Cypress Creek from the dam at Lake Bob Sandlin downstream to U. S. Highway 271 in Camp County. Surveys found noteworthy populations of mussels in this stream segment (Howells 1997, 1999). Protection of this stream segment will provide brood stock to restock downstream water naturally if and when water quality conditions improve downstream.

The Sabine River from the dam at Lake Tawakoni downstream to State Highway 19 in Rains and Van Zandt counties, from FM 14 to State Highway 155 in Smith, Wood, and Upshur counties and from State Highway 43 downstream to U.S. Highway 59 in Harrison and Panola counties. Several surveys at these locations confirmed that populations of mussels were still present.

The Angelina River from its source in Rusk County to its confluence with the Neches River, including B. A. Steinhagen Reservoir in Jasper County. Although abundance and diversity of the mussel populations in the Angelina River have declined significantly, the river and its tributaries were found to contain a number of rare and endemic mussel species (still present in surveys in 2005; report in preparation). Additionally, B.A. Steinhagen

Reservoir and the river downstream support the largest and most diverse mussel assemblage remaining in Texas, including rare endemic mussels (Howells 1997, Howells et al. 2000) such as the rare Texas heelsplitter (Neck and Howells 1994).

The Neches River from the dam at Lake B. A. Steinhagen downstream to its confluence with Pine Island Bayou in Orange County. A tributary of the Neches River in Hardin County was found to contain populations of several rare and endemic mussels (Howells 2003, unpublished survey work in 2005, in preparation).

The Trinity River from State Highway 7 in Leon and Houston counties downstream to State Highway 19 in Walker and Trinity counties. Surveys indicate a significant population, including a number of rare and endemic species, located upstream of Lake Livingston (Howells 1997), with indications of recovery and successful reproduction. Protection of this recovering population will ultimately serve to naturally restock mussels upstream in the Trinity River and downstream into Lake Livingston.

Live Oak Creek from U. S. Highway 290 west of Fredericksburg in Gillespie County downstream to the confluence of the Pedernales River in Gillespie County. A small population of rare, endemic Texas fatmucket was found here (Howells et al. 2003) and was still present in 2005 (unpublished survey data, in preparation). This mussel only occurs in Central Texas and has only been found alive at six sites since 1992, but has apparently been lost at two of those sites in recent years. Protecting small populations like this one may reduce the likelihood of this species of mussel being listed as endangered.

The Brazos River from the dam at Possum Kingdom Reservoir in Palo Pinto County downstream to FM 2580 in Parker County. Surveys determined that, in addition to pearl-producing species like Tampico pearlymussel and commercial shell species like southern mapleleaf, some of the last remaining Texas fawnsfoot mussels occur in this area. Texas fawnsfoot only occurs in Central Texas and only about a dozen specimens have been found alive in recent decades (Howells. 2004. Texas Freshwater Mussels: Species of Concern. Wildlife Diversity meeting, San Marcos, Texas).

The Guadalupe River from the Upper Guadalupe River Authority dam in Kerr County downstream to the Flat Rock Dam in Kerr County. Rare, endemic Texas fatmucket and golden orb are both native to Central Texas. Texas fatmucket has been reduced to six known sites (possibly only four remain) and golden orb has only been found alive at five sites since 1992. Both occur in this stream segment. (Howells. 2004. Texas Freshwater Mussels: Species of Concern. Wildlife Diversity meeting, San Marcos, Texas).

The Concho River from the mouth of Kickapoo Creek downstream to the U. S. Highway 83 bridge in Concho County. This section of the Concho River supported not only pearl-producing species like Tampico pearlymussel and commercial shell species like southern mapleleaf, but also included one of the last remaining populations of rare, endemic Texas pimplebacks. Although the entire mussel assemblage here has been badly reduced, living specimens persist and a population possibly can be reestablished if the stream section is protected.

The San Saba River from FM 864 in Menard County downstream to the U. S. Highway 83 bridge in Menard County. A significant population was found to be present in this stream segment (Howells 1998), including rare, endemic Texas fatmucket and Texas pimpleback, as well as pearl and commercial shell species.

The Guadalupe River from the dam at Lake Wood in Gonzales County downstream to the confluence of the San Marcos River in Gonzales County. This stream segment supports a significant population of commercial shell species, including washboard, threeridge, and southern mapleleaf. It also held a significant population of endemic golden orbs, one of only five places the species has been found alive since 1992 (Howells 1997).

The San Marcos River from its source in Hays County downstream to the confluence with the Guadalupe River in Gonzales County. Although it appeared from early survey efforts that nearly all of the mussels in this river had been lost since the late 1970s, an apparent recovery and reinvasion involving several mussel species appears to be occurring, including commercial shell species. The discovery of living golden orbs (one of only five places since 1992) (Howells 2001), and a recent discovery of a living Texas pimpleback (Howells 2005) make protection of this stream segment necessary for brood stock purposes.

Pine Creek from its source in Lamar County to its confluence with the Red River in Red River County. This creek contains a unique, abundant and diverse assemblage of unionids. It also supports species such as white heelsplitter that are otherwise rare in Texas, and is one of only two sites where the endangered Ouachita rock-pocketbook has been found in Texas (Howells 1995).

Sanders Creek from its source in Fannin County to the confluence with the Red River in Lamar County. This creek contains a unique, abundant and diverse assemblage of unionids. It also supports species such as white heelsplitter that are otherwise rare in Texas, and may be the only place in Texas where true pimpleback mussel occurs. It is also one of only two sites where the endangered Ouachita rock-pocketbook has been found in Texas (Howells 1995).

Elm Creek from its source downstream to the dam at Elm Creek Lake at Ballinger City Park in Runnels County. This creek previously supported a significant population of pearl-producing Tampico pearlymussels, the shell species southern mapleleaf, and the rare, endemic Texas fatmucket and Texas pimpleback (Howells 1995). However, possible overharvest in conjunction with severe drought and scouring flood damage devastated mussel populations in this area and none were found alive when it was examined in 2001 (Howells 2002). Surveys in 2005 found a small number of survivors and recently dead shells. Therefore this site should be protected to allow a once-significant population the opportunity to recover.

The Rio Grande from Columbia Bridge in Webb County downstream to the Webb/Zapata county line. Protection of this stream segment is in response to the discovery of a surviving mussel population that had not been previously known. Beginning in 2002, this area produced several significant discoveries. Washboard, a commercial shell species thought extinct in the Rio Grande, was found alive here, as was yellow sandshell, also feared lost from the system. Additionally, the only confirmed living population of Texas hornshells in Texas was discovered, as were two living Mexican fawnsfoot, possibly the only two found alive in half a century (Howells 2003, 2004, 2005; Strenth et al. 2004). Within the Rio Grande drainage of Texas, nearly all of the original mussel fauna has been lost. The number remaining in this sanctuary are, in some cases, the only survivors. These assemblages will be needed as brood stock to rebuild other populations throughout the system. Commercial harvest of the few surviving Rio Grande washboards or shell collectors taking Texas

hornshell or Mexican fawnsfoot mussels could easily eliminate any of these from this system.

Adopted new §57.157(e) allows a person with a valid fishing license (or a resident exempt from licensing) to harvest not more than 25 pounds per day of whole mussels and clams or 12 pounds of mussel and clam shells, as is specifically authorized by statute (Parks and Wildlife Code, §78.005).

Adopted new §57.157(f) establishes the criteria for the issuance of a commercial mussel and clam fisherman's license. Beginning in license year 2006-07, a commercial mussel and clam fisherman's license would be available only to a person who held a commercial mussel and clam fisherman's license at any time between September 1, 2003 and May 1, 2006 and who continues to purchase a commercial mussel and clam fisherman's license each year thereafter. The department reviewed historical license purchases and noted that 10 of the 13 persons currently holding a commercial mussel and clam fisherman's license also purchased a license between September 1, 2003 and August 31, 2005. In limiting the availability of the special commercial license to persons who have purchased a commercial mussel and clam fisherman's license within the specified timeframe, the department's intent is to cap commercial mussel harvest at current levels without inflicting hardship on persons currently engaged in commercial mussel harvest. Commercial harvest of freshwater mussels in Texas has been relatively intense at times, (e.g., 488 commercial licenses sold in 1996); however, pressure during the last several years has declined considerably in response to a contracting market. Only 11 resident and non-resident mussel harvest licenses were sold in 2005. The department sold no shell-buyer licenses last year, leading to the conclusion that commercial activity involving mussel shell is at or near historic lows, which is confirmed by anecdotal information from the regulated community. At the present time, the commercial harvest of mussels and clams (within specified size limits) in public waters is essentially unrestricted. Any recurrence of high demand, given the continued observed habitat degradation and documented decline in mussel populations, would subject mussel populations to unsustainable increases in additive harvest pressure. Mussels are very long-lived animals, some living over 100 years, and are very slow-growing. Some species valued in commercial trade take as long as 10 years to reach the size at which they may be legally harvested. Therefore, it is axiomatic that mussels do not recover quickly from over harvest or reductions in populations caused by environmental degradation. Failure to acknowledge the adverse impact of overharvest could lead to more serious biological problems and potential listing activities by the federal government.

Another purpose of this adopted subsection is to furnish the department with resource location and harvest data upon which to base management and protection strategies. The new subsection requires all persons collecting under a commercial license to keep a daily log and submit an annual report to the department, detailing the number and species of mussels and clams collected by the licensee and allowing for the department to require additional information about significant mussel populations encountered by the licensee. Thus, the new rule will help manage mussels, and will minimize cost and avoid unnecessary duplication by using commercial collectors to assist the department in monitoring efforts, allowing the department to coordinate and allocate various department assets in the most productive manner. The adopted subsection also would require licensees to be in physical possession of the license while engaged in take and sale of mussels, and would allow the licensee to be assisted by other persons, provided the licensee is present and is the only person actually disturbing mussel beds. These provisions would enhance enforcement by assuring that the cap on licenses is not avoided by having multiple individuals operate under one license.

Adopted new §57.157(g) allows the sale of jewelry and collectibles made from lawfully taken clamshell and pearls. This provision would allow continuation of a hobby that does not appear to deplete mussel populations overall.

REGULATORY IMPACT ANALYSIS

Although Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, does not apply to the rule, TPWD adopts the regulatory impact analysis provided in the rule proposal preamble, and finds that, compared to the alternative proposals considered and rejected, the rule will result in the best combination of effectiveness in obtaining the desired results and of economic costs not materially greater than the costs of any alternative regulatory method considered.

COMMENTS SUMMARY

At the TPW Commission meeting on August 24, 2006, two individual commenters, both of whom identified themselves as participants in the commercial mussel harvest industry, spoke in favor of adoption of the proposed rule. No written comments were received. No comments in opposition to the proposed rule were received from individuals or groups.

SUBCHAPTER B. MUSSELS AND CLAMS

31 TAC §57.157

STATUTORY AUTHORITY

Under Parks and Wildlife Code, Chapter 78, the Texas Parks and Wildlife Commission is authorized to regulate the taking, possession, purchase, and sale of mussels and clams; the quantity and size of mussels and clams that may be taken, possessed, sold, or purchased; and the times, places, conditions, and means and manner of taking mussels and clams. Under §78.006, the commission is required to consider the best scientific information available in determining measures to prevent the depletion of mussels and clams; measures to manage mussels and clams; measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and measures that will enhance enforcement.

Under Parks and Wildlife Code, §67.001, mussels are a nongame species by virtue of the fact that they are indigenous to Texas and are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species (except for the Ouachita rock pocketbook), alligators, marine penaeid shrimp, or oysters. Under Parks and Wildlife Code, §67.002, the department is required to "develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully." Under §67.003, the department is required to "conduct investigations of nongame fish and wildlife to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information." Under §67.0041, the department is authorized to issue licenses for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605786
Ann Bright
Chief of Staff
Texas Parks and Wildlife Department
Effective date: November 13, 2006
Proposal publication date: June 9, 2006
For further information, please call: (512) 389-4775

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31 TAC §57.157

STATUTORY AUTHORITY

Under Parks and Wildlife Code, §67.001, mussels are a nongame species by virtue of the fact that they are indigenous to Texas and are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species (except for the Ouachita rock pocketbook), alligators, marine penaeid shrimp, or oysters. Under Parks and Wildlife Code, §67.002, the department is required to "develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully." Under §67.003, the department is required to "conduct investigations of nongame fish and wildlife to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information." Under §67.0041, the department is authorized to issue licenses for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

§57.157. Mussels and Clams.

(a) General prohibition. It is unlawful for any person to take or possess mussels and clams except as provided under this subchapter.

(b) Size limits. No person may take or possess mussels or clams, including their shells, that can be passed through a ring with an inside diameter (I.D.) specified for the species, as follows:
Figure: 31 TAC §57.157(b)

(c) Means, and methods. Mussels and clams may be taken only by hand.

(d) Seasons, times, and places.

(1) It is unlawful for any person to take mussels and clams from 30 minutes after sunset to 30 minutes before sunrise of each day.

(2) Except for the stream segments and reservoirs listed in this paragraph, all public waters of the state are open to mussel and clam harvest.

(A) Big Cypress Creek from the Dam at Lake Bob Sandlin downstream to U. S. Highway 271 in Camp County.

(B) The Sabine River from the dam at Lake Tawakoni downstream to State Highway 19 in Rains and Van Zandt counties, from FM 14 to State Highway 155 in Smith, Upshur, and Wood counties and from State Highway 43 downstream to U.S. Highway 59 in Harrison and Panola counties.

(C) The Angelina River from its source in Rusk County to its confluence with the Neches River to and including B. A. Steinhagen Reservoir in Jasper County.

(D) The Neches River from the Dam at Lake B. A. Steinhagen downstream to its confluence with Pine Island Bayou in Orange County.

(E) The Trinity River from State Highway 7 in Leon and Houston counties downstream to State Highway 19 in Walker and Trinity counties.

(F) Live Oak Creek from U. S. Highway 290 west of Fredericksburg in Gillespie County downstream to the confluence of the Pedernales River in Gillespie County.

(G) The Brazos River from the dam at Possum Kingdom Reservoir in Palo Pinto County downstream to FM 2580 in Parker County.

(H) The Guadalupe River from Upper Guadalupe River Authority dam in Kerr County downstream Flat Rock Dam in Kerr County.

(I) The Concho River from the mouth of Kickapoo Creek downstream to the U. S. Highway 83 Bridge in Concho County.

(J) The San Saba River from FM 864 in Menard County downstream to the U. S. Highway 83 Bridge in Menard County.

(K) The Guadalupe River from the dam at Lake Wood in Gonzales County downstream to the confluence of the San Marcos River in Gonzales County.

(L) The San Marcos River from its source in Hays County downstream to the confluence with the Guadalupe River in Gonzales County.

(M) Pine Creek from its source in Lamar County to its confluence with the Red River in Red River County.

(N) Sanders Creek from its source in Fannin County to the confluence with the Red River in Lamar County.

(O) Elm Creek from its source downstream to the dam at Elm Creek Lake at Ballinger City Park in Runnels County.

(P) The Rio Grande from Columbia Bridge in Webb County downstream to the Webb/Zapata county line.

(e) Recreational bag limit. A person who possesses a valid fishing license or who is a resident and is exempt from licensing requirements under Parks and Wildlife Code, §46.002 may take or harvest from the public water of the state not more than 25 pounds a day of whole mussels and clams, or 12 pounds of mussel and clam shells.

(f) Resident and nonresident commercial licenses. Except as provided in subsection (g) of this section, no person may take any mussels, clams, or their shells from public water of the state for commercial purposes without a resident or nonresident commercial mussel and clam fisherman's license.

(1) A license for taking mussels, clams, or their shells from the public water of the state for commercial purposes may be obtained by completing and submitting an application to the department on a form supplied by the department.

(2) The license authorized by this subsection:

(A) is valid only for the license year for which it is issued; and

(B) may be obtained only by a person who:

(i) held a resident or nonresident commercial mussel and clam fisherman's license valid for the 2003-2004 or 2004-2005 license year or who obtained a commercial mussel and clam fisherman's license between September 1, 2005 and May 1, 2006; and

(ii) continues to purchase a resident or nonresident commercial mussel and clam fisherman's license every year thereafter.

(3) Holders of a resident or nonresident commercial mussel and clam fisherman's license shall maintain a daily log.

(A) The daily log shall be on a form supplied by the department and shall describe:

(i) the number and weight of each species of mussels or clams taken each day by the person;

(ii) the name of the stream or reservoir where the take occurred; and

(iii) the county of take.

(B) The department may request additional information concerning significant populations of mussels or clams encountered by a licensee.

(4) The daily log required by this subsection shall be kept current and shall be presented at the request of any department employee acting within the scope of official duties.

(5) Holders of resident or nonresident commercial mussel and clam fisherman's licenses shall complete and submit an annual report to the department by December 31 of each year. The annual report shall be on a form supplied or approved by the department.

(6) The department may refuse to issue a resident or nonresident commercial mussel and clam fisherman's license to any person who fails to comply with the recordkeeping requirements of this section.

(7) A person engaging in any activity involving the take and sale of mussels for commercial purposes, including offering for sale or export of mussels or clams shall physically possess the resident or nonresident commercial mussel and clam fisherman's license on his or her person during all such activities.

(8) A holder of a resident or nonresident commercial mussel and clam fisherman's license may be assisted by other persons, provided the licensee is present and is the only person physically disturbing mussel or clam beds.

(g) Exception. A person who possesses a valid fishing license or who is a resident and is exempt from licensing requirements under Parks and Wildlife Code, §46.002, may take or harvest from the public water of the state not more than 25 pounds a day of whole mussels and clams, or 12 pounds of mussel and clam shells, for use and sale in jewelry and collectibles.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605787

Ann Bright
Chief of Staff
Texas Parks and Wildlife Department
Effective date: November 13, 2006
Proposal publication date: June 9, 2006
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER A. JUDICIARY DEPARTMENT PROCEDURES

34 TAC §§5.1, 5.4, 5.6, 5.8

The Comptroller of Public Accounts adopts amendments to §5.1, concerning definitions, §5.4, concerning claims for additional compensation for active, retired, and former district judges, §5.6, concerning expense accounts of district judges and district attorneys, and §5.8, concerning payroll procedures: district judges, criminal district judges, district attorneys, criminal district attorney. Section 5.1 is adopted with one change to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7097). Sections 5.4, 5.6 and 5.8 are adopted without change and will not be republished.

The adopted amendments relate to procedures for paying claims made by certain judges and criminal, district, and county attorneys from the Comptroller's Judiciary Section appropriation. Section 5.1 is amended to update the definition of "official mileage guide" to mean the mileage guide currently adopted by the comptroller's office. A minor change in §5.1 is necessary to correct the definition of "official mileage guide" in order to reference the "Texas Mileage Guide" instead of the "State of Texas Travel Allowance Guide" as set out in the published rule. Section 5.4 is amended to update the statutory reference from the Texas Civil Statutes to the Government Code. Section 5.6 is amended for clarity by adding "travel" to the title and deleting reference to outdated expense items in subsection (a)(1)(F) and subsection (c). Section 5.8 is amended to update the reference to the Internal Revenue Service form 204 which is now IRS Form W-4.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Government Code, §§24.019, 43.004 and 74.061; and Code of Criminal Procedure, Articles 24.28 and 35.27.

The amendments implement Government Code, §660.043(c), §24.019; and Code of Criminal Procedure, Articles 24.28 and 35.27.

§5.1. Definitions.

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

(1) Comptroller--The comptroller of public accounts of the State of Texas.

(2) Designated headquarters--The city limits of the town in which a person's headquarters are located.

(3) Official mileage guide--The "Texas Mileage Guide" (available in print and electronically) issued under Government Code, §660.043(c). It is intended as a guide for state employees to use in the calculation of mileage while on state business.

(4) Payroll period--Designates the time period for which full-time state employees receive payment for services to the state.

(5) State pay warrant--A warrant issued by the comptroller payable at the treasury for services rendered to the state.

(6) Travel voucher--An accounting document used to implement payment to state officials and employees for travel expenses incurred in the discharge of state business.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605916
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
For further information, please call: (512) 475-0387

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34 TAC §5.9

The Comptroller of Public Accounts adopts the repeal of §5.9, concerning travel expenses--judicial conferences, without changes to the proposed text as published in the September 1, 2006, issue of the *Texas Register* (31 TexReg 7098).

The section is being repealed because the General Appropriations Act provision upon which the rule is based has expired. The substance of the current §5.9, as it applies to district judges and district attorneys, will be included in §5.6, concerning Travel and Expense Accounts of District Judges and District Attorneys.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Government Code, §403.011.

The repeal implements Government Code, §§24.019, 43.004, and 74.025.

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

Filed with the Office of the Secretary of State on October 30, 2006.

TRD-200605917
Martin Cherry
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Comptroller of Public Accounts
Effective date: November 19, 2006
Proposal publication date: September 1, 2006
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER D. SUMMARY SUSPENSION

37 TAC §35.52

The Texas Department of Public Safety adopts new §35.52, concerning Summary Action Following Convictions, without changes to the proposed text as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6623).

Adoption of the new section is necessary in order to clarify the board's authority to act summarily when notified of a conviction.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605778
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: November 13, 2006
Proposal publication date: August 25, 2006
For further information, please call: (512) 424-2135

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SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §35.76

The Texas Department of Public Safety adopts the repeal of §35.76, concerning Investigations by Security Department of Private Businesses, without changes to the proposed text as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6623).

Repeal of the section is necessary as the statutory provision on which it was based, and which it was intended to clarify, has been repealed (subsection "e" of §1702.323 of the Occupations Code).

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to

adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605776
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: November 13, 2006
Proposal publication date: August 25, 2006
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SUBCHAPTER F. ADMINISTRATIVE HEARINGS

37 TAC §35.93

The Texas Department of Public Safety adopts an amendment to §35.93, concerning Penalty Range, without changes to the proposed text as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6624).

Adoption of the amendment to §35.93 is necessary in order to clarify the scope of the fee schedule's application.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605777
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: November 13, 2006
Proposal publication date: August 25, 2006
For further information, please call: (512) 424-2135

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SUBCHAPTER P. MISCELLANEOUS REGULATED BUSINESSES

37 TAC §35.242

The Texas Department of Public Safety adopts new §35.242, concerning Miscellaneous Regulated Businesses, with changes to the proposed text as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6624) and will be republished.

The change to the section adds an additional class of license (Class C) required of those persons who engage in the business of recovering unclaimed or abandoned property. This change is based on discussions with industry representatives.

Adoption of the new section is necessary in order to clarify the application of Chapter 1702 of the Occupations Code to those individuals who engage in the business of the retrieval of lost or unclaimed property through the use of non-public information. In addition, the title of the subchapter is also changed in order to more accurately describe the rules within that subchapter.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

§35.242. Investigations Related to Unclaimed Property.

Any person who engages in the business of recovering unclaimed or abandoned property, or who accepts employment to obtain or furnish information related to such property, and seeks to recover such property or information through any means other than the review of public information as defined in Chapter 552 of the Texas Government Code, is acting as an investigations company, as defined in §1702.104 of the Act, and consequently is required to obtain a Class A or Class C Investigations Company License.

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

Filed with the Office of the Secretary of State on October 24, 2006.

TRD-200605779
Thomas A. Davis, Jr.
Director
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Effective date: November 13, 2006
Proposal publication date: August 25, 2006
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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.51

The Texas Board of Criminal Justice adopts amendments to Title 37, Part 6, Chapter 151, General Provisions, §151.51, Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines, without changes to the text as proposed in the July 28, 2006, issue of the *Texas Register* (31 TexReg 5904).

These revisions are necessary to accurately reflect eligibility guidelines for custodial officer certification and hazardous duty pay.

No comments were received.

The amendment is adopted under Texas Government Code, Chapter 659, Subchapter L and §813.506.

Cross Reference to Statutes: Texas Government Code, §§508.001, 811.001, 815.505, and the General Appropriations Act.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605912
Melinda H. Bozarth
General Counsel
Texas Department of Criminal Justice
Effective date: November 16, 2006
Proposal publication date: July 28, 2006
For further information, please call: (512) 463-0422

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CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION
SUBCHAPTER B. CORRECTIONAL CAPACITY

37 TAC §152.31

The Texas Board of Criminal Justice adopts new rule Title 37, Part 6, Chapter 152, Correctional Institutions Division, Subchapter B, Correctional Capacity, §152.31, Addition to the Skyview Unit Capacity with one change to the text as proposed in the July 21, 2006, issue of the *Texas Register* (31 TexReg 5795).

The purpose of the new rule is to ensure inpatient psychiatric treatment of female offenders, which has the potential to positively impact public safety at the time of their release by preventing the recidivism of these offenders.

Comments were received on August 10, August 14 and September 1, 2006 from three offenders at the Skyview Unit. No comments were received from the public.

Comment: One offender expressed concern that she would no longer be single celled.

Response: Texas Government Code, §501.113 provides that offenders diagnosed with psychiatric illness be housed in single cells if recommended by their individual treatment plan. The Skyview Unit will still have 16 single cells available for housing. In addition, patients can still be single celled even if there are two beds in a cell. Finally, an additional 20 single cells are available at the Mountain View Unit for crisis management. No changes to the rule are warranted.

Comment: One offender noted that it was not clear for which building the increase was proposed. He also expressed concern that the second bed would result in a double bunk and offenders on psychotropic medication might fall off the top bunk.

Response: Double bunking will not occur. The rule has been revised by deleting the reference to Pod C so the Agency can add the bunks to whatever building and pod it deems appropriate and to allow the Agency the flexibility to re-designate the buildings as it deems necessary.

Comment: One offender stated that the unit has an overcrowding situation, but recognized the need to make room. This offender proposed that A-pod be converted for diagnostic, evaluation, and acute care; that offenders with HIV be single celled; that dangerous people be put on a building unit like Skyview I, II, III, or IV; and that offenders who are an escape risk or do not take their medications be placed in building V. The offender stated that the single cells are too small, and dormitory style housing should be considered for the elderly and those in need of chronic care.

Response: The single rooms in building V exceed the standard of 80 square feet for general population double occupancy cells. The room is large enough to accommodate another bed. No changes to the rule are warranted.

The new rule is adopted under Texas Government Code, §§499.102, 499.104, and 499.105.

Cross Reference to Statutes: Texas Government Code, §§499.103, 499.106, and 499.107.

§152.31. Addition to the Skyview Capacity.

At the Skyview Unit, an additional bed in 34 inpatient mental health cells increases the capacity to 562.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605913
Melinda H. Bozarth
General Counsel
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Effective date: November 16, 2006
Proposal publication date: July 21, 2006
For further information, please call: (512) 463-0422

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.25

The Texas Board of Criminal Justice adopts amendments to Title 37, Part 6, Chapter 163, Community Justice Assistance Division Standards, Section §163.25, Community Justice Councils, Task Forces and Plans without change to the text as proposed in the July 28, 2006, issue of the *Texas Register* (31 TexReg 5906).

These revisions are necessary to provide the public notice on the specific requirements of community justice councils, task forces and plans.

No comments were received.

The amendment is adopted under Texas Government Code, §509.003 and §509.007.

Cross Reference to Statutes: Texas Government Code, §76.002 and §76.003.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605914
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General Counsel
Texas Department of Criminal Justice
Effective date: November 16, 2006
Proposal publication date: July 28, 2006
For further information, please call: (512) 463-0422

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER D. SCHOOL INVESTIGATIONS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.409 and the repeal of §700.522, without changes to the proposed text published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6190). Senate Bill 6, 79th Legislature, Regular Session, 2005, revised the Texas Family Code §261.302 to require DFPS to tape all interviews with children that DFPS conducts during an investigation. As a result, DFPS is repealing §700.522, which lists the good cause exceptions to audiotaping or videotaping interviews with children. Also, DFPS is revising §700.409 to delete the cross reference to §700.522.

The rule changes and repeal will function by ensuring that department interviews of children during investigations will be audiotaped or videotaped, thereby preserving evidence to support actions needed to keep children safe.

No comments were received regarding adoption of the proposal.

40 TAC §700.409

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

The amendment implements Texas Family Code §261.302, as amended by §1.21 of Senate Bill 6, 79th Legislature, Regular Session.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605851
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2006
Proposal publication date: August 4, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

40 TAC §700.522

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

The repeal implements Texas Family Code §261.302, as amended by §1.21 of Senate Bill 6, 79th Legislature, Regular Session.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605852
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2006
Proposal publication date: August 4, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

40 TAC §700.519

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.519, without changes to the proposed text as published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6191). Prior to the 79th Legislature, Texas Family Code §261.310 required DFPS to enact rules and adopt voluntary standards for investigators to encourage professionalism

and consistency in the investigation of suspected child abuse and neglect. Senate Bill 6, 79th Legislature, Regular Session, 2005, revised this statute so the standards are no longer voluntary, require additional types of training, and require DFPS to preserve certain types of evidence (original recordings of intake telephone calls, original worker case notes, videotapes, and audiotapes). As a result, DFPS is deleting references to the standards being voluntary, to require the additional training in specific subjects, and to require the preservation of specific types of evidence for a year. In addition, the distinction between investigations performed by Child Protective Services and those performed pursuant to Texas Family Code §261.401 is clarified. Also, paragraph (4) is amended to reflect the current best practices to minimize the number of interviews with a child abuse victim, while ensuring interviews are thorough and professional. The cumulative effect of these changes will be to improve standards, training and protocols for child abuse investigations.

The amendment will function by enhancing the protection of children and the integrity of the investigation by setting standards for training child abuse investigators, taping of interviews with children, and preserving the evidence.

No comments were received regarding adoption of the amendment.

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

The amendment implements Texas Family Code §261.310, as amended by §1.21 of Senate Bill 6, 79th Legislature, Regular Session.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605857
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2006
Proposal publication date: August 4, 2006
For further information, please call: (512) 438-3437

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CHAPTER 705. ADULT PROTECTIVE SERVICES
SUBCHAPTER N. PUBLIC AWARENESS

40 TAC §705.8101

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §705.8101, without changes to the proposed text published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6199). The justification for the new section is to outline a statewide pubic awareness campaign strategy, as required by Senate Bill 6, 79th Legislature, Regular Session, 2005.

The new section will function by educating the public regarding abuse, neglect, and exploitation of vulnerable adults and reducing the incidences of maltreatment.

No comments were received regarding adoption of the new section.

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

The new section implements §2.05 of Senate Bill 6, 79th Legislature, Regular Session, 2005, and §40.0527 of the HRC.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605850
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2006
Proposal publication date: August 4, 2006
For further information, please call: (512) 438-3437

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CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.11, 745.201, 745.243, 745.273, 745.275, 745.321, 745.323, 745.325, 745.341, 745.343, 745.345, 745.347, 745.349, 745.351, 745.385, 745.435, 745.501, 745.505, 745.507, 745.509, 745.519, 745.8307, 745.8605, 745.8613, 745.8683, 745.8807, 745.8835, 745.8837, 745.8843, 745.8855, and 745.8875; new §§745.277, 745.279, 745.281, 745.401, 745.403, 745.405, 745.407, 745.437, 745.901, 745.903, 745.905, 745.907, 745.909, 745.911, 745.913, 745.915, 745.8419, 745.8425, 745.8661, and 745.8841; and the repeal of §§745.401, 745.403, 745.405, 745.407, 745.409, 745.8419, and 745.8841, in its Licensing chapter. The amendments to §§745.243, 745.8605, 745.8837, and 745.8855; and new §§745.907, 745.911, and 745.913 are adopted with changes to the proposed text published in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3849). The amendments to §§745.11, 745.201, 745.273, 745.275, 745.321, 745.323, 745.325, 745.341, 745.343, 745.345, 745.347, 745.349, 745.351, 745.385, 745.435, 745.501,

745.505, 745.507, 745.509, 745.519, 745.8307, 745.8613, 745.8683, 745.8807, 745.8835, 745.8843, and 745.8875; new §§745.277, 745.279, 745.281, 745.401, 745.403, 745.405, 745.407, 745.437, 745.901, 745.903, 745.905, 745.909, 745.915, 745.8419, 745.8425, 745.8661, and 745.8841; and the repeal of §§745.401, 745.403, 745.405, 745.407, 745.409, 745.8419, and 745.8841 are adopted without changes to the proposed text and will not be republished.

The changes are the result of legislation passed during the 79th Legislature, Regular Session, 2005, and changes necessary to provide clarification to existing rules.

Legislated changes are the result of requirements stated in House Bill (H.B.) 183 and Senate Bill (S.B.) 6, passed by the 79th Legislature, Regular Session, 2005 (hereafter referred to as S.B. 6). These laws require the Executive Commissioner to adopt or amend regulated child-care facility rules relating to (1) a new definition for noncontiguous facilities; (2) controlling persons; (3) denial of permit applications submitted by an entity who has had a license revoked in another state; (4) invalidating agency home verifications if a public hearing was not held as required; and (5) changing the term "provisional license" to "initial license." Clarifications to existing rules address exemptions to regulation, public hearings, permit issuance, permit suspension due to nonpayment of fees, adverse action, and due process.

The sections will function by enhancing the protection of children in out-of-home care and improving the quality of regulated child care.

During the public comment period, DFPS received comments from Central Texas Youth Services and a child-care provider. A summary of the comments and responses follows:

Comment concerning *§745.243, What does a completed application for a permit include?* One comment was received regarding §745.243(2)(H). The commenter stated that requiring a high school diploma or its equivalent in order to be registered is not needed and is irrelevant. The same commenter asked how they are to obtain such a document in order to verify the education, and if currently regulated operations are grandfathered. The commenter added this is discriminatory.

Response: DFPS is not revising this section as a result of comment. However, DFPS is revising paragraphs (4)(H) and (6)(F) to correspond with changes in the new minimum standards.

Comment concerning *§745.275, What are the specific requirements for a public notice and hearing?* DFPS received one comment regarding holding a hearing no later than one month after the date the application is accepted. The commenter stated that if DFPS denies the application based upon the results of the public hearing, the owner of the facility has lost the investment of remodeling or new construction. This commenter recommended DFPS alter the proposed rules to allow an application to be provisionally approved based on architectural renderings of remodeling or new construction followed by analysis of the public hearing requirement. Should the provisional application continue to be approved, then final inspection of the completed facility could result in any necessary modifications to meet full compliance and then full application approval.

Response: DFPS is adopting this section without change. The requirement to hold a public hearing no later than one month after the date the application is accepted by DFPS is in current rule; the amendment to this rule does not alter that requirement. DFPS staff are responsible for providing information about the regulatory process and technical assistance to applicants as well as permit holders. Potential applicants are required to attend orientation prior to submitting an application. Licensing staff review floor plans with potential applicants and permit holders who are considering remodeling. DFPS staff will discuss compliance issues and offer technical assistance. Only certain residential operations must comply with public notice and hearing requirements. At orientation, DFPS staff provide information regarding the public hearing in order to help the applicant be prepared. Handouts include information regarding steps that should be taken prior to purchasing property, investing money, hiring staff, and submitting an application.

Human Resources Code (HRC), §42.046, requires DFPS staff to investigate after receipt of an application. DFPS staff must complete the investigation prior to issuance. HRC, §42.048 requires Licensing staff to issue a license after determining that an applicant has satisfied all requirements.

Comments concerning *§745.321, What will Licensing do after accepting my application?* One commenter stated that the facility must already be remodeled or built, in order to be inspected by Licensing. Only after the inspection will DFPS decide to issue or deny. If DFPS decides to deny the application, the owner has lost the investment of remodeling or new construction. The commenter recommended DFPS alter the proposed rules to allow an application to be provisionally approved based on architectural renderings of remodeling or new construction followed by analysis of the public hearing requirement. Should the provisional application continue to be approved, then final inspection of the completed facility could result in any necessary modifications to meet full compliance and then full application approval.

Response: DFPS is adopting this rule without change. The proposed amendment to this rule only changes a time frame to decide on an application from 60 days to two months, in order to correspond with HRC, §42.046.

DFPS staff are responsible for providing information about the regulatory process and technical assistance to applicants as well as permit holders. Potential applicants are required to attend orientation prior to submitting an application. Licensing staff review floor plans with potential applicants, as well as permit holders, who are considering remodeling. DFPS staff will discuss compliance issues and offer technical assistance.

HRC, §42.046, requires DFPS staff to investigate after receipt of an application. DFPS must complete the investigation prior to issuance. HRC, §42.048 requires Licensing staff to issue a license after determining that an applicant has satisfied all requirements.

In addition, DFPS is revising the following rules:

§745.907, What are the consequences of Licensing designating me as a controlling person? DFPS is revising subsection (a) to further clarify that the designation of a controlling person only applies to residential child-care licensing. Subsection (b) is clarified to reflect that a designated controlling person will not be "sustained" until after the revocation of an operation is final and the person's due process rights are exhausted.

§745.911, In what other circumstances may I not employ someone because of his previous involvement with a residential child-care operation? DFPS is changing the word "sustained" to "final" to reflect the language in S.B. 6 and Licensing policy when

referring to the completion of due process for the denial of a permit.

§745.913, When does Licensing check whether someone is ineligible for employment at my residential child-care operation? DFPS is deleting the word "form" because most background checks are completed online.

§745.8605, When can Licensing take remedial action against me? To conform with the intent of S.B. 6, DFPS is clarifying this rule to reflect that the new actions where we can impose remedial actions only apply to residential childcare operations. The language is also being clarified to indicate that remedial action can be taken before your designation as a controlling person is sustained, and within five years after the designation is sustained.

§745.8837, Who can request the due process hearing? DFPS is revising this rule to clarify that a controlling person may request a due process hearing for an administrative penalty that is imposed against him.

§745.8855, Can I waive my right to a due process hearing? DFPS is clarifying this rule by referencing §745.907, which explains that the designation of a controlling person cannot become final until the revocation of an operation is final.

SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

DIVISION 2. DEFINITIONS FOR THE LANGUAGE USED IN THIS CHAPTER

40 TAC §745.11

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

The amendment implements HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605828
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER D. APPLICATION PROCESS

DIVISION 1. DEFINITIONS

40 TAC §745.201

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

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605829
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 3. SUBMITTING THE APPLICATION MATERIALS

40 TAC §745.243

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

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.243. What does a completed application for a permit include?

Application forms vary according to the type of permit. We will provide you with the required forms. Contact your local Licensing office for additional information. The following table outlines the requirements for a completed application:
Figure: 40 TAC §745.243

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605830
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 4. PUBLIC NOTICE AND HEARING REQUIREMENTS FOR RESIDENTIAL CHILD-CARE OPERATIONS

40 TAC §§745.273, 745.275, 745.277, 745.279, 745.281

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

The amendments and new sections implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605831
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 6. REVIEWING THE APPLICATION FOR COMPLIANCE WITH MINIMUM STANDARDS, RULES, AND STATUTES

40 TAC §§745.321, 745.323, 745.325

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

The amendments implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605832
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 7. THE DECISION TO ISSUE OR DENY A PERMIT

40 TAC §§745.341, 745.343, 745.345, 745.347, 745.349, 745.351

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

The amendments implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605833
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 8. DUAL AND MULTIPLE PERMITS

40 TAC §745.385

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605834
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 9. REAPPLYING FOR A PERMIT

40 TAC §§745.401, 745.403, 745.405, 745.407, 745.409

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

The repeals implement Senate Bill 6, 79th Legislature, Regular Session, 2005.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605835
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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40 TAC §§745.401, 745.403, 745.405, 745.407

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

The new sections implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605836
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 10. RELOCATION OF OPERATION

40 TAC §745.435, §745.437

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

The amendment and new section implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605837
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER E. FEES

40 TAC §§745.501, 745.505, 745.507, 745.509, 745.519

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

The amendments implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605838
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER G. RESIDENTIAL CONTROLLING PERSON AND CERTAIN EMPLOYMENT PROHIBITED

40 TAC §§745.901, 745.903, 745.905, 745.907, 745.909, 745.911, 745.913, 745.915

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

The new sections implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.907. What are the consequences of Licensing designating me as a controlling person?

(a) If we designate you as a controlling person:

(1) We may not issue you a permit to operate a residential child-care operation for five years after our designation is sustained;

(2) You may not be the controlling person at a residential child-care operation for five years after the designation is sustained; and

(3) A residential child-care operation may not employ you for five years after the designation is sustained.

(b) Our designation of you as a controlling person is sustained when the revocation is final and:

(1) You have waived your due process rights regarding the designation; or

(2) The designation is upheld after you have exhausted your due process rights.

§745.911. In what other circumstances may I not employ someone because of his previous involvement with a residential child-care operation?

(a) You may not employ a person in any capacity to work in a residential child-care operation if we denied the person a permit because the:

(1) Person is barred from operating a residential child-care operation in another state; or

(2) Person's permit to operate a residential child-care operation in another state was revoked.

(b) The person is prohibited from employment in a residential child-care operation on or after the denial referred to in subsection (a) of this section is final.

(c) If the person is no longer barred from operating in the other state or is subsequently allowed to operate in the other state, then you may employ the person if approved by Licensing.

§745.913. When does Licensing check whether someone is ineligible for employment at my residential child-care operation?

(a) When you submit a Controlling Person Form to us, we will check to see if any person listed on the form is a sustained controlling person or if the person was denied a residential permit due to compliance history in another state.

(b) When you submit a Request for Criminal History and Central Registry Check for staff as required under §745.615 of this title (relating to On whom must I request background checks?), we will check whether the person is ineligible for employment at your operation for reasons noted under §745.907 of this title (relating to What are the consequences of Licensing designating me as a controlling person?) or §745.911 of this title (relating to In what other circumstances may I not employ someone because of his previous involvement with a residential child-care operation?).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605839
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER J. WAIVERS AND VARIANCES FOR MINIMUM STANDARDS

40 TAC §745.8307

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

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605840
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS
DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

40 TAC §745.8419

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

The repeal implements HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605841
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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40 TAC §745.8419, §745.8425

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

The new sections implement HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605842
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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

40 TAC §745.8605, §745.8613

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

The amendments implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.8605. When can Licensing take remedial action against me?

We can impose a remedial action any time we find one of the following:

(1) You supplied false information or made false statements during the application process;

(2) You falsified or permitted to be falsified any record or other materials that are required to be maintained by Licensing minimum standards;

(3) You do not have the required insurance;

(4) You do not pay the required fees;

(5) A single serious deficiency of minimum standards, rules, or laws, including a finding of abuse or neglect or background check matches;

(6) Several deficiencies that create an endangering situation;

(7) A repetition or pattern of deficiencies;

(8) An immediate threat or danger to the health or safety of children;

(9) You or someone working at your operation refuses, prevents, or delays our ability to conduct an inspection and/or investigation;

(10) A failure to timely report necessary changes to Licensing;

(11) A failure to comply with any restrictions or limits placed on your permit;

(12) A failure to meet the terms and conditions of your evaluation or probation;

(13) A failure to comply with minimum standards, rules, or laws at the end of the suspension period;

(14) On or after September 1, 2005:

(A) We revoked your permit to operate a residential child-care operation; or

(B) You voluntarily closed your residential child-care operation or relinquished your permit after receiving notice of our intent to take adverse action against your permit or that we were taking adverse action against your permit;

(15) You apply for a permit to operate a residential child-care operation after we designate you as a controlling person, but before the designation is sustained;

(16) It is within five years since your designation as a controlling person has been sustained;

(17) You apply for a permit to operate a residential child-care operation, and you are barred from operating a residential child-care operation in another state;

(18) You apply for a permit to operate a residential child-care operation, and your permit to operate a residential child-care operation in another state was revoked;

(19) You apply for a permit to operate a residential child-care operation and:

(A) You fail to comply with public notice and hearing requirements as set forth in §745.277 of this title (relating to What will happen if I fail to comply with public notice and hearing requirements?); or

(B) The results of the public hearing meet one of the criteria set forth in §745.279 of this title (relating to How may the results of a public hearing affect my application for a permit or a request to amend my permit?);

(20) You operate a residential child-care operation, and that operation discharges or retaliates against an employee, client, resident, or other person because the person or someone on behalf of the person files a complaint, presents a grievance, or otherwise provides in good faith, information relating to the misuse of restraint or seclusion at the operation;

(21) A reason set forth in Human Resources Code, §42.078; or

(22) A failure to pay an administrative penalty under Human Resources Code, §42.078.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605843
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 3. ADVERSE ACTIONS

40 TAC §745.8661

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

The new section implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605844
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 4. JUDICIAL ACTIONS

40 TAC §745.8683

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

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605845
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER M. ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS

DIVISION 1. ADMINISTRATIVE REVIEWS

40 TAC §745.8807

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

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605846
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 2. DUE PROCESS HEARINGS

40 TAC §§745.8835, 745.8837, 745.8841, 745.8843, 745.8855

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

The amendments and new section implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.8837. Who can request the due process hearing?

(a) When we have designated a person as a perpetrator of child abuse or neglect or determined that he is an immediate threat or danger to the health or safety of children, only he can request the due process hearing.

(b) When we are taking an adverse action against an operation or determine an operation is an immediate threat or danger to the health or safety of children, only the governing body, director, or the designee can request the due process hearing.

(c) A licensed administrator can request a due process hearing when we suspend, revoke, or deny his administrator's license.

(d) A controlling person of a residential child-care operation can request a due process hearing if an administrative penalty is imposed against him.

(e) A person that we designate as a controlling person of a residential child-care operation can request a due process hearing for that designation.

(f) The governing body, director, or the designee of the operation can request a due process hearing for an administrative penalty imposed against a permit holder.

§745.8855. Can I waive my right to a due process hearing?

(a) You will waive your right to a due process hearing by not requesting one according to §745.8839 of this title (relating to How do I request a due process hearing? and §745.8841 of this title (relating to Where do I send the written request for a due process hearing?). If you waive your right to a due process hearing by not requesting one according to the rules, our decision and/or action will be effective on the date after your time period for requesting a due process hearing expires unless the due process hearing was offered due to the designation of a controlling person. If so, see §745.907(b) of this title (relating to (What are the consequences of Licensing designating me as a controlling person?) to determine when the action is effective.

(b) If you want to expedite the decision and/or action, you may send us a written waiver of your right to the due process hearing be-

fore the 30-day timeframe has expired. Our decision or action will be effective on the date that we receive your written waiver.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605847
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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40 TAC §745.8841

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

The repeal implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605848
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 3. OPERATIONS PENDING THE ADMINISTRATIVE REVIEW AND DUE PROCESS HEARING

40 TAC §745.8875

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

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605849
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §745.21 and §745.37 and new §745.9097, with changes to the proposed text published in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4175). The amendments to §§745.35, 745.117, 745.4151, 745.8901, 745.8931, 745.8933, 745.8951, 745.8955, 745.8957, 745.8959, 745.8961, 745.8963, 745.8965, 745.8967, 745.8969, 745.8991, 745.8993, 745.8995, 745.8997, 745.8999, 745.9001, 745.9003, 745.9005, 745.9007, and 745.9031; the repeal of §§745.4001, 745.4003, 745.4021, 745.4023, 745.4027, 745.4029, 745.4061, 745.4069, 745.4071, 745.4073, 745.4077, 745.4079, 745.4091, 745.4093, 745.4095, 745.4097, 745.4099, 745.4101, 745.4103, 745.8903, 745.8905, 745.8907, 745.8909, 745.8911, 745.8913, 745.8953, 745.9009, 745.9011, 745.9013, 745.9035, 745.9037, 745.9039, 745.9041, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, and 745.9071; and new §§745.8903, 745.8905, 745.8907, 745.8909, 745.8911, 745.8913, 745.8915, 745.8917, 745.8919, 745.8921, 745.8935, 745.9009, 745.9011, 745.9013, 745.9015, 745.9017, 745.9019, 745.9021, 745.9023, 745.9035, 745.9037, 745.9039, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071,745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9099, and 745.9100 are adopted without changes to the proposed text and will not be republished. The changes are the result of (1) legislation passed during the 79th Legislature, Regular Session, 2005; (2) changes necessary to complement the proposed minimum standards in Chapter 748, General Residential Operations and Residential Treatment Centers; Chapter 749, Child-Placing Agencies; and Chapter 750, Independent Foster Homes; and (3) changes necessary to provide clarification to existing rules.

Legislated changes are the result of requirements stated in Senate Bill (S.B.) 6, passed by the 79th Legislature, Regular Session, 2005 (hereafter referred to as S.B. 6). Sections 1.111 to 1.121 of S.B. 6 made significant revisions to Human Resources Code (HRC), Chapter 43, Regulation of Child-Care and Child-Placing Agency Administrators. These sections of

S.B. 6 added the Child-Placing Agency Administrator License (CPAAL), changed the minimum educational requirement for a Child-Care Administrator's License (CCAL) to a bachelor's degree, doubled the required training hours for renewal of an Administrator's License, and added to the law several conditions that may result in remedial action regarding an Administrator's License. The revisions to Subchapter N of this chapter (relating to Administrator Licensing) complement these changes in the law, while also introducing some needed rule changes/additions, such as rules addressing persons who hold both licenses and a rule regarding a person's inability to renew a license due to active military duty.

Changes necessary to complement the minimum standards in Chapters 748, 749, and 750 include the repeal of many of the rules of Subchapter H of this chapter (relating to Residential Child-Care Minimum Standards). These rules are now in the minimum standards chapters. The changes include revising the definition of "minimum standards" to reflect the new minimum standards chapters. They also include changes in the list of residential child-care operation types, as many will now fall under the license type of "general residential operation" rather than more restrictive license types such as "emergency shelter" or "halfway house." These changes also resulted in replacing the previous Subchapter O with stand-alone rules regarding the qualifications, guidelines, and requirements for conducting, evaluating, and approving independent pre-adoptive home screenings and independent post-placement adoptive reports. For individuals performing these home screenings and adoptive reports, having the rules in one place is more user friendly and no judgment calls have to be made regarding what rules are applicable.

The sections will function by enhancing the health, safety, and welfare of children in residential child care and improving the quality of residential child care.

During the public comment period DFPS received comments from Christian Homes of Abilene; Handle with Care; 115 child-care providers from Knowledge Learning Corporation, Almost Angels Christian Academy, Childtime Learning Centers, Stepping Stones Learning Center, Linda's Little Angels Learning Center, Kiddie Koop Enrichment Center, Luv 'N' Care Learning Center, Creative Academy Inc., Education Connection, El Paso Children's Day Care, Concorida Learning Center, Dallas North Montessori School, Children's Courtyard Centers; a director of an unknown center; a lobbyist for the Texas Licensed Child Care Association; and three individuals. A summary of the comments and responses follows:

Comment concerning *§745.35, What is residential child care?*

One commenter suggested specifically including child-placing agencies and maternity homes in the definition of residential child care.

Response: DFPS is adopting this section without change. The definition in this rule is taken directly from §1.90 of S.B. 6. This definition does include maternity homes and child-placing agencies, which are specifically listed as types of residential child-care operations in §745.37 of this title (relating to What types of operations does Licensing regulate?).

Comment concerning *§745.37, What specific types of operations does Licensing regulate?* One commenter suggested adding "during any calendar year" to the description of a maternity home in this rule.

Response: DFPS is adopting this section with a change to the maternity home description, which clarifies that the care for four or more women occur "within a period of 12 months," as specified in §249.001 of the Health and Safety Code.

Comments concerning *§745.117, Which programs of limited duration are exempt from Licensing regulation?* DFPS received 119 comments. The commenters stated that all children in out-of-home care or in any care need to be in regulated facilities and/or they do not want exemptions to regulation so that children are safe, thus putting all providers on a level playing field and affording all children the same opportunities for regulated care.

Response: DFPS is adopting this section without change. Chapter 42 of the Human Resources Code (HRC) requires regulation of a child-care facility, and it includes that certain child-care programs are exempt from licensure. The exemptions from licensure are included under HRC, §42.041. DFPS is amending only two of the eight exemptions listed in the table that was published for public comment. DFPS didn't receive specific comments regarding the proposed amendments. The amendments actually strengthen the two exemptions in order that Licensing regulates those child-care operations that operate outside specific boundaries added by the changes. The changes are to: paragraph (1), which is an exemption for short-term child day care programs offering care to children only when the parents are on the premise. The revision more closely mirrors the intent of HRC, §42.041(b)(3), by imposing specific boundaries; and paragraph (6), which clarifies that a respite care program that operates more than 40 days per year is subject to regulation. This amendment corresponds with rules in the residential child-care minimum standards.

Comment concerning *§745.8903, What is a child-placing agency administrator?* One commenter suggested that independent foster homes should be required to have Licensed Administrators.

Response: DFPS is adopting this section without change. Previously, independent foster family homes were never required to have Licensed Administrators; only independent foster group homes were required to have Licensed Administrators. S.B. 6, HRC Chapter 43, revised this requirement and independent foster group homes are no longer required to have Licensed Administrators.

In addition, DFPS is adopting §725.21 with a change to paragraph (12) to correct the title of §745.901. Section 745.9097 is adopted with a change to correct a typographical error. The correction of error was published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4674).

SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

DIVISION 3. DEFINITIONS FOR LICENSING

40 TAC §745.21

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

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC, Chapter 43, as amended and added by S.B. 6, and HRC, §42.042.

§745.21. What do the following words and terms mean when used in this chapter?

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

(1) Abuse--As defined in the Texas Family Code, §261.401(1) (relating to Agency Investigation) and §745.8557 of this title (relating to What is abuse?).

(2) Affinity--Related by marriage as set forth in the Government Code, §573.024 (relating to Determination of Affinity).

(3) Capacity--The maximum number of children that a permit holder may care for at one time.

(4) Caregiver--A person whose duties include the supervision, guidance, and protection of a child or children.

(5) Child--A person under 18 years old.

(6) Child-care facility--An establishment subject to regulation by Licensing which provides assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the establishment operates for profit or charges for its services. A child-care facility includes the people, administration, governing body, activities on or off the premises, operations, buildings, grounds, equipment, furnishings, and materials. A child-care facility does not include child-placing agencies, listed family homes, or maternity homes.

(7) Child day care--As defined in §745.33 of this title (relating to What is child day care?).

(8) Child-placing agency (CPA)--A person, including an organization, other than the parents of a child who plans for the placement of or places a child in a child-care operation or adoptive home.

(9) Children related to the caregiver--Children who are the children, grandchildren, siblings, great-grandchildren, first cousins, nieces, or nephews of the caregiver, whether by affinity or consanguinity or as the result of a relationship created by court decree.

(10) Consanguinity--Two individuals are related to each other by consanguinity if one is a descendant of the other; or they share a common ancestor. An adopted child is considered to be related by consanguinity for this purpose. Consanguinity is defined in the Government Code, §573.022 (relating to Determination of Consanguinity).

(11) Contiguous operations--Two or more operations that touch at a point on a common border or located in the same building.

(12) Controlling person--As defined in §745.901 of this title (relating to Who is a controlling person in a residential child-care operation?).

(13) Deficiency--Any failure to comply with a standard, rule, law, specific term of your permit, or condition of your evaluation, probation, or suspension.

(14) Designated perpetrator--As defined in §745.731 of this title (relating to What are designated perpetrators and sustained perpetrators of child abuse or neglect?).

(15) Division--The Licensing Division within the Texas Department of Family and Protective Services (DFPS).

(16) Employee--Any person employed by or that contracts with the permit holder, including but not limited to caregivers, drivers, kitchen personnel, maintenance and administrative personnel, and the center/program director.

(17) Endanger--To expose a child to a situation where physical or mental injury to a child is likely to occur.

(18) Exploitation--As defined in the Texas Family Code, §261.401(2) (relating to Agency Investigation).

(19) Finding--The conclusion of an investigation or inspection indicating compliance or deficiency with one or more minimum standards or laws.

(20) Governing body--The entity with ultimate authority and responsibility for the operation.

(21) Governing body designee--The person named on the application as the designated representative of a governing body who is officially authorized by the governing body to speak for and act on its behalf in a specified capacity.

(22) Household member--An individual, other than the caregiver(s), who resides in an operation.

(23) Kindergarten age--As defined in §745.101(1) of this title (relating to What words must I know to understand this subchapter?).

(24) Licensed administrator--As defined in §745.8905 of this title (relating to What is a licensed administrator?).

(25) Minimum standards--The rules contained in Chapters 727 of this title (relating to Licensing of Maternity Facilities), 746 of this title (relating to Minimum Standards for Child-Care Centers), 747 of this title (relating to Minimum Standards for Child-Care Homes), 748 of this title (relating to General Residential Operations and Residential Treatment Centers), 749 of this title (relating to Child-Placing Agencies), 750 of this title (relating to Independent Foster Homes) and Subchapter I of this chapter (relating to Maternity Home Minimum Standards), which are minimum requirements for permit holders that are enforced by DFPS to protect the health, safety and well-being of children.

(26) Neglect--As defined in the Texas Family Code, §261.401(3) (relating to Agency Investigation) and §745.8559 of this title (relating to What is neglect?).

(27) Operation--A person or entity offering a program that may be subject to Licensing regulation. An operation includes the building and grounds where the program is offered, any person involved in providing the program, and any equipment used in providing the program. An operation includes a child-care facility, child-placing agency, listed family home, or maternity home.

(28) Parent--A person that has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(29) Permit--A license, certification, registration, listing, or any other written authorization granted by Licensing to operate a child-care facility, child-placing agency, listed family home, or maternity home. This also includes a child-care administrator's license.

(30) Permit holder--The person or entity granted the permit.

(31) Pre-kindergarten age--As defined in §745.101(2) of this title (relating to What words must I know to understand this subchapter?).

(32) Program--Activities and services provided by an operation.

(33) Regulation--The enforcement of statutes and the development and enforcement of rules, including minimum standards. Regulation includes the licensing, certifying, registering, and listing of an operation or child-care administrator.

(34) Report--An expression of dissatisfaction or concern about an operation, made known to DFPS staff, that alleges a possible violation of minimum standards or the law and involves risk to a child/children in care.

(35) Residential child care--As defined in §745.35 of this title (relating to What is residential child care?).

(36) State Office of Administrative Hearings (SOAH)--See §745.8831 and §745.8833 of this title (relating to What is a due process hearing? and What is the purpose of a due process hearing?).

(37) Sustained perpetrator--See §745.731 of this title (relating to What are designated perpetrators and sustained perpetrators of child abuse or neglect?).

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605803
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

40 TAC §745.35, §745.37

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

The amendments implement HRC, Chapter 42, as amended and added by S.B. 6.

§745.37. What specific types of operations does Licensing regulate?

The charts in paragraphs (1), (2), and (3) of this section list the types of operations for child day care and residential child care that we regulate. Maternity homes, child-placing agencies, and foster homes verified by a child-placing agency are included in the residential child-care chart.

(1) Types of Child Day-Care Operations before September 1, 2003.
Figure: 40 TAC §745.37(1)

(2) Types of Child Day-Care Operations on and after September 1, 2003.
Figure: 40 TAC §745.37(2)

(3) Types of Residential Child-Care Operations.
Figure: 40 TAC §745.37(3)

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605804
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION
DIVISION 2. EXEMPTIONS FROM REGULATION

40 TAC §745.117

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

The amendment implements HRC, §42.042.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605805
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER H. RESIDENTIAL CHILD-CARE MINIMUM STANDARDS

DIVISION 1. IMMUNIZATIONS

40 TAC §745.4001, §745.4003

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

The repeals implement HRC, §42.042.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605806
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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DIVISION 2. CHILD-PLACING AGENCY STANDARDS FOR CONDUCTING A FOSTER HOME SCREENING, PRE-ADOPTIVE HOME SCREENING, AND POST-PLACEMENT ADOPTIVE REPORT

40 TAC §§745.4021, 745.4023, 745.4027, 745.4029

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

The repeals implement HRC, §42.042 and Family Code, §107.0511 and §107.052.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605807
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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DIVISION 3. ADDITIONAL CHILD-PLACING AGENCY STANDARDS FOR CONDUCTING A PRE-ADOPTIVE HOME SCREENING

40 TAC §§745.4061, 745.4069, 745.4071, 745.4073, 745.4077, 745.4079

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

The repeals implement HRC, §42.042 and Family Code, §107.0511 and §107.052.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605808
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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DIVISION 4. ADDITIONAL CHILD-PLACING AGENCY STANDARDS FOR FOSTER HOMES AND FOR CONDUCTING FOSTER HOME SCREENINGS

40 TAC §§745.4091, 745.4093, 745.4095, 745.4097, 745.4099, 745.4101, 745.4103

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and

the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605809
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER H. RESIDENTIAL CHILD-CARE: DRUG TESTING AND LAW ENFORCEMENT ADMISSIONS
DIVISION 6. DRUG TESTING

40 TAC §745.4151

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

The amendment implements HRC, §42.042 and §42.057.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605810
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER N. CHILD-CARE ADMINISTRATOR'S LICENSING
DIVISION 1. OVERVIEW OF CHILD-CARE ADMINISTRATOR'S LICENSING

40 TAC §§745.8903, 745.8905, 745.8907, 745.8909, 745.8911, 745.8913

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

The repeals implement HRC Chapter 43, as amended and added by S.B. 6.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605811
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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DIVISION 3. LICENSING'S REVIEW OF YOUR APPLICATION

40 TAC §745.8953

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

The repeal implements HRC, Chapter 43, as amended and added by S.B. 6.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605812

Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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DIVISION 4. RENEWING YOUR CCAL

40 TAC §§745.9009, 745.9011, 745.9013

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

The repeals implement HRC, Chapter 43, as amended and added by S.B. 6.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605813
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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DIVISION 5. REMEDIAL ACTIONS

40 TAC §§745.9035, 745.9037, 745.9039, 745.9041

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

The repeals implement HRC, Chapter 43, as amended and added by S.B. 6.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605814
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER N. ADMINISTRATOR LICENSING

DIVISION 1. OVERVIEW OF CHILD-CARE ADMINISTRATOR'S LICENSING

40 TAC §§745.8901, 745.8903, 745.8905, 745.8907, 745.8909, 745.8911, 745.8913, 745.8915, 745.8917, 745.8919, 745.8921

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

The amendment and new sections implement HRC, Chapter 43, as amended and added by S.B. 6.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605815
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

40 TAC §§745.8931, 745.8933, 745.8935

The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective

Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC, Chapter 43, as amended and added by S.B. 6.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605816
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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DIVISION 3. LICENSING'S REVIEW OF YOUR APPLICATION

40 TAC §§745.8951, 745.8955, 745.8957, 745.8959, 745.8961, 745.8963, 745.8965, 745.8967, 745.8969

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

The amendments implement HRC, Chapter 43, as amended and added by S.B. 6.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605817
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

40 TAC §§745.8991, 745.8993, 745.8995, 745.8997, 745.8999, 745.9001, 745.9003, 745.9005, 745.9007, 745.9009, 745.9011, 745.9013, 745.9015, 745.9017, 745.9019, 745.9021, 745.9023

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

The amendments and new sections implement HRC, Chapter 43, as amended and added by S.B. 6.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605818
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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DIVISION 5. REMEDIAL ACTIONS

40 TAC §§745.9031, 745.9035, 745.9037, 745.9039

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

The amendment and new sections implement HRC, Chapter 43, as amended and added by S.B. 6.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605819

Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER O. INDEPENDENT PRE-ADOPTIVE HOME SCREENING AND INDEPENDENT POST-PLACEMENT ADOPTIVE REPORT

40 TAC §§745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071

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

The repeals implement HRC, Chapter 43, as amended and added by S.B. 6.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605820
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

♦ ♦ ♦

40 TAC §§745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071,745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9097, 745.9099, 745.9100

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

The new sections implement HRC, §42.042 and Family Code, §107.0511 and §107.052.

§745.9097. What information must the post-placement adoptive report include?

(a) It must include the following documented information:

(1) A summary of all assessments and available information about the child who is the subject of a petition for adoption, including:

(A) Health history, social history, educational history, genetic and family history, and other information required by the Texas Family Code, §162.005 and §162.007;

(B) History of physical, sexual, or emotional abuse experienced by the child;

(C) History of any previous placements, including the date and reasons for placement;

(D) The child's understanding of adoptive placement or conservatorship; and

(E) The child's legal status;

(2) A summary of all assessments, interviews, and available information about the prospective adoptive parents including:

(A) The pre-adoptive home screening (see §745.9061 of this title (relating to What is a pre-adoptive home screening?) and §745.9069 of this title (relating to What information must be included in the pre-adoptive home screening?));

(B) The birth parents' expectations for adoptive placement and further involvement (see §745.9081 of this title (relating to Must the pre-adoptive home screening include information about birth parents?));

(C) Individual strengths and weaknesses of the adoptive parents;

(D) Observations made relative to the family's interactions with each other;

(E) Interviews of persons specified in §745.9073 of this title (relating to Whom must I interview when conducting a pre-adoptive home screening or a post-placement adoptive report?); and

(F) A visit to the home (see §745.9077 of this title (relating to What are the requirements for visiting the home during a pre-adoptive home screening or a post-placement adoptive report?));

(3) An evaluation of the child's present or prospective physical, intellectual, social, and psychological functioning and needs, and whether the environment will meet those needs;

(4) A summary of the adjustment of the family and child in the home during the six-month placement period, if appropriate;

(5) Sources of information and verification, to the extent possible, of all statements of fact pertinent to the report;

(6) The basis for your conclusions or recommendations; and

(7) The names and the qualifications of all persons involved in the preparation and evaluation of the report.

(b) All persons involved in the preparation and evaluation of the study must sign the report.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605821
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 19, 2006
For further information, please call: (512) 438-3437

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.3401, 746.5101, 746.5401, and 746.5607, in its Minimum Standards for Child-Care Centers chapter. The amendment to §746.5401 is adopted with changes to the proposed text published in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3862). The amendments to §§746.3401, 746.5101, and 746.5607 are adopted without changes to the proposed text and will not be republished. The amendments to §§746.3401, 746.5101, and 746.5401 change provisional permit to initial permit based on legislation passed by Senate Bill 6, 79th Legislature, Regular Session, 2005. The amendment to §746.5607 updates the rule for center-based operations in response to House Bill 183 of the 79th Legislature, Regular Session, 2005, and clarifies safety requirements for children younger than one year and more than 20 pounds.

The amendments will function by enhancing the protection of children in out-of-home care and improving the quality of regulated child care.

During the public comment period, DFPS received comments from Texas Licensed Child Care Association, Children's Courtyard, Knowledge Learning Corporation, Childtime Learning Centers, and child care providers. A summary of the comments and responses follows:

§746.3401. Must my child-care center have an annual sanitation inspection?

§746.5101. Must my child-care center have an annual fire inspection?

§746.5401. Must my child-care center be inspected for gas leaks?

Comments: One commenter supported the changes. One hundred and fifteen comments were received concerning the content of the rules in general, but were not related to the proposed changes.

(1) One hundred and ten of the commenters stated public schools and/or child-care programs operating in public schools should be held to the same standard as other DFPS regulated programs, so all children in out of home care are afforded the same protection.

(2) One commenter recommended the rule language be changed to "ensuring these programs meet the equivalent of these life and safety standard inspections from another entity".

Response: The current rules allow child-care centers located in public school buildings to comply with the requirements for fire, sanitation, and gas leak inspections by either obtaining an inspection specific to the area used by the child-care operation, or by providing documentation indicating the state or local inspector has approved the building for public school use or an inspection is not available. These options allow for the numerous variations found between independent school districts across the state, while ensuring that children in regulated child-care benefit from similar standards that promote a safe and healthy environment. The rules do not exempt child-care centers located in public school buildings from fire, sanitation, or gas leak inspections.

(3) Regarding §746.5101, one commenter questioned whether the fire inspection form will be changed to match the rule.

Response: DFPS will ensure that forms are consistent with the rules.

(4) Regarding §746.5401, two of the commenters questioned whether programs without gas lines would still be required to obtain a gas leak test. One of these commenters requested this be made clear in the rule. One of the commenters stated it is not reasonable to incur a cost for a gas leak inspection every two years if the center does not use gas.

Response: Current §746.5403 indicates that only child-care centers that use natural gas or LP-gas must be tested for gas leaks; however, in response to the commenter's suggestion, DFPS is revising §746.5401 to clarify which operations are required to be inspected for gas leaks.

§746.5607. What safety seat system must I use when I transport children?

Comment: DFPS received 88 comments.

(1) Five commenters supported the proposed changes. Eighty-two commenters did not support the proposed changes. These commenters recommended the age of children required to use a child passenger safety seat/ booster seat remain at younger than four years and not be increased to younger than five years.

Response: House Bill 183 of the 79th Legislature, Regular Session, 2005, changed the ages of children using child passenger safety seat systems from younger than four years to younger than five years. DFPS is revising the rule in response to that bill.

(2) Many of the same commenters requested the gross vehicle weight rating (GVWR) specified in the rule be changed from 10,000 lbs to 9500 lbs (mini-buses). One commenter also stated exempting "mini-buses" from the use of child passenger safety seats/booster seats would provide for safety without giving larger institutions a competitive advantage in being able to offer field trips and other enrichment activities outside the child-care center. Another commenter recommended that the requirements only be applied to 15-passenger vans, not large and mini-buses. One commenter expressed confusion about whether the proposed changes apply to large yellow school buses.

Response: Section 746.5607 specifically exempts vehicles with a GVWR of 10,000 lbs or more. A GVWR of 10,000 lbs. or more is used by the National Transportation Safety Board (NTSB) to define "large school buses," which must comply with specific occupant crash protection standards not typically met by vehicles with a lower GVWR. The term "school bus" may refer to a variety of vehicle types used to transport persons to and from school or school activities, and which may or may not meet the same safety standards.

SUBCHAPTER R. HEALTH PRACTICES

DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §746.3401

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

The amendment implements S.B. 6, 79th Legislature, Regular Session, 2005.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605822
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 1. FIRE INSPECTION

40 TAC §746.5101

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

The amendment implements S.B. 6, 79th Legislature, Regular Session, 2005.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605823
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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DIVISION 4. GAS AND PROPANE TANKS

40 TAC §746.5401

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

The amendment implements S.B. 6, 79th Legislature, Regular Session, 2005.

§746.5401. Must my child-care center be inspected for gas leaks?

If your child-care center uses natural or liquid propane (LP) gas, your child-care center must be inspected for gas leaks before we issue your initial permit, and once every two years after your permit is issued, unless your child-care center is located in a public school building that the state or local fire marshal has approved for public school use.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605824
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER X. TRANSPORTATION

40 TAC §746.5607

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

The amendment implements House Bill 183, 79th Legislature, Regular Session, 2005.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605825
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES
SUBCHAPTER X. TRANSPORTATION

40 TAC §747.5407

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §747.5407, without changes to the proposed text published in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3863). The justification for the amendment to §747.5407 is to update the rule for home-based operations in response to House Bill 183 of the 79th Legislature, Regular Session, 2005, and to clarify safety requirements for children younger than one year and more than 20 pounds.

The amendment will function by enhancing the protection of children in out-of-home care and improving the quality of regulated child care.

During the public comment period, DFPS received comments from Texas Licensed Child Care Association, Children's Courtyard, Knowledge Learning Corporation, Childtime Learning Centers, and child care providers. DFPS received 88 comments. A summary of the comments and responses follow:

(1) Five commenters supported the proposed changes. Eighty two commenters did not support the proposed changes. These commenters recommended the age of children required to use a child passenger safety seat/booster seat remain at younger than four years and not be increased to younger than five years.

Response: DFPS is adopting this rule without change. House Bill 183 of the 79th Legislature, Regular Session, 2005, changed the ages of children using child passenger safety seat systems from younger than four years to younger than five years. DFPS's rule revision is in response to that bill.

(2) Many of the same commenters requested the gross vehicle weight rating (GVWR) specified in the rule be changed from 10,000 lbs to 9500 lbs (mini-buses). One commenter also stated exempting "mini-buses" from the use of child passenger safety seats/booster seats would provide for safety without giving larger institutions a competitive advantage in being able to offer field trips and other enrichment activities outside the child-care center. Another commenter recommended that the requirements only be applied to 15-passenger vans, not large and mini-buses. One commenter expressed confusion about whether the proposed changes apply to large yellow school buses.

Response: DFPS is adopting this rule without change. Section 747.5407 specifically exempts vehicles with a GVWR of 10,000 lbs or more. A GVWR of 10,000 lbs. or more is used by the National Transportation Safety Board (NTSB) to define "large school buses," which must comply with specific occupant crash protection standards not typically met by vehicles with a lower GVWR. The term "school bus" may refer to a variety of vehicle types used to transport persons to and from school or school activities, and which may or may not meet the same safety standards.

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

The amendment implements House Bill 183, 79th Legislature, Regular Session, 2005.

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

Filed with the Office of the Secretary of State on October 25, 2006.

TRD-200605826
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: January 1, 2007
Proposal publication date: May 12, 2006
For further information, please call: (512) 438-3437

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 31. PUBLIC TRANSPORTATION

The Texas Department of Transportation (department) adopts amendments to §31.3, definitions, new §31.17, Section 5316 Grant Program, and new §31.18, Section 5317 Grant Program. The amendments to §§31.3, 31.17 and 31.18 are adopted with changes to the proposed text as published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6311).

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

Title 49, USC §5316, as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (Pub. L. No. 109-59) (2005) (SAFETEA-LU), authorizes the U.S. Secretary of Transportation to make available grants to support

employment and employment-related public transportation activities under a program called "Job Access and Reverse Commute" (JARC).

Title 49, USC §5317, as added by SAFETEA-LU, authorizes the U.S. Secretary of Transportation to make available grants for public transportation projects that provide new public transportation services and public transportation alternatives beyond those currently required by the Americans with Disabilities Act of 1990 (ADA) that assist individuals with disabilities with transportation including transportation to and from jobs and employment support services. The program is called New Freedom (NF).

For urbanized areas less than 200,000 population and for rural areas, the governor of Texas (governor) has delegated project selection and grant administration for these programs to the Texas Transportation Commission (commission). The commission adopts rules concerning project selection and the administration of the JARC and NF programs to implement federal laws and regulations and permit the commission to award grants.

Existing §31.3, Definitions, is amended to include new terms used in §31.17 and §31.18. Definitions are taken from federal statute or other guidance published by the Federal Transit Administration. The definitions are renumbered to accommodate the alphabetical inclusion of the terms.

New §31.3(16), Employment-related transportation, describes assistance to individuals in job search (interviews, trips to employment offices), job preparation (college or vocational training classes) and support activities such as taking children to daycare.

New §31.3(30), Job access project, defines public transportation related to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment-related destinations.

New §31.3(36), Low-income individual, is a person whose family income is at or below 150 percent of the poverty line (as that term is defined in §673(2) of the Community Services Block Grant Act (42 USC §9902(2)) for a family of the size involved, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

New §31.3(37), Mobility management, means short-range planning and management activities and projects for improving coordination among public transportation and other transportation services providers. Typically these activities are carried out by transit agencies or their subcontractors through an agreement with a person, including a governmental entity. Mobility management excludes operating public transportation services.

New §31.3(40), New public transportation services, with respect to the NF program, are defined as activities that (1) are targeted toward people with disabilities; (2) meet the intent of the NF program by removing barriers to transportation and assisting persons with disabilities with transportation, including transportation to and from jobs and employment services; and (3) were not included in a Transportation Improvement Program or Statewide Transportation Improvement Program prior to August 10, 2005.

New §31.3(63), Reverse commute project, defines transportation of residents of urbanized areas and other than urbanized areas to suburban employment opportunities, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

New §31.3(82), Welfare recipient, defines an individual who has received assistance under a state or tribal program funded under part A of Title IV of the Social Security Act at any time during the previous three-year period, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

In developing new §31.17 and new §31.18, the department draws from the federal statute; the Federal Transit Administration's Interim Guidance on Implementation, published in the *Federal Register*, 71 Fed. Reg. 13,456 (March 15, 2006); the Federal Transit Administration's "Guidance for Fiscal Year 2007 Implementation; Notice of Availability of Circulars" calling for comments on draft circulars for the JARC and NF programs, *Federal Register*, 71 Fed. Reg. 52,610, (September 6, 2006); the joint guidance documentation issued by the U.S. Department of Labor, U.S. Department of Transportation, and the U.S. Department of Health and Human Services provide sufficient detailed guidance for the local decision makers to decide how best to use their match (See "Use Of TANF, WtW, and Job Access Funds for Transportation", http://www.fta.dot.gov/funding/grants/grants_financing_3715); and the department's existing rules for federal program administration contained in Title 43, Chapter 31, Subchapter C.

Section 31.17(a), Purpose, identifies the JARC federal law, states its purpose, and also states that the commission has been designated by the governor to administer the program in areas less than 200,000 population.

Section 31.17(b), Goal and objectives, states the department's goal and objectives for promoting public transportation services targeted to employment transportation in accordance with the Federal Transit Administration's guidance on implementing the program.

Section 31.17(c), Department role, states that the department will act as the designated recipient for funds for areas less than 200,000 population, while allowing subrecipients to retain control over daily operations.

Section 31.17(d), Project types, provides an illustrative list of projects that JARC grants may fund. The JARC project types detail elements included in these programs so that project sponsors will have an understanding of eligible project types.

Section 31.17(e), Eligible subrecipients, mirrors the language in 49 USC §5316, which lists eligible subrecipients as state agencies, local governmental authorities, private non-profit organizations and operators of public transportation services. Private for-profit businesses may participate as a contractor to a subrecipient. Applicants who are subrecipients of public transportation funds through another department program must be in good standing with the department as defined in §31.3.

Section 31.17(f), Eligible assistance categories, lists state administrative expenses, capital expenses, project administration expenses, planning expenses, marketing expenses and operating expenses as eligible for reimbursement and gives the percentage of federal and non-federal match required for each category.

Section 31.17(g), Ineligible expenses, lists those costs that are not reimbursable, which includes construction expenses, except for minor passenger amenities, extended vehicle warranties, purchase and/or maintenance of vehicles for private use, and other expenses prohibited by the Federal Transit Administration.

Section 31.17(h), Local share requirements, states that other U.S. Department of Transportation funds cannot be used for the

local (non-federal) match requirement. Eligible match sources include local, state, and federal programs, including funds disbursed from the Texas Workforce Commission; local workforce development boards; and human services agencies, including funds awarded to the state for the Medicaid Medical Transportation Program. Documented in-kind services related to a proposed JARC project are eligible with prior department approval. The subsection clarifies that fares cannot be used for local match but must, instead, reduce the net operating expense.

Section 31.17(i), Planning requirement, reflects the federal requirement for prioritized JARC projects to be derived from a locally developed, coordinated public transit-human services transportation plan. It is anticipated that the regional service planning process will be used to meet the requirements of the local coordinated planning process.

Section 31.17(j), Allocation of funds, allows the department to use up to 10% of the federal apportionment to urbanized areas less than 200,000 population and to nonurbanized areas for administrative, planning and technical assistance activities associated with JARC. The commission will competitively award the remaining funds. The department will issue a call for projects in the *Texas Register*. The subsection lists the content of the *Texas Register* notice. Funds from one category (urbanized area less than 200,000 population or nonurbanized area) shall not be moved to the other, without a certification from the governor. The origination location of the riders shall be the basis for determining which apportionment is used to fund a particular project.

Section 31.17(k), Grant award, states that the department will enter into a grant agreement with individual subrecipients. The commission has expressed its commitment to a plan to improve transportation in Texas. The plan has five goals: 1) reduce congestion; 2) enhance safety; 3) expand economic opportunity; 4) improve air quality; and, 5) increase the value of transportation assets. The subsection enumerates the criteria that the commission will use in awarding grant funds in a manner that facilitates the goals of the plan. Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the balance of funds to another project.

Section 31.17(l), Vehicle leasing, permits subrecipients to lease vehicles to other entities, with prior department approval, such as local public bodies or agencies, private non-profit organizations and private for-profit businesses, as long as the purpose of the JARC project is carried out by the lessee. The subrecipient is responsible for ensuring the lessee follows all applicable laws and regulations.

Section 31.17(m), Incidental vehicle use, allows vehicles to be used for other purposes, and to accommodate riders not engaged in employment activities, when such activities/riders do not interfere with employment transportation purposes.

Section 31.17(n), Disposition of vehicles at end of the grant, states that vehicles purchased with JARC funds may be transferred to another subrecipient in accordance with state disposition requirements.

Section 31.18(a), Purpose, identifies the New Freedom federal law, states its purpose, and also states that the commission has been designated by the governor to administer the program in areas with less than 200,000 population.

Section 31.18(b), Goal and objectives, states the department's goal and objectives for the NF program. These projects shall provide new public transportation services and public transportation alternatives, beyond those currently required by the Americans with Disabilities Act of 1990 (ADA), that assist individuals with disabilities with transportation including transportation to and from jobs and employment support services.

Section 31.18(c), Department role, stipulates that the department will act as the designated recipient for funds for areas with less than 200,000 population, while allowing subrecipients to retain control over daily operations.

Section 31.18(d), Project types, provides an illustrative list of projects that NF grants may fund. The list is not intended to be an exhaustive list of the project types. The projects listed are examples of new public transportation services and public transportation alternatives, beyond those currently required by the Americans with Disabilities Act of 1990 (ADA), that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

Section 31.18(e), Eligible subrecipients, mirrors the language in 49 USC §5317, which lists eligible subrecipients as state agencies, local governmental authorities, private non-profit organizations, and operators of public transportation services. Private for-profit businesses may participate as a contractor to a subrecipient. Applicants who are subrecipients of public transportation funds through another department program must be in good standing with the department as defined in §31.3.

Section 31.18(f), Eligible assistance categories, lists state administrative expenses, capital expenses, project administration expenses, and operating expenses as eligible for reimbursement and gives the percentage of federal and non-federal match required for each category.

Section 31.18(g), Ineligible expenses, lists those costs that are not reimbursable, including extended vehicle warranties, purchase and/or maintenance of private use vehicles, and other FTA prohibited expenses.

Section 31.18(h), Local share requirements, states that other U.S. Department of Transportation funds cannot be used for the local (non-federal) match requirement. Eligible match sources include local, state, and federal programs, including funds disbursed from the Texas Workforce Commission; local workforce development boards; and human services agencies, including funds awarded to the state for the Medicaid Medical Transportation Program. Documented in-kind services related to the NF project are eligible with prior department approval. The subsection clarifies that fares cannot be used for local match but must, instead, reduce the net operating expense.

Section 31.18(i), Planning requirement, reflects the federal requirement for prioritized NF projects to come from a locally developed, coordinated public transit-human services transportation plan. It is anticipated that the regional service planning process will be used to meet the requirements of the local coordinated planning process.

Section 31.18(j), Allocation of funds, allows the department to use up to 10% of the federal apportionment to urbanized areas with less than 200,000 population and to nonurbanized areas for administrative, planning, and technical assistance activities associated with NF. The commission will competitively award the remaining funds. The department will issue a call for projects in the *Texas Register*. The subsection lists the content of the *Texas Register* notice. Funds from one category (urbanized area less than 200,000 population or nonurbanized area) shall not be moved to the other. The origination location of the riders shall be

the basis for determining which apportionment is used to fund a particular project.

Section 31.18(k), Grant award, states that the department will enter into a grant agreement with individual subrecipients. The commission has expressed its commitment to a plan to improve transportation in Texas. The plan has five goals: 1) reduce congestion; 2) enhance safety; 3) expand economic opportunity; 4) improve air quality; and, 5) increase the value of transportation assets. The subsection enumerates the criteria that the commission will use in awarding grant funds in a manner that facilitates the goals of the plan. Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the balance of funds to another project.

Section 31.18(l), Vehicle leasing, permits subrecipients to lease vehicles to other entities, with prior department approval, such as local public bodies or agencies, private non-profit organizations, and private for-profit businesses, as long as the purpose of the NF project is carried out by the lessee. The subrecipient is responsible for ensuring the lessee follows all applicable laws and regulations.

Section 31.18(m), Incidental vehicle use, allows vehicles to be used for other purposes, and to accommodate able-bodied persons, when such activities/riders do not interfere with transportation opportunities specifically designed for persons with disabilities.

Section 31.18(n), Disposition of vehicles at end of the grant, states that vehicles purchased with NF funds may be transferred to another subrecipient in accordance with state disposition requirements.

The Public Transportation Advisory Committee (PTAC) met on October 20, 2006 to review the rules and by motion recommended to the commission that the rules be adopted.

COMMENTS

In the period between the publication of the proposed rules and these final rules, the U.S. Department of Transportation Federal Transit Administration (FTA) provided additional information for the implementation of the JARC and NF programs. The department has made changes that consider this guidance.

The definition of mobility management, new §31.3 (37), has been reworded to consider the additional guidance provided by FTA.

The department added to the definition of §31.3(40) by including the words "or alternatives" and included the requirement that NF projects be beyond ADA requirements.

The additional guidance provided by the FTA proposed circular concerning implementation of the JARC program indicates that private for-profit businesses may be subrecipients. This is a change from their role in other formula programs, which limits private for profit businesses to being contractors to subrecipients. New §31.17(e) and §31.18(e) are changed to reflect the guidance for the JARC and NF program issued by the FTA in its proposed circular.

Due to federal guidance, new §31.17(f) is changed to add purchase of vouchers as an eligible operating expense; new §31.17(g) is changed to include the federal prohibition against purchasing transit passes for use on fixed route or ADA complementary paratransit services; new §31.17(i) is changed to include a requirement that the JARC project documentation describe the role of the local workforce development board or its service providers in developing the project; and new §31.17(n) is changed to delete a reference to federal disposition requirements because state laws and procedures govern the disposition of property when the state is the designated recipient.

Due to federal guidance, new §31.18(b) is changed to require that transportation services and alternatives must be "beyond ADA" requirements, in accordance with federal law. New §31.18(f) is changed to add the purchase of vouchers as an eligible operating expense, to comply with the new guidance received from FTA. The list of eligible items is changed to specifically state that maintenance is an eligible operating expense, with prior department approval. New §31.18(g) is changed to include marketing, planning, and the federal prohibition against purchasing transit passes for use on fixed route or ADA complementary paratransit services. New §31.18(n) is changed to delete a reference to federal disposition requirements because state laws and procedures govern the disposition of property when the state is the designated recipient.

Other minor changes were added to correct grammar and improve clarity and readability.

In addition, comments on the proposed amendments and new sections were received.

Comment

One commenter stated that specific language should be added to ensure that the grant recipients will not create new services if existing providers and services are currently available, and that the language should demonstrate and ensure coordination. The use of universal travel vouchers that are acceptable by all service providers in the area is one example of such coordination.

Response

The federal law authorizing both the JARC and NF programs requires that JARC and NF projects must be derived from a locally developed, coordinated public transportation - human services transportation plan. The department has established that the ongoing regional coordinated plans will fulfill the role of the locally developed, coordinated public transportation-human services transportation plan. The elimination of duplicative services is a focal point of these regional plans. No changes in the proposed rules were made as a result of this comment.

Comment

The Texas Workforce Commission (TWC) supports allowing regional service plans to be used to meet the requirements of the local coordinated planning process required for a JARC project. TWC has encouraged the Local Workforce Development Boards (Boards) to become an integral part of these regional service plans by providing input on the needs of the workforce and on economic development within their respective areas. In addition, TWC staff serves on the TxDOT regional planning study group. However, TWC states concern that the proposed rules, which detail the local planning requirements, refer to a "public transit-human service transportation plan." TWC states that the needs of the Texas workforce system should be explicitly stated. In addition, TWC states that representatives from the Texas workforce system should be listed as required representatives involved in the development of the plan. TWC also state that any TWC funds used as match for JARC must also meet federal and state requirements or restrictions regarding eligible populations to be served. TWC currently issues guidance to the Boards on the allowable uses of designated transportation funds

and will continue to provide guidance or assistance regarding the use of funds for transportation services.

Response

In response to the comment, the department has incorporated language in §31.17(i)(4)(D) that requires participation by local workforce development boards or their service providers in JARC proposals. In addition, the applicable FTA proposed circular specifies workforce interests as a participant in the JARC planning process.

SUBCHAPTER A. GENERAL

43 TAC §31.3

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 461.

§31.3. Definitions.

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

(1) Administrative expenses--Include, but are not limited to, general administrative expenses such as salaries of the project director, secretary, and bookkeeper; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; and standard overhead rates.

(2) Allocation--A preliminary distribution of grant funds representing the maximum amount to be made available to a subrecipient during the fiscal year, subject to the subrecipient's completion of and compliance with all application requirements, rules, and regulations applicable to the specific funding program.

(3) Authority--A metropolitan or regional authority created under Transportation Code, Chapter 451 or 452, or a city transit department created under Transportation Code, Chapter 453, by a municipality having a population of not less than 200,000 according to the most recent federal census.

(4) Average revenue vehicle capacity--The number of seats in all revenue vehicles divided by the number of revenue vehicles.

(5) Capital expenses--Include the acquisition, construction, and improvement of public transit facilities and equipment needed for a safe, efficient, and coordinated public transportation system.

(6) Commission--The Texas Transportation Commission.

(7) Common rule--49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(8) Contractor--A recipient of public transportation funds through a contract with the department.

(9) Corrective action plan--A plan developed by the rail transit agency that describes the actions the rail transit agency will take to minimize, control, correct, or eliminate hazards, and the schedule for implementing those actions.

(10) Department--The Texas Department of Transportation.

(11) Deputy executive director--The deputy executive director of the department.

(12) Designated recipient--The state, an authority, a municipality that is not included in an authority, a local governmental body, or a nonprofit entity providing rural public transportation services, that receives federal or state public transportation money through the department or the Federal Transit Administration, or its successor.

(13) Director--The director of public transportation for the department.

(14) District--One of the 25 districts of the department having responsibility for administration of public transportation programs in a designated geographic area.

(15) District engineer--The chief executive officer in charge of a district.

(16) Employment-related transportation--Transportation to support services that assist individuals in job search or job preparation. Trips to daycare centers, one-stop workforce centers, jobs interviews, and vocational training are examples.

(17) Equipment--Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

(18) Executive director--The chief executive officer of the department.

(19) Fatality--A death that results from an incident and that occurs within 30 days following the incident.

(20) Federally funded project--A public transportation project that is being funded in part under the provisions of the Federal Transit Act, as amended, 49 USC §5301 et seq., the Federal-Aid Highway Act of 1973, as amended, 23 USC §101 et seq., or any other federal program for funding public transportation.

(21) Fiscal year--The state accounting period of 12 months that begins on September 1 of each calendar year and ends on August 31 of the following calendar year.

(22) FRA--The Federal Railroad Administration, an agency of the United States Department of Transportation.

(23) FTA--The Federal Transit Administration, an agency of the United States Department of Transportation.

(24) Good standing--A status indicating that the department's director of public transportation has not sent a letter to an entity signifying the entity is in noncompliance with any aspect of a program.

(25) Hazard--Any real or potential condition (as defined in the rail transit agency's hazard management process) that can cause injury, illness, or death; damage to or loss of a system, equipment or property; or damage to the environment.

(26) Incident--An intentional or unintentional act that occurs on or in association with transit-controlled property and that threatens or affects the safety or security of an individual or property.

(27) Individual--A passenger; employee; contractor; other rail transit facility worker; pedestrian; trespasser; or any person on rail transit controlled property.

(28) Injury--Any physical damage or harm that occurs to an individual as a result of an incident and that requires immediate medical attention away from the scene.

(29) Investigation--The process used to determine the causal and contributing factors of an accident or hazard, so that actions can be identified to prevent recurrence.

(30) Job access project--A public transportation project relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

(31) Like-kind exchange--The trade-in or sale of a transit vehicle before the end of its useful life to acquire a replacement vehicle of like kind.

(32) Local funds--Directly generated funds, as defined in the latest edition of the Federal Transit Administration National Transit Database Reporting Manual. Examples include, but are not limited to, passenger fares, special transit fares, purchased transportation fares, park and ride revenue, other transportation revenue, charter service revenue, freight tariffs, station and vehicle concessions, advertising revenue, funds dedicated to transit at their source, taxes, cash contributions, contract revenue, general revenue, and in-kind contributions.

(33) Local governmental entity--Any local unit of government including a city, town, village, municipality, county, city transit department, metropolitan transit authority, or regional transit authority.

(34) Local public body--Includes cities, counties, and other political subdivisions of states; public agencies; and instrumentalities of one or more states, municipalities, or political subdivisions of states.

(35) Local share requirement--The amount of funds required and eligible to match federally funded projects for the improvement of public transportation.

(36) Low income individual--An individual whose family income is at or below 150 percent of the poverty line, as that term is defined in the Community Services Block Grant Act (42 USC §9902(2)), including any revision required by that section, for a family of the size involved, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

(37) Mobility management--Eligible capital expenses consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation-service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a government entity under, 49 USC Chapter 5300 et.seq (other than Section 5309). Mobility management excludes operating public transportation services.

(38) MPO--Metropolitan Planning Organization, the organization designated by the governor as the responsible entity for transportation planning in urbanized areas over 50,000 in population.

(39) Net operating expenses--Those expenses that remain after operating revenues are subtracted from eligible operating expenses.

(40) New public transportation services or alternatives--An activity that, with respect to the New Freedom program:

(A) is targeted toward people with disabilities;

(B) is beyond the ADA requirements;

(C) meets the intent of the program by removing barriers to transportation and assisting persons with disabilities with transportation, including transportation to and from jobs and employment services; and

(D) is not included in a Transportation Improvement Program or Statewide Transportation Improvement Program prior to August 10, 2005.

(41) New starts project--Any rail fixed guideway system funded under FTA's 49 USC §5309 discretionary construction program.

(42) Nonprofit organization--A corporation or association determined by the Secretary of the Treasury of the United States to be an organization described by 26 USC §501(c), one that is exempt from taxation under 26 USC §504(a) or §101, or one that has been determined under state law to be nonprofit and for which the state has received documentation certifying the status of the nonprofit organization.

(43) Nonurbanized area--An area outside an urbanized area.

(44) Obligated funds--Monies made available under a valid, unexpired contract between the department and a public transportation subrecipient.

(45) Operating expenses--Costs directly related to system operations of a transit agency regardless of the category of funding. At a minimum, this definition includes:

(A) fuel, oil, replacement tires, replacement parts that do not meet the criteria for capital items, drivers' and mechanics' salaries and fringe benefits, dispatchers' salaries, and licenses;

(B) maintenance, repair, servicing, and inspection of transit agency property, including both vehicles and other property, whether routine or to remedy the effects of collision damage or vandalism; and

(C) expenses funded with capital or administrative funds, including preventative maintenance, provision of paratransit service under the Americans with Disability Act (ADA), capital cost of contracting, and insurance.

(46) Passenger operations--The period of time when any aspects of rail transit agency operations are initiated with the intent to carry passengers.

(47) Private--Pertaining to nonpublic entities. This definition does not include municipalities or other political subdivisions of the state; public agencies or instrumentalities of one or more states; Indian tribes (except private nonprofit corporations formed by Indian tribes); public corporations, boards, or commissions established under the law of any state; or entities subject to control by public authority, whether state or municipal.

(48) Program standard--A written document developed and distributed by the oversight agency, that describes the policies, objectives, responsibilities, and procedures used to provide rail transit agency safety and security oversight.

(49) Project--The public transportation activities to be carried out by a subrecipient, as described in its application for funding.

(50) Property damage--The dollar amount required to replace any vehicle, whether transit or non-transit, and any property or facility damaged during an incident, or to repair it to the condition of the property or facility that existed before the incident.

(51) Public transportation--Transportation of passengers and their hand-carried packages or baggage on a regular or continuing basis by means of surface or water conveyance. This definition includes fixed guideway transportation and underground transportation, but excludes services provided by aircraft, taxicabs, ambulances, and emergency vehicles.

(52) Rail transit accident--An incident involving a rail fixed guideway transit vehicle or taking place on rail fixed guideway transit controlled property where one or more of the following occurs:

(A) a fatality at the scene; or where an individual is confirmed dead within thirty (30) days of a rail fixed guideway transit-related incident;

(B) injuries requiring immediate medical attention away from the scene for two or more individuals;

(C) property damage to rail fixed guideway transit vehicles, non-rail transit vehicles, other rail transit property or facilities and non-transit property that equals or exceeds $25,000;

(D) an evacuation due to life safety reasons;

(E) a collision at a grade crossing;

(F) a main-line derailment;

(G) a collision with an individual on a rail fixed guideway right of way; or

(H) a collision between a rail fixed guideway transit vehicle and a second rail fixed guideway transit vehicle, or a rail fixed guideway transit non-revenue vehicle.

(53) Rail transit agency--An entity operating a rail fixed guideway system.

(54) Rail transit contractor--An entity that performs tasks required on behalf of the oversight or rail transit agency. The fixed guideway system may not be a contractor for the oversight agency.

(55) Rail transit controlled property--Property that is used by the rail transit agency and may be owned, leased, or maintained by the rail transit agency.

(56) Rail transit fixed guideway system--Any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway, as determined by the FTA, that:

(A) is not regulated by the Federal Railroad Administration; and

(B) is included in FTA's calculation of fixed guideway route miles or receives funding under FTA's formula program for urbanized areas (49 USC §5336); or

(C) has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas (49 USC §5336).

(57) Rail transit passenger--A person who is on board, boarding, or alighting from a rail transit vehicle for the purpose of travel.

(58) Rail transit vehicle--The rail transit agency's rolling stock, including, but not limited to passenger and maintenance vehicles.

(59) Real property--Land, including improvements, structures, and appurtenances, but excluding movable machinery and equipment.

(60) Revenue service--Passenger transportation occurring when a vehicle is available to the general public and there is a reasonable expectation of carrying passengers that directly pay fares, are subsidized by public policy, or provide payment through some contractual agreement. This does not imply that a cash fare must be paid. Vehicles operated in free fare services are considered in revenue service.

(61) Revenue vehicle--The rolling stock used in providing transit service for passengers. This definition does not include a vehicle used in connection with keeping revenue vehicles in operation, such as a tow truck or a staff car.

(62) Revenues--Fares paid by riders, including those who are later reimbursed by a human service agency or other user-side subsidy arrangement. This definition includes subscription service fees, whether or not collected on-board a transit vehicle. Payments made directly to the transportation system by a human service agency are not considered to be revenues.

(63) Reverse commute project--A public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

(64) Ridership--Unlinked passenger trips.

(65) Ridesharing activities--Transportation provided by rubber-tired vehicles that carry no fewer than 10 nor more than 15 passengers and that are operated on a nonprofit basis.

(66) Rural public transportation (RPT)--A generic term used to identify subrecipients who provide service in nonurbanized areas.

(67) Rural transit district--A political subdivision of the state that provides and coordinates rural public transportation within its boundaries in accordance with the provisions of Transportation Code, Chapter 458.

(68) Safety--Freedom from harm resulting from unintentional acts or circumstances.

(69) Security--Freedom from harm resulting from intentional acts or circumstances. Intentional danger includes crimes and must be reported to the department if the intentional act meets the thresholds for notification.

(70) Stakeholders--All individuals or groups that are potentially affected by transportation decisions. Examples include public agencies, representatives of transportation agency employees or other affected employees, private providers of transportation, non-governmental agencies, local businesses, persons in diverse and traditionally underserved communities, and other interested parties.

(71) Strategic priorities--Projects that the commission has determined will:

(A) stabilize funding levels;

(B) increase transit operating efficiency or effectiveness as demonstrated by significant cost savings or substantial enhancements to service delivery; or

(C) advance the level of coordination among transportation service providers, and among transportation service providers and health and human services agencies.

(72) Subrecipient--An entity that receives state or federal transportation funding from the department, rather than directly from FTA or other state or federal funding source.

(73) System safety program plan--A document developed by the rail transit agency, describing its safety policies, objectives, responsibilities, and procedures.

(74) System security plan--A document developed by the rail transit agency describing its security policies, objectives, responsibilities, and procedures.

(75) Uniform grant and contract management standards--The standards contained in the Texas Administrative Code, Title 1, Chapter 5, Subchapter A, concerning uniform grant and contract management standards for state agencies.

(76) Unlinked passenger trips--The number of passengers who board public transportation vehicles. A passenger is counted each time the passenger boards a vehicle even though the passenger might be on the same journey from origin to destination.

(77) Urban transit district--In accordance with Transportation Code, Chapter 458, a local governmental body or a political subdivision of the state that operates a public transportation system in an urbanized area with a population between 50,000 and 200,000, according to the most recent federal census. This definition includes small urban transportation providers under Transportation Code, Chapter 456, that received state money through the department on September 1, 1994.

(78) Urbanized area--A core area and the surrounding densely populated area with a population of 50,000 or more, with boundaries fixed by the United States Census Bureau.

(79) Vehicle miles--The miles a vehicle travels while in revenue service, plus deadhead miles. This definition excludes miles a vehicle travels for charter service, school bus service, operator training, or maintenance testing.

(80) Vehicle revenue hours or miles--The hours or miles a vehicle travels while in revenue service. This definition includes layover and recovery, but excludes travel to and from storage facilities, the training of operators prior to revenue service, road tests, deadhead travel, and school bus and charter service.

(81) Vehicle utilization--Average daily passenger trips per revenue vehicle, divided by average revenue vehicle capacity. This definition provides a measure of an individual system's ability to use existing seating capacity.

(82) Welfare recipient--An individual who has received assistance under a state or tribal program funded under the Social Security Act, Title IV, Part A, at any time during the previous three year period, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605897
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: November 16, 2006
Proposal publication date: August 11, 2006
For further information, please call: (512) 463-8683

SUBCHAPTER C. FEDERAL PROGRAMS

43 TAC §31.17, §31.18

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 461.

§31.17. Section 5316 Grant Program.

(a) Purpose. The Federal Transit Act, codified at 49 USC §5316, authorizes the Secretary of the United States Department of Transportation to make grants for public transportation projects for access to jobs and reverse commute purposes. The commission has been designated by the governor to administer the Section 5316 program, known as the Job Access and Reverse Commute program, or JARC, in areas less than 200,000 population.

(b) Goal and objectives. The department's goal in administering the Section 5316 program is to promote the availability of public transportation services targeted to employment and employment-related transportation needs. To achieve this goal, the department's objectives are to:

(1) promote the development of employment transportation services throughout the state, in partnership with local officials, public and private non-profit agencies, and operators of public transportation services;

(2) fully integrate the Section 5316 program with other federal and state programs supporting public, employment, and human service transportation;

(3) foster the development of local, coordinated public and human service transportation service plans from which JARC projects are derived;

(4) support local economic development; and

(5) improve the efficiency and effectiveness of the Section 5316 program through the provision of technical assistance.

(c) Department role. The department acts as the designated recipient for Section 5316 funds apportioned to the state for all urbanized areas less than 200,000 population and all nonurbanized areas. The subrecipient shall retain control of daily operations.

(d) Project types.

(1) Job access projects include:

(A) financing the eligible costs of projects that provide public transportation services targeted to welfare recipients and eligible low-income individuals;

(B) promoting public transportation use by low-income workers, including the use of public transportation by workers with nontraditional work schedules;

(C) promoting the use of employer-provided transportation, including the transit pass benefit program under Section 132 of the Internal Revenue Code of 1986;

(D) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing employment or employment-related transportation services; and

(E) otherwise facilitating or providing transportation for employment or employment-related purposes by welfare recipients and low income persons.

(2) Reverse commute projects include:

(A) subsidizing the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and other than urbanized areas to suburban workplaces;

(B) subsidizing the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace;

(C) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing employment or employment-related transportation services; and

(D) otherwise facilitating or providing public transportation services to suburban employment opportunities.

(e) Eligible subrecipients.

(1) State agencies, local governmental authorities, private nonprofit organizations, and operators of public transportation services are eligible to receive Section 5316 funds through the department.

(2) Private for-profit operators of public transportation services may participate in the program through contracts with eligible subrecipients. If allowed by federal regulation, private for-profit operators are eligible to receive funds as a subrecipient.

(3) Applicants who are subrecipients of public transportation funds through another program administered by the department must be in good standing with the department as defined in §31.3 of this chapter.

(f) Eligible assistance categories.

(1) State administrative expenses. The department may use up to 10% of the annual federal apportionment for urbanized areas less than 200,000 population and nonurbanized areas to defray the expenses incurred for the planning and administration of the Section 5316 program. State administrative and technical assistance expenses do not require a non-federal match.

(2) Capital expenses.

(A) Eligible items are:

(i) buses, vans, or other paratransit vehicles, fare boxes, wheelchair lifts and restraints;

(ii) equipment for transporting bicycles on public transit vehicles;

(iii) radios and communication equipment;

(iv) equipment installation costs;

(v) vehicle procurement, testing, inspection, and acceptance costs;

(vi) preventive maintenance, including all maintenance costs;

(vii) vehicle rebuilding or overhaul;

(viii) capital and operating support including computer hardware or software, with prior department approval;

(ix) transit-related intelligent transportation systems;

(x) the introduction of new technology, through innovative and improved products, into public transportation;

(xi) passenger shelters, bus stop signs, and similar passenger amenities, with prior department approval;

(xii) mobility management;

(xiii) the lease of vehicles or equipment, provided that the subrecipient, with the concurrence of the department, determines that a lease is more cost effective than purchase after considering management efficiency, availability of equipment, staffing capabilities, and guidelines on capital leases as contained in 49 CFR Part 639;

(xiv) the capital portions of costs for service under contract as described in FTA Circular 9030.1C or its latest published version; and

(xv) the provision of Americans with Disabilities Act of 1990 (ADA) paratransit service directly related to fixed route JARC services, which shall be used only by subrecipients that are in compliance with ADA requirements for both fixed route and demand responsive service.

(B) Reimbursement rates.

(i) federal funds may be used to reimburse up to 80% of eligible capital expenditures;

(ii) the federal share may increase to up to 90% for incremental costs related to compliance with the Clean Air Act or with the ADA; and

(iii) eligibility standards for the higher federal share are defined in FTA Circular 9030.1C, or its latest version.

(3) Project administration. Administrative costs associated with a JARC project are eligible for a federal reimbursement rate of 50%.

(4) Planning activities. The federal reimbursement rate is 80%. Planning activities may include:

(A) studies relating to management, operations, and capital requirements;

(B) evaluation of previously funded projects; and

(C) other similar or related activities prior to and in preparation for the undertaking or improvement of JARC-eligible services.

(5) Marketing projects. The federal reimbursement rate is 80%. Marketing activities may include:

(A) market research;

(B) production of route maps and schedules;

(C) information delivery;

(D) website development;

(E) advertising;

(F) promotion of the use of transit vouchers by welfare recipients and eligible low income individuals; and

(G) promotion of employer-provided transportation, including the Internal Revenue Service's transit pass benefit.

(6) Operating expenses. Operating expenses are reimbursed at 50% of net operating expenses. Operating expenses are those costs directly tied to systems operations. FTA Circular 9030.1C or its latest published version shall be the guide for determining eligible operating expenses. Examples are:

(A) fuel;

(B) oil;

(C) driver, dispatcher, and mechanic salaries;

(D) purchase of service; and

(E) purchase of vouchers.

(g) Ineligible expenses include:

(1) construction, except for passenger shelters, signage, and similar passenger amenities specifically approved by the department;

(2) extended vehicle warranties;

(3) purchase and/or maintenance of vehicles intended for private use;

(4) purchase of transit passes for use on fixed route or ADA complementary paratransit services; and

(5) other FTA-prohibited expenses.

(h) Local share requirements.

(1) Eligible match sources include local, state, or federal programs, including funds disbursed from the Texas Workforce Commission, local workforce development boards, human service agencies, and the Medicaid Medical Transportation Program. Unrestricted federal funds are also eligible as match, such as Temporary Assistance for Needy Families (42 USC 603(a)(5)(C)(vii)). With prior department approval, in-kind contributions, volunteer services, and donations directly attributable to the project are eligible as local share if the value is documented.

(2) Other U.S. Department of Transportation program funds cannot be used as the local share required for Section 5316 grants. Fares cannot be used as match for any expense but must, instead, be used to determine the net operating expense to reduce the amount of requested reimbursement.

(i) Planning requirement.

(1) Projects submitted in response to the department's call for projects must be derived from a locally developed, coordinated public transit-human service transportation plan. The plan must be developed through a process that includes representatives of public, private, and nonprofit transportation and human service providers and participation by the public.

(2) The commission supports the development of regional service plans that respond to the department's charge in Transportation Code, §461.004 to identify:

(A) overlaps and gaps in the provision of public transportation services, including services that could be more effectively provided by existing, privately funded transportation resources;

(B) underused equipment owned by public transportation providers; and

(C) inefficiencies in the provision of public transportation services by any public transportation provider.

(3) The commission anticipates that the regional service planning process will be used to meet the requirements of the local coordinated planning process described in paragraph (1) of this subsection. Regions interested in participating in the JARC program shall develop and prioritize Section 5316 projects in response to the employment transportation deficiencies identified in the regional planning process and documented in the plan.

(4) A JARC project must:

(A) contain goals and objectives;

(B) discuss rider origination location and employment and employment-related destinations and how the project fills the transportation gap;

(C) describe how it implements the regional service plan;

(D) describe the role of the local workforce development board or its service provider in developing the project;

(E) explain how the project will maximize use of existing transportation service providers;

(F) provide a cost estimate; and

(G) identify match sources including employer-provided or employer-assisted transportation service strategies incorporated in the project.

(j) Allocation of funds. As part of its administration of the Section 5316 program, the department is charged with ensuring that there is a fair and equitable distribution of program funds within the state (49 USC §5316(f)(2)).

(1) The department will act as the designated recipient for projects in urbanized areas of less than 200,000 population and in nonurbanized areas. Of the amount apportioned to these areas by FTA's annual publication in the *Federal Register*, the department may use up to 10% of the total for its administrative, planning, and technical assistance activities to support the JARC program statewide.

(2) The department will allocate the remaining Section 5316 funds to subrecipients through a statewide competitive selection process.

(3) Unless the governor certifies that all program objectives are being met, funds apportioned to urbanized areas with less than 200,000 population will be available only to fund projects in these geographic areas.

(4) Funds apportioned to nonurbanized areas will be available only for projects serving nonurbanized areas.

(5) The origination location of the riders, not their destination, shall be the basis for determining which apportionment the department uses to fund an approved project.

(6) At a minimum, the department will publish a notice in the *Texas Register* soliciting proposals for the award of Section 5316 JARC grants. An eligible entity may submit a proposal for an eligible project in response to the published notice.

(A) The proposal must include a detailed description of:

(i) the project and the need for the project;

(ii) how the award of transportation JARC funds will expand the availability of employment related transportation services;

(iii) how the project will:

(I) promote the development of employment transportation services;

(II) support local economic development and expand economic opportunity for economically disadvantaged individuals;

(III) fully integrate the JARC program with other federal and state programs supporting public, employment, and human service transportation; and

(IV) improve the efficiency and effectiveness of employment related transportation opportunities.

(B) The proposal must describe the project's relationship to the locally developed, coordinated public transit-human service transportation plan.

(C) The department may require supplemental information to clarify the issues described in paragraph (6)(A) and (B) of this subsection.

(k) Grant award.

(1) After commission and FTA approval of the program of projects, the department will enter into grant agreements with individual subrecipients. A subrecipient must comply with all rules and regulations applicable to the Section 5316 program.

(2) The commission will make the final selection of projects and will select projects based on the potential of the project to:

(A) reduce congestion;

(B) expand economic opportunity;

(C) enhance safety;

(D) improve air quality; and

(E) increase the value of transportation assets.

(3) Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the unobligated balance to another project.

(l) Vehicle leasing. Vehicles acquired under the Section 5316 program may be leased to other entities, with prior department approval, such as local public bodies or agencies, private non-profit agencies, or private for-profit operators. The lessee shall operate the vehicles on behalf of the Section 5316 subrecipient and provide the transportation services as described in the grant application. The Section 5316 subrecipient is responsible for seeing that all federal and state rules and regulations are observed by the lessee.

(m) Incidental vehicle use. Vehicles purchased with Section 5316 funds may be used for incidental uses that do not conflict with their primary mission - employment and employment-related transportation. Examples are stopping for retail purchases enroute home from the workday, allowing riders not engaged in employment activities to occupy vacant seats, delivering meals, or using the vehicle for other public transportation activities when not required for its JARC project purposes. Vehicles shall not be altered in any way to accommodate incidental use.

(n) Disposition of vehicles at end of the grant. If a subrecipient is no longer receiving funds for a JARC project and has purchased a vehicle with JARC funds, the vehicle may be transferred to another subrecipient, in accordance with state laws and procedures governing disposition requirements.

§31.18. Section 5317 Grant Program.

(a) Purpose. The Federal Transit Act, codified at 49 USC §5317, authorizes the Secretary of the United States Department of Transportation to make grants for public transportation projects that provide new public transportation services and public transportation alternatives beyond those currently required by the Americans with Disabilities Act of 1990 (ADA) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services. The commission has been designated by the governor to administer the Section 5317 program, known as the New Freedom Program, or NF, in areas less than 200,000 population.

(b) Goal and objectives. The department's goal in administering the Section 5317 program is to provide new or improved public transportation services and alternatives, beyond the requirements of the ADA, to assist individuals with disabilities. To achieve this goal, the department's objectives are to:

(1) promote the development and maintenance of a network of transportation services and alternatives, beyond the requirements of the ADA, for persons with disabilities throughout the state, in partnership with local officials, public and private non-profit agencies, and operators of public transportation services;

(2) fully integrate the Section 5317 program with other federal, state, and local resources and programs that are designed to serve similar populations;

(3) foster the development of local, coordinated public and human service transportation service plans from which NF projects are derived;

(4) improve the efficiency, effectiveness, and safety of Section 5317 project providers through the provision of technical assistance; and

(5) include private sector operators in the overall plan to provide NF program transportation services for persons with disabilities.

(c) Department role. The department acts as the designated recipient for Section 5317 funds apportioned to the state for all urbanized areas less than 200,000 population and all nonurbanized areas. The subrecipient shall retain control of daily operations.

(d) Project types.

(1) New public transportation service projects, "beyond ADA", include:

(A) providing paratransit services beyond minimum requirements (3/4 mile to either side of a fixed route) for a transit provider operating fixed route service;

(B) making accessibility improvements to existing transit and intermodal stations not designated as key stations; for example, adding an elevator or ramps, detectable warnings, improving signage;

(C) building an accessible path to a bus stop that is currently inaccessible, including curbcuts, sidewalks, pedestrian signals or other accessible features;

(D) implementing technology improvements that enhance accessibility for persons with disabilities;

(E) implementing "same day" paratransit services; and

(F) otherwise facilitating or providing transportation services beyond ADA requirements, including transportation to and from employment and employment-related destinations.

(2) New public transportation alternatives, "beyond ADA", include:

(A) purchasing vehicles and supporting accessible taxi, ride-sharing, and vanpooling programs;

(B) supporting voucher programs for transportation services offered by human service providers;

(C) supporting volunteer driver and aide programs;

(D) acquiring transportation services by a contract, lease, or other arrangement;

(E) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation;

(F) new feeder service (transit service that provides access) to commuter rail, commuter bus, intercity rail and intercity bus

stations, for which complementary paratransit service is not required under the ADA;

(G) new training programs for individual users on awareness, knowledge, and skills of public and alternative transportation options available in their communities. This includes travel instruction and travel training services; and

(H) otherwise facilitating or providing new transportation services for persons with disabilities, including transportation to and from employment and employment-related destinations.

(e) Eligible subrecipients.

(1) State agencies, local governmental authorities, private nonprofit organizations, and operators of public transportation services are eligible to receive Section 5317 funds through the department.

(2) Private for-profit operators of public transportation services may participate in the program through contracts with eligible subrecipients. If allowed by federal regulation, private for-profit operators are eligible to receive funds as a subrecipient.

(3) Applicants who are subrecipients of public transportation funds through another program administered by the department must be in good standing with the department as defined in §31.3 of this chapter.

(f) Eligible assistance categories include:

(1) State administrative expenses. The department may use up to 10% of the annual federal apportionment for urbanized areas less than 200,000 population and nonurbanized areas to defray its expenses incurred for the planning and administration of the Section 5317 program. State administrative and technical assistance expenses do not require a non-federal match.

(2) Capital expenses.

(A) Eligible items include:

(i) buses, vans, or other paratransit vehicles, fareboxes, wheelchair lifts and restraints;

(ii) radios and communications equipment;

(iii) accessibility aids;

(iv) equipment installation costs;

(v) vehicle procurement, testing, inspection, and acceptance costs;

(vi) vehicle rebuilding or overhaul;

(vii) capital and operational support including computer hardware or software, with prior department approval;

(viii) preventive maintenance, including all maintenance costs, with prior department approval;

(ix) transit-related intelligent transportation systems;

(x) the introduction of new technology, through innovative and improved products, into public transportation;

(xi) curbcuts, sidewalks, pedestrian signals or other accessible features;

(xii) mobility management;

(xiii) the lease of vehicles or equipment, provided that the subrecipient, with the concurrence of the department, determines that a lease is more cost effective than the purchase after considering management efficiency, availability of equipment, staffing capabilities, and guidelines on capital leases as contained in 49 CFR Part 639; and

(xiv) the capital portions of costs for service under contract as described in FTA Circular 9070.1E or its latest published version.

(B) Reimbursement rates.

(i) Federal funds may be used to reimburse up to 80% of eligible capital expenditures; and

(ii) the federal share may increase to up to 90% for incremental costs related to compliance with the Clean Air Act or with the ADA. Eligibility standards for the higher federal share are defined in FTA Circular 9070.1E, or its latest version.

(3) Project administration. Administrative costs associated with a NF project are eligible for a federal reimbursement rate of 50%.

(4) Operating expenses. Operating expenses are reimbursed at 50% of net operating expenses. Operating expenses are those costs directly tied to systems operations. FTA Circular 9030.1C, or its latest published version, shall be the guide for determining eligible operating expenses not specifically listed in this paragraph. Examples are:

(A) fuel and oil;

(B) maintenance, with prior department approval;

(C) driver, dispatcher, and mechanic salaries;

(D) purchase of service;

(E) reimbursement of costs associated with a volunteer driver program; and

(F) purchase of vouchers.

(g) Ineligible expenses include:

(1) extended vehicle warranties;

(2) purchase and/or maintenance of vehicles intended for private use;

(3) marketing

(4) planning

(5) purchase of transit passes for use on fixed route or ADA complementary paratransit services; and

(6) other FTA-prohibited expenses.

(h) Local share requirements.

(1) Eligible match sources include local, state, or federal program funds disbursed from the Texas Workforce Commission, local workforce development boards, human service agencies and the Medicaid Medical Transportation Program. Unrestricted federal funds are also eligible as match, such as Temporary Assistance for Needy Families (42 USC 603(a)(5)(C)(vii)). With prior department approval, in-kind contributions, volunteer services, and donations directly attributable to the project are eligible as local share if the value is documented.

(2) Other U.S. Department of Transportation program funds cannot be used as the local share required for Section 5317 grants. Fares cannot be used as match for any expense but must, instead, be used to determine the net operating expense to reduce the amount of requested reimbursement.

(i) Planning requirement.

(1) Projects submitted in response to the department's call for projects must be derived from a locally developed, coordinated public transit-human service transportation plan. The plan must be developed through a process that includes representatives of public, private, and nonprofit transportation and human service providers and participation by the public.

(2) The commission supports the development of regional service plans that respond to the department's charge in Transportation Code, §461.004 to identify:

(A) overlaps and gaps in the provision of public transportation services including services that could be more effectively provided by existing, privately funded transportation resources;

(B) underused equipment owned by public transportation providers; and

(C) inefficiencies in the provision of public transportation services by any public transportation provider.

(3) The commission anticipates that the regional service planning process will be used to meet the requirements of the local coordinated planning process defined in paragraph (1) of this subsection. Regions interested in participating in the NF program shall develop and prioritize Section 5317 projects in response to the opportunities to improve transportation for persons with disabilities uncovered in the regional planning process and documented in the plan.

(4) An NF project must:

(A) contain goals and objectives;

(B) discuss rider origination location and destinations and how the project fills the transportation gap by providing new transportation services or new transportation alternatives beyond ADA requirements;

(C) describe how it implements the regional service plan;

(D) explain how the project will maximize use of existing transportation service providers;

(E) provide a cost estimate; and

(F) identify match sources.

(G) Where transportation to employment or employment-related destinations is part of the project, any employer-provided or employer-assisted transportation service strategies incorporated in the project must also be identified.

(j) Allocation of funds. As part of its administration of the Section 5317 program, the department is charged with ensuring that there is a fair and equitable distribution of program funds within the state (49 USC §5317(e)(2)).

(1) The department will act as the designated recipient for projects in urbanized areas of less than 200,000 population and in nonurbanized areas. Of the amount apportioned to these areas by FTA's annual publication in the *Federal Register*, the department may use up to 10% of the total for its administrative, planning, and technical assistance activities to support the NF program statewide.

(2) The department will allocate the remaining Section 5317 funds to subrecipients through a competitive selection process.

(3) Funds apportioned to urbanized areas less than 200,000 population will be available only to fund projects in these geographic areas.

(4) Funds apportioned to nonurbanized areas will be available only for projects serving nonurbanized areas.

(5) The origin of the riders, not their destination, shall be the basis for determining which apportionment the department uses to fund an approved project.

(6) At a minimum, the department will publish a notice in the *Texas Register* soliciting proposals for the award for Section 5317 NF grants.

(A) An eligible entity may submit a proposal for an eligible project in response to the published notice. The proposal must include a detailed description of:

(i) the project and the need for the project;

(ii) the methods by which the award of transportation NF funds will provide new transportation services or new alternatives, beyond ADA requirements, for persons with disabilities;

(iii) how the project will:

(I) promote the development and maintenance of a network of transportation services for persons with disabilities;

(II) expand economic opportunity for individuals with disabilities;

(III) fully integrate the NF program with other federal, state, and local resources and programs that are designed to serve similar populations; and

(IV) improve the efficiency, effectiveness, and safety of transportation services for persons with disabilities.

(B) The proposal must describe the project's relationship to the locally developed, coordinated public transit-human service transportation plan.

(C) The department may require supplemental information to clarify the issues described in paragraph (6)(A) and (B) of this subsection.

(k) Grant Award.

(1) After commission and FTA approval of the program of projects, the department will enter into grant agreements with individual subrecipients. A subrecipient must comply with all requirements, rules, and regulations applicable to the Section 5317 program.

(2) The commission will make the final selection of projects and will select projects based on the potential of the project to:

(A) reduce congestion;

(B) expand economic opportunity;

(C) enhance safety;

(D) improve air quality; and

(E) increase the value of transportation assets.

(3) Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the unobligated balance to another project.

(l) Vehicle leasing. Vehicles acquired under the Section 5317 program may be leased to other entities, with prior department approval, such as local public bodies or agencies, private non-profit agencies, or private for-profit operators. The lessee shall operate the vehicles on behalf of the Section 5317 recipient and provide the transportation services as described in the grant application. The Section 5317

recipient is responsible for seeing that all federal and state rules and regulations are observed by the lessee.

(m) Incidental vehicle use. Vehicles purchased with Section 5317 funds may be used for incidental use that does not conflict with their primary mission - providing new or alternative transportation services beyond ADA requirements. Examples of incidental use are meal delivery, allowing able-bodied persons to occupy vacant seats or using the vehicle for other public transportation activities not required for its NF project purposes. Vehicles shall not be altered in any way to accommodate incidental uses.

(n) Disposition of vehicles at end of the grant. If a subrecipient is no longer receiving funds for an NF project and has purchased a vehicle with NF funds, the vehicle may be transferred to another subrecipient, in accordance with state laws and procedures governing disposition requirements.

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

Filed with the Office of the Secretary of State on October 27, 2006.

TRD-200605898
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: November 16, 2006
Proposal publication date: August 11, 2006
For further information, please call: (512) 463-8683

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 91, §§91.501 (Eligibility to Hold Office), 91.502 (Director Fees and Expenses), 91.503 (Change in Credit Union President), 91.510 (Bond and Insurance Requirements), 91.515 (Financial Reporting), 91.516 (Audits and Verifications), 91.601 (Share and Deposit Accounts), 91.602 (Solicitation and Acceptance of Brokered Deposits), 91.608 (Confidentiality of Member Records), and 91.610 (Safe Deposit Box Facilities) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to info@tcud.state.tx.us. The deadline for comments is November 30, 2006.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-200605919

Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 30, 2006

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Texas Department of Criminal Justice

Title 37, Part 6

The Texas Department of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 151, General Provisions, §151.52, Sick Leave Pool. This review is being conducted pursuant to Texas Government Code, §2001.039, which requires rule review every four years.

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

Cross reference to statutes: Texas Government Code, §661.202.

TRD-200605920
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: October 30, 2006

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Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC) Chapter 61, concerning Terms and Phrases, pursuant to Texas Government Code §2001.039. As required by this statute, ERS will accept comments as to whether the reasons for adopting 34 TAC Chapter 61 continue to exist. The public comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mailed to paula.jones@ers.state.tx.us.

TRD-200605868

Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: October 25, 2006

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The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC) Chapter 63, concerning Board of Trustees, pursuant to Texas Government Code §2001.039. As required by this statute, ERS will accept comments as to whether the reasons for adopting 34 TAC Chapter 63 continue to exist. The public comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mailed to paula.jones@ers.state.tx.us.

TRD-200605869
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: October 25, 2006

♦ ♦ ♦

The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC) Chapter 65, concerning Executive Director, pursuant to Texas Government Code §2001.039. As required by this statute, ERS will accept comments as to whether the reasons for adopting 34 TAC Chapter 65 continue to exist. The public comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mailed to paula.jones@ers.state.tx.us.

TRD-200605870
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: October 25, 2006

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The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC) Chapter 67, concerning Hearings on Disputed Claims, pursuant to Texas Government Code §2001.039. As required by this statute, ERS will accept comments as to whether the reasons for adopting 34 TAC Chapter 67 continue to exist. The public comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mailed to paula.jones@ers.state.tx.us.

TRD-200605871
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: October 25, 2006

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The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC) Chapter 85, concerning Flexible Benefits, pursuant to Texas Government Code §2001.039. As required by this statute, ERS will accept comments as to whether the reasons for adopting 34 TAC Chapter 85 continue to exist. The public comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mailed to paula.jones@ers.state.tx.us.

TRD-200605872
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: October 25, 2006

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The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC) Chapter 87, concerning Deferred Compensation, pursuant to Texas Government Code §2001.039. As required by this statute, ERS will accept comments as to whether the reasons for adopting 34 TAC Chapter 87 continue to exist. The public comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mailed to paula.jones@ers.state.tx.us.

TRD-200605873
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: October 25, 2006

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Teacher Retirement System of Texas

Title 34, Part 3

The Teacher Retirement System of Texas (TRS) files this expanded notice of intention to review and to consider for readoption, amendment, or repeal the rule chapters in Title 34, Part 3, of the Texas Administrative Code: Chapter 21 (Purpose and Scope), Chapter 23 (Administrative Procedures), Chapter 25 (Membership Credit), Chapter 27 (Termination of Membership and Refunds), Chapter 29 (Benefits), Chapter 31 (Employment After Retirement), Chapter 33 (Legal Capacity), Chapter 35 (Payments by TRS), Chapter 39 (Proof of Age), Chapter 41 (Health Care and Insurance Programs), Chapter 43 (Contested Cases), Chapter 47 (Qualified Domestic Relations Orders), Chapter 49 (Collection of Delinquent Obligations), and Chapter 51 (General Administration). TRS published its initial proposed rule review notice in the March 31, 2006 issue of the *Texas Register* (31 TexReg 2884). This continuing review and consideration is being conducted in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The review includes, at a minimum, an assessment as to whether the reasons for adopting or readopting the rules in these chapters continue to exist. TRS has previously filed a rule review plan, which is available on the Secretary of State's Web site at www.sos.state.tx.us.

This expanded proposed rule review notice provides greater detail on the assessment TRS has made of the rule chapters under review, as shown below:

CHAPTER 21. PURPOSE AND SCOPE.

§21.1, Statement of Policy - Readopt without changes.

CHAPTER 23. ADMINISTRATIVE PROCEDURES.

§23.1, Complaints - Readopt without changes.

§23.4, Public Participation in Adoption of Rules - Readopt with changes.

§23.5, Nomination for Appointment to the Board of Trustees - Readopt with changes.

§23.7, Code of Ethics for Consultants, Agents, Financial Providers and Brokers - Readopt with changes.

§23.8, Expenditure Reporting by Consultants, Agents, Financial Providers and Brokers - Readopt with changes.

CHAPTER 25. MEMBERSHIP CREDIT.

Subchapter A. Service Eligible for Membership.

§25.1, Full-time Service - Readopt with changes.

§25.2, Bus Drivers - Readopt without changes.

§25.3, Independent or Third-Party Contractors - Readopt without changes.

§25.4, Substitutes - Readopt without changes.

§25.6, Part-time or Temporary Employment - Readopt without changes.

§25.10, Student Employment - Readopt without changes.

Subchapter B. Compensation.

§25.21, Compensation Subject to Deposit and Credit - Readopt with changes.

§25.22, Contributions to Cafeteria Plans and Deferred Compensation - Readopt without changes.

§25.24, Performance Pay - Readopt without changes.

§25.25, Required Deposits - Readopt without changes.

§25.26, Annual Compensation Creditable for Benefit Calculation - Readopt without changes.

§25.28, Payroll Report Dates - Readopt without changes.

§25.30, Conversion of Noncreditable Compensation to Salary - Readopt without changes.

§25.31, Percentage Limits on Compensation Increases - Readopt with changes.

§25.33, Contribution Limitation Based on Compensation - Readopt with changes.

§25.34, Membership Waiting Period - Readopt without changes.

§25.35, Employer Payments for New Members - Readopt without changes.

Subchapter C. Unreported Service or Compensation.

§25.41, Required Deposits - Readopt with changes.

§25.42, Payment of Benefits Contingent on Deposits - Readopt with changes.

§25.43, Deposits for Unreported Service - Readopt with changes.

§25.44, Service Eligibility - Repeal.

§25.45, Verification of Unreported Compensation - Readopt with changes.

§25.46, Determination of Compensation Subject to Deposit and Credit - Readopt with changes.

Subchapter E. Military Service.

§25.61, Service Credit for Eligible Military Duty - Readopt without changes.

§25.64, Crediting Fee - Readopt without changes.

§25.66, Application for Military Credit - Readopt without changes.

Subchapter F. Veteran's (USERRA) Service Credit.

§25.71, Service Credit for Eligible Active Military Duty Under the Uniformed Services Employment and Re-Employment Rights Act - Readopt without changes.

§25.72, Limitations on Eligible Service - Readopt without changes.

§25.73, Ineligible Military Service - Readopt without changes.

§25.74, Cost - Readopt without changes.

§25.75, Application for Eligible Active Military Duty Under the Uniformed Services Employment and Re-Employment Rights Act - Readopt with changes.

§25.76, Eligibility of Retiree - Readopt without changes.

Subchapter G. Purchase of Credit for Out-of-State Service.

§25.81, Out-of-State Service Eligible for Credit - Readopt without changes.

§25.82, Cost - Readopt with changes.

§25.84, Crediting Fees - Readopt without changes.

§25.85, Amount of Out-of-State Service Which Can Be Purchased - Readopt without changes.

§25.86, Computing Average Compensation - Readopt without changes.

§25.87, Effective Date of Out-of-State Service Credit and Time for Payment - Readopt without changes.

Subchapter H. Joint Service with Employees Retirement System.

§25.113, Transfer of Credit between TRS and ERS - Readopt with changes.

Subchapter I. Verification of Service.

§25.121, Employer Verification - Readopt with changes.

§25.122, Affidavit - Readopt without changes.

§25.123, Certification - Readopt with changes.

Subchapter J. Creditable Time and School Year.

§25.131, Required Service - Readopt with changes.

§25.132, Paid Leave Time - Readopt without changes.

§25.133, School Year - Readopt without changes.

§25.134, Credit Limit - Readopt without changes.

Subchapter K. Developmental Leave.

§25.151, Developmental Leave, Eligibility, Cost - Readopt without changes.

§25.152, Application and Payment for Developmental Leave Credit - Readopt without changes.

Subchapter L. Other Special Credit Service.

§25.161, Work Experience Service Credit - Readopt with changes.

§25.162, State Personal or Sick Leave Credit - Readopt without changes.

§25.163, Service Credit Purchase - Readopt without changes.

§25.164, Credit for Service During School Year With Membership Waiting Period - Readopt with changes.

Subchapter M. Optional Retirement Program.

§25.171, Election of ORP - Readopt without changes.

§25.172, ORP and TRS - Readopt without changes.

Subchapter N. Installment Payments.

§25.181, Minimum Monthly Payment - Readopt without changes.

§25.182, Yearly Increments of Credit - Readopt without changes.

§25.183, Nonpayment - Readopt without changes.

§25.184, Refund for Nonpayment - Readopt with changes.

§25.185, Amounts Not Refundable - Readopt without changes.

§25.186, Automatic Bank Draft - Readopt without changes.

§25.188, Payment by Beneficiary - Readopt without changes.

§25.189, Fees Set at the Time of First Payment - Readopt without changes.

§25.190, Employer Pick-up of Installment Payments - Readopt without changes.

Subchapter O. Rollover Distributions and Transfers to TRS.

§25.201, Acceptance of Rollovers and Transfers for Purchase of TRS Credit - Readopt with changes.

Subchapter P. Calculation of Fees.

§25.301, Calculation of Fees - Readopt with changes.

§25.302, Calculation of Actuarial Cost - Adopt new rule.

CHAPTER 27. TERMINATION OF MEMBERSHIP AND REFUNDS.

§27.2, Withdrawal by a Person in a Position Not Eligible for TRS Membership - Readopt with changes.

§27.3, False Affidavit and Ineligible Refunds - Readopt with changes.

§27.4, Refunds - Readopt without changes.

§27.5, Termination of Right to Benefits - Readopt without changes.

§27.6, Reinstatement of an Account - Readopt with changes.

§27.8, Reinstatement of Membership and Service Credit by ORP Participants - Readopt with changes.

§27.10, Forfeitures May Not Increase Benefits - Readopt without changes.

CHAPTER 29. BENEFITS.

Subchapter A. Retirement.

§29.4, Actual Compensation - Readopt without changes.

§29.5, Computation of Retirement Benefits - Readopt without changes.

§29.8, Retirement Payment Plans - Readopt without changes.

§29.9, Survivor Benefits - Readopt without changes.

§29.10, Retirement Under Options 3 and 4 - Readopt without changes.

§29.11, Actuarial Tables - Readopt without changes.

§29.12, Early Age Retirement Benefit Calculated on Law in Effect Before September 1, 2005 - Readopt without changes.

§29.13, Changing Beneficiary for Survivor Benefits - Readopt without changes.

§29.14, Eligibility for Retirement at the End of May - Readopt without changes.

§29.15, Termination of Employment - Readopt with changes.

§29.16, Unpaid Benefits - Readopt without changes.

§29.17, Latest Date for Commencement of Benefits - Readopt without changes.

§29.21, Beneficiary Tables - Readopt without changes.

§29.22, Approval of Disability Retirements - Readopt without changes.

§29.23, Disability Retirement with Less Than 10 Years of Creditable Service - Readopt without changes.

§29.24, Purchase of Credit - Readopt without changes.

§29.26, Discontinuance of Disability Benefits - Readopt with changes.

Subchapter B. Death Before Retirement.

§29.33, Absence from Service - Readopt without changes.

§29.34, Limitations - Readopt with changes.

Subchapter C. Postretirement Increases.

§29.40, Election of Recalculation of Benefit - Readopt without changes.

Subchapter D. Plan Limitations.

§29.50, Definitions - Readopt with changes.

§29.51, Plan Limitations on Retirement Benefits - Readopt with changes.

§29.52, Adjustment to Annual Benefit Limit - Readopt with changes.

§29.53, Limitation for Participant in Defined Contribution Plan - Repeal.

§29.55, Limitation on Contributions - Readopt with changes.

Subchapter E. Deferred Retirement Option Plan.

§29.61, Distribution - Readopt with changes.

§29.62, Unemployment During Deferred Retirement Option Plan - Readopt without changes.

§29.63, Deadline for Purchase of Special Service Credit - Readopt without changes.

Subchapter F. Partial Lump-Sum Payment.

§29.70, Distribution - Readopt with changes.

§29.71, Tables - Readopt without changes.

§29.72, Eligibility to Select PLSO - Readopt without changes.

Subchapter G. Proportionate Retirement.

§29.80, Eligibility for Normal Age Retirement - Readopt without changes.

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT.

Subchapter A. General Provisions.

§31.1, Definitions - Readopt without changes.

§31.2, Monthly Certified Statement - Readopt without changes.

§31.3, Exceptions Apply Only to Effective Retirements - Readopt without changes.

Subchapter B. Employment After Service Retirement.

§31.11, Employment Resulting in Forfeiture of Service Retirement Annuity - Readopt without changes.

§31.12, Exceptions to Forfeiture of Service Retirement Annuity - Readopt with changes.

§31.13, Substitute Service - Readopt with changes.

§31.14, One-Half Time Employment - Readopt with changes.

§31.15, Six-Month Exception - Readopt with changes.

§31.16, Acute Shortage Area Exception - Readopt with changes.

§31.17, Principal or Assistant Principal Exception - Readopt with changes.

§31.18, Bus Driver Exception - Readopt without changes.

§31.19, Faculty Member of Professional Nursing Program - Readopt with changes.

Subchapter C. Employment After Disability Retirement.

§31.31, Employment Resulting in Forfeiture of Disability Retirement Annuity - Readopt without changes.

§31.32, Half-Time Employment Up to 90 Days - Readopt without changes.

§31.33, Substitute Service Up to 90 Days - Readopt without changes.

§31.34, Employment Up to Three Months on a One-Time Only Trial Basis - Readopt with changes.

Subchapter D. Employer Pension Surcharge.

§31.41, Return to Work Employer Pension Surcharge - Readopt with changes.

CHAPTER 33. LEGAL CAPACITY.

§33.1, Selection of Plan for Payment of Death Claim for a Minor Child - Readopt without changes.

§33.2, Payments for the Account of a Minor Child or Incapacitated Person - Readopt with changes.

§33.3, Selection of Plan for Payment of Death Claim for an Incapacitated Person - Readopt without changes.

§33.4, Selection of Retirement Plan for an Incapacitated Person - Readopt without changes.

§33.5, Approval of Designated Beneficiary - Readopt with changes.

§33.6, Power of Attorney - Readopt without changes.

§33.7, Acceptable Signatures - Readopt without changes.

CHAPTER 35. PAYMENTS BY TRS.

§35.1, Computation Error - Readopt with changes.

§35.2, Direct Rollovers from TRS - Readopt without changes.

CHAPTER 39. PROOF OF AGE.

§39.1, Establishment of Date of Birth - Readopt without changes.

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS.

Subchapter A. Retiree Health Care Benefits (TRS-Care).

§41.1, Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care) - Readopt without changes.

§41.2, Additional Enrollment Opportunity - Readopt without changes.

§41.3, Retirees Advisory Committee - Readopt without changes.

§41.4, Employer Health Benefit Surcharge - Readopt without changes.

§41.5, Payment of Contributions - Readopt without changes.

§41.6, Required Contributions from Public Schools - Readopt without changes.

§41.7, Effective Date of Coverage - Readopt without changes.

§41.8, Eligible Bidders - Readopt without changes.

§41.9, Bid Procedure - Readopt without changes.

§41.10, Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act - Readopt without changes.

§41.11, Years of Service Credit Used to Determine Premiums - Readopt without changes.

§41.14, Expulsion from TRS-Care for Fraud - Readopt without changes.

Subchapter B. Long-Term Care, Disability, and Life Insurance.

§41.15, Requirements to Bid on Insurance For School District Employees and Retirees Under Chapters 1576 and 1577 of the Insurance Code - Readopt with changes.

§41.16, Coverage Offered Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program - Readopt with changes.

§41.17, Definitions - Readopt with changes.

§41.18, Eligibility for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program - Readopt with changes.

§41.19, Initial Enrollment Periods for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program - Readopt with changes.

§41.20, Effective Date of Coverage Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program - Readopt without changes.

Subchapter C. Texas School Employees Group Health (TRS-ActiveCare).

§41.30, Participation in the Texas School Employees Uniform Group Health Coverage Act (TRS-ActiveCare) by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers - Readopt with changes.

§41.31, Eligible Bidders - Readopt with changes.

§41.32, Bid Procedure - Readopt with changes.

§41.33, Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program - Readopt with changes.

§41.34, Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program - Readopt with changes.

§41.35, Coverage Plans - Readopt with changes.

§41.36, Enrollment Periods for the TRS-ActiveCare Program - Readopt with changes.

§41.37, Effective Date of Coverage - Readopt with changes.

§41.38, Termination Date of Coverage - Readopt with changes.

§41.39, Coverage for Individuals Changing Employers - Readopt with changes.

§41.40, Coverage Continuation While on Leave Without Pay - Readopt with changes.

§41.41, Premium Payment - Readopt with changes.

§41.45, Required Information from School Districts with More than 1,000 Employees - Readopt without changes.

§41.50, Adjudication of Claims - Readopt with changes.

§41.51, Appeals Relating to Eligibility - Readopt with changes.

§41.52, Expulsion from TRS-ActiveCare Program - Readopt with changes.

Subchapter D. Comparability of Group Health Coverages.

§41.91, Certification of Insurance Coverage - Readopt with changes.

CHAPTER 43. CONTESTED CASES.

§43.1, Administrative Review of Individual Requests - Readopt with changes.

§43.2, Effect of Invalidity of Rule - Readopt without changes.

§43.3, Definitions - Readopt with changes.

§43.4, Decisions Subject to Review by an Adjudicative Hearing - Readopt without changes.

§43.5, Request for Adjudicative Hearing - Readopt without changes.

§43.6, Filing of Documents - Readopt with changes.

§43.7, Computation of Time - Readopt without changes.

§43.8, Extensions - Readopt with changes.

§43.9, Docketing of Adjudicative Hearing, Dismissal, and SOAH Authority - Readopt with changes.

§43.10, Authority to Grant Relief - Readopt with changes.

§43.11, Classification of Pleadings - Readopt without changes.

§43.12, Form of Petitions and Other Pleadings - Readopt with changes.

§43.13, Filing of Pleadings and Amendments - Readopt without changes.

§43.14, Briefs - Readopt without changes.

§43.15, Motions - Readopt with changes.

§43.16, Notice of Hearing and Other Action - Readopt with changes.

§43.17, Agreements To Be in Writing - Readopt without changes.

§43.18, Motion for Consolidation - Readopt with changes.

§43.19, Additional Parties - Readopt without changes.

§43.20, Appearance and Representation - Readopt with changes.

§43.21, Lead Counsel - Readopt without changes.

§43.23, Powers of the Administrative Law Judge - Readopt with changes.

§43.24, Prehearing Conference and Orders - Readopt without changes.

§43.25, Conduct of Hearing - Readopt without changes.

§43.26, General Admissibility - Readopt without changes.

§43.27, Exhibits - Readopt without changes.

§43.28, Pre-filed Direct Testimony in Disability Appeal Proceedings - Readopt with changes.

§43.29, Limit on Number of Witnesses - Readopt without changes.

§43.33, Failure to Appear - Readopt without changes.

§43.34, Conduct and Decorum at Hearing - Readopt with changes.

§43.35, Official Notice - Readopt without changes.

§43.36, Ex Parte Consultations - Readopt without changes.

§43.37, Recording of the Hearing; Certified Language Interpreter - Readopt with changes.

§43.38, Dismissal without Hearing - Readopt with changes.

§43.39, Summary Disposition - Readopt with changes.

§43.40, The Record - Readopt without changes.

§43.41, Findings of Fact - Readopt without changes.

§43.42, Reopening of Hearing - Readopt with changes.

§43.43, Subpoenas and Commissions - Readopt without changes.

§43.44, Discovery - Readopt with changes.

§43.45, Proposals for Decision, Exceptions, and Appeals to the Board of Trustees - Readopt with changes.

§43.46, Rehearings - Readopt without changes.

§43.47, Procedures Not Otherwise Provided - Readopt without changes.

§43.48, Appeal to Court - New Rule.

CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS.

§47.1, Payments by TRS - Readopt without changes.

§47.2, Submission of Orders - Readopt without changes.

§47.3, Review of Orders - Readopt without changes.

§47.4, Payment Pursuant to Qualified Orders - Readopt without changes.

§47.5, Orders Not Qualified - Readopt without changes.

§47.6, Determination That An Order Is Not Qualified Is Final - Readopt without changes.

§47.7, Submission of Amended Order - Readopt without changes.

§47.8, Orders Affecting Optional Retirement Program - Readopt without changes.

§47.9, Orders Affecting Benefits from More Than One Public Retirement System - Readopt without changes.

§47.10, Determination of Whether an Order Is a Qualified Domestic Relations Order - Readopt with changes.

§47.13, Benefits Resulting from Resumption of Membership and Reinstatement of Service Credit - Readopt without changes.

§47.14, Reinstatement of Service Credit - Readopt without changes.

§47.15, Death of an Alternate Payee - Readopt without changes.

§47.16, Effective Date of TRS Review of Orders - Readopt without changes.

§47.17, Calculation for Alternate Payee Benefits Before a Member's Benefit Begins - Readopt with changes.

CHAPTER 49. COLLECTION OF DELINQUENT OBLIGATIONS.

§49.1, Collection Procedures - Readopt without changes.

§49.2, Demand Letters - Readopt without changes.

§49.3, Referrals of Delinquent Obligations to Attorney General for Collection - Readopt without changes.

§49.4, Extension of Deadlines - Readopt without changes.

§49.5, Records - Readopt without changes.

§49.6, Supplemental and Alternative Collection Procedures - Readopt without changes.

§49.7, Exceptions - Readopt without changes.

CHAPTER 51. GENERAL ADMINISTRATION.

§51.1, Advisory and Auxiliary Committees - Readopt with changes.

§51.2, Vendor Protests, Dispute Resolution, and Hearing - Readopt without changes.

§51.5, Waiver of Deadline to Remit Deposits and Documentation - Readopt without changes. Readopt without changes.

§51.7, Assignment of TRS Vehicles - Readopt without changes.

§51.11, Historically Underutilized Businesses - Readopt without changes.

§51.12, Applicability of Certain Laws in Effect Before September 1, 2005 - Readopt without changes.

Written comments pertaining to this expanded proposed rule review notice must be submitted to Ronnie Jung, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701. The deadline for written comments is 30 days after publication of this notice in the *Texas Register*. The preambles and rule texts for the proposed amendment, repeal, or creation of rules arising out of the rule review are published for public comment in the Proposed Rules section of this issue of the *Texas Register* in accordance with the requirements of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code and the related rules of the Secretary of State. The public will continue to be given the opportunity to comment on the proposed rule review and any proposed rule changes arising out of the review at upcoming meetings of the TRS Board of Trustees.

TRD-200605925
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Filed: October 30, 2006

♦ ♦ ♦

Adopted Rule Review

Texas Department of Insurance

Title 28, Part 1

Pursuant to the notice of proposed rule review published in the *Texas Register* (31 TexReg 4483), May 26, 2006, the Texas Department of Insurance has reviewed and considered for readoption, revision or repeal all sections as they existed on May 26, 2006, of the following chapters of Title 28, Part 1 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 5, Property and Casualty Insurance; Chapter 7, Corporate and Financial Regulation; Chapter 11, Health Maintenance Organizations; Chapter 15, Surplus Lines Insurance; Chapter 19, Agents' Licensing; Chapter 21, Trade Practices; Chapter 23, Prepaid Legal Service; and Chapter 26, Small Employer Health Insurance Regulations.

The Department considered, among other things, whether the reasons for adoption of these rules continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapters 5, 7, 11, 15, 19, 21, 23, and 26. The completion of the review of these chapters concludes the rule review process.

TRD-200605906
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 27, 2006

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §3.80(a)

Table 1. Railroad Commission Oil and Gas Division Forms

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
AOF-1	Field Application for AOF Status	10/95	3.31
AOF-2	Individual Operator Application for AOF Status	10/95	3.31
AOF-3	Operator's Review of AOF Status	12/95	3.31
C-1	Carbon Black Plant Report	7/66	3.54, 3.63
C-2	Application for Permit to Operate a Carbon Black Plant	7/66	3.54, 3.63
C-3	Permit to Operate Carbon Black Plant	12/67	3.54, 3.63
CF-1	Commercial Facility Bond	8/98	3.78
CF-2	Commercial Facility Irrevocable Letter of Credit	8/98	3.78
G-1	Gas Well Back Pressure Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.28, 3.31
G-3	Gas Storage Data Sheet	10/94	3.96, 3.97
G-5	Gas Well Classification Report	1/86	3.53
G-9	Gas Cycling Report	4/71	
G-10	Gas Well Status Report	9/00	3.28, 3.53, 3.55, 3.71
GC-1	Gas Well Capability	5/92	3.31
GT-1	Geothermal Production Test, Completion or Recompletion Report, and Log	01/76	3.4, 3.16, 3.33
GT-2	Producer's Monthly Report of Geothermal Wells	01/76	Tex. Nat. Res. Code, Ch. 141
GT-3	Monthly Geothermal Gatherer's Report	01/76	Tex. Nat. Res. Code, Ch. 141
GT-4	Producer's Certificate of Compliance and Authorization to Transport Geothermal Energy and/or Natural Gas and/or Other Minerals	01/76	Tex. Nat. Res. Code, Ch. 141
GT-5	Application to Inject Fluid into a Reservoir Productive of Geothermal Resources	9/75	Tex. Nat. Res. Code, Ch. 141
H-1	Application to Inject Fluid into a Reservoir Productive of Oil or Gas	[~~4/82 Revision effective~~] 05/01/04	3.46
H-1A	Injection Well Data for H-1 Application	[~~4/82 Revision effective~~] 05/01/04	3.46
H-1S	Injection Well Area Permit	12/98	3.46
H-2	Permit Application to Create, Operate and Maintain a Brine Mining Facility	5/99	3.81
H-4	Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility	4/82	3.95, 3.97
H-5	Disposal/Injection Well Pressure Test Report	6/85	3.9, 3.46, 3.96
H-7	Fresh Water Data Form	3/68	3.46

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
H-8	Crude Oil, Gas Well Liquids, or Associated Products Loss Report	6/70	3.20
N/A	Interim H-8 Crude Oil Spill Sheet	12/93	3.20
H-9	Certificate of Compliance, Statewide Rule 36 (Hydrogen Sulfide)	12/77	3.36
H-10	Annual Disposal/Injection Well Monitoring Report (RRC computer-generated)	7/95	3.9, 3.46
H-10H	Annual Well Monitoring Report Underground Storage in Salt Formations	7/95	3.95, 3.96, 3.97
H-11	Application for Permit to Maintain and Use a Pit	5/84	3.8
H-12	New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application	10/03	3.50
H-13	EOR Positive Production Response Certification Application	4/90	3.50
H-14	Enhanced Oil Recovery Reduced Tax Annual Report	2/93	3.50
H-15	Test on an Inactive Well More than 25 Years Old	8/93	3.14
H-20	Hazardous Oil and Gas Waste Generator (and Transporter) Notification	6/96	3.98
H-21	Annual Hazardous Oil and Gas Waste Report	10/01	3.98
L-1	Electric Log Status Report	**12/06** [~~1/02~~]	3.16
MD-1	Optional Operator Market Demand Forecast for Gas Well Gas in Prorated Fields	5/92	3.31
OW-1	Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells	4/06	Tex. Nat. Res. Code, §89.060
OW-2	Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells	4/06	Tex. Nat. Res. Code, §89.060
OW-3	Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well	4/06	Tex. Nat. Res. Code, §89.060
PR	Monthly Production Report	**Effective** [~~New Form effective~~] for production reports filed for 01/05 or after 5:00 pm CT 02/11/05	3.27, 3.54, 3.58
P-1B	Producer's Monthly Supplemental Report	9/90	3.50, 3.80
P-3	Authority to Transport Recovered Load or Frac Oil	3/77	3.58
P-4	Producer's Certificate of Compliance and Transportation Authority	5/02	3.1, 3.14, 3.30, 3.58, 3.73, 3.78
P-5	Organization Report	1/87	3.1
P-5 IWB	Individual Well Bond	11/00	3.78
P-5 IWLC	Individual Well Irrevocable Documentary Letter of Credit	1/02	3.78
P-5LC	Irrevocable Documentary Blanket Letter of Credit	2/01	3.78
P-5 PB(1)	Individual Performance Bond	2/01	3.78
P-5PB(2)	Blanket Performance Bond	2/01	3.78
P-5S	P-5 Supplemental Officer Listing	9/91	3.1

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
N/A	Franchise Tax Certification (The Commission will accept a copy of the Certificate of Account Status from the Texas Comptroller of Public Accounts in lieu of the Commission's form.)	11/01	3.1
P-6	Request for Permission to Consolidate/Subdivide Leases	5/02	3.26, 3.27, 3.38,3.39, 3.58
P-7	New Field Designation and/or Discovery Allowable Application	2/89	3.41, 3.42
P-8	Request for Clearance of Storage Tanks Prior to Potential Test	12/82	3.58
P-12	Certificate of Pooling Authority	5/01	3.31, 3.38, 3.40
P-13	Application of Landowner to Condition an Abandoned Well for Fresh Water Production	9/79	3.14
P-15	Statement of Productivity of Acreage Assigned to Proration Units	5/71	3.31
P-17	Application for Exception to Statewide Rules 26 and/or 27 (Commingling)	1/78	3.26, 3.27
P-17A	Interim Commingling/Measurement Application Supplement	6/97	3.26, 3.27
P-18	Skim Oil/Condensate Report	1/86	3.56
PS-79	Application for a Permit to Construct a Sour Gas Pipeline Facility	3/98	3.106
R-1	Monthly Report and Operations Statement for Refineries	1974	3.61
R-2	Monthly Report for Reclaiming and Treating Plants	12/77	3.8, 3.57
R-3	Monthly Report for Gas Processing Plants	10/00	3.54, 3.56, 3.60, 3.62
R-4	Gas Processing Plant Report of Gas Injected	9/75	3.54
R-5	Certificate of Compliance (Gasoline Plants and Refineries)	3/72	3.61
R-6	Application for Certificate of Compliance (Cycling Plant)	9/75	3.62
R-7	Pressure Maintenance & Repressuring Plant Report	*	3.54
R-9	Application for Permit to Operate Reclamation Plant	2/90	3.57
S-10	Application for Transfer of Allowable, Casing Leak Well East Texas Field)	2/89	Field Rules
ST-1	Application for Texas Severance Tax Incentive Certification	**12/06** [~~**10/03**~~]	3.83, 3.101,3.103
T-1	Monthly Transportation & Storage Report	3/72	3.59
T-4, T-4A, T-4C	Forms relating to pipeline permits; under jurisdiction of the Safety Division	T-4: 9/99T-4A: 4/99T-4C: 4/97	3.70
T-6	Pipeline Company Monthly Report of Gas Exported from Texas	1948	Exec. Order
T-7	Dist. 10 Panhandle Fields Monthly Gas Gatherer Report	6/91	Dkt. 10-87017
VCP-1	Voluntary Cleanup Program Application	11/03	4.401 - 4.405
VCP-2	Voluntary Cleanup Program Agreement	11/03	4.401 - 4.405
W-1	Application to Drill, Deepen, Plug Back, or Reenter	[~~**9/01 (Revision effective**~~] 07/01/04 [~~)~~]	3.5
W-1A	Substandard Acreage Drilling Unit Certification	5/01	3.38
W-1D	Supplemental Directional Well Information	07/01/04	3.5
W-1H	Supplemental Horizontal Well Information	07/01/04	3.5
W-1X	Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit	10/03	3.14, 3.78

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
W-2	Oil Well Potential Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.46, 3.51
W-3	Plugging Record	12/92	3.14
W-3A	Notice of Intention to Plug and Abandon	1/83	3.14
W-4	Application for Multiple Completion	8/69	3.6
W-4A	Sketch of Multiple Completion Installation	8/69	3.6
W-5	Packer Setting Report	8/69	3.6
W-6	Communication or Packer Leakage Test	1/70	3.6
W-7	Bottom-hole Pressure Report	*	3.41
W-9	Net Gas-Oil Ratio Report	7/69	RRC Order, §49
W-10	Oil Well Status Report	7/95	3.26, 3.27, 3.52, 3.53
W-12	Inclination Report	1/71	3.11
W-14	Application to Dispose of Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas	[~~1/82 Revision effective~~] 05/01/04	3.9
W-15	Cementing Report	4/83	3.8, 3.13, 3.14
WH-1	Application for Oil and Gas Waste Hauler's Permit (formerly Application for Salt Water Hauler's Permit)	4/94	3.8
WH-2	Oil and Gas Waste Hauler's List of Vehicles (formerly Salt Water Hauler's Permit Bond)	4/94	3.8
WH-3	Oil and Gas Waste Hauler's Authority to Use Approved Disposal/Injection System	4/94	3.8
W-21	Application for Exception to Statewide Rule 21 to Produce by Swabbing, Bailing, or Jetting	2/03	3.21
Data Sheet	SWR 32 Exception Data Sheet	2/99	3.32
Data Sheet	SWR 10 Exception Data Sheet	*	3.10
EPA 8700-12	RCRA Subtitle C Site Identification Form (not an RRC form but required)	01/04	3.98
N/A	Claim for Proceeds of Salvage	9/94	Tex. Nat. Res. Code, §89.086
N/A	Request for Notice by Lienholder or Non-Operator	9/94	Tex. Nat.Res. Code, §§89.043(c), 89.085(f), 91.115(f)
SAD	Security Administrator Designation (SAD) Form	07/04	3.80

Figure: 19 TAC §153.1022(d)

Years Experience	Monthly Amount
0	2,732 [~~2,482~~]
1	2,791 [~~2,541~~]
2	2,849 [~~2,599~~]
3	2,908 [~~2,658~~]
4	3,032 [~~2,782~~]
5	3,156 [~~2,906~~]
6	3,280 [~~3,030~~]
7	3,395 [~~3,145~~]
8	3,504 [~~3,254~~]
9	3,607 [~~3,357~~]
10	3,704 [~~3,454~~]
11	3,796 [~~3,546~~]
12	3,884 [~~3,634~~]
13	3,965 [~~3,715~~]
14	4,043 [~~3,793~~]
15	4,116 [~~3,866~~]
16	4,186 [~~3,936~~]
17	4,251 [~~4,001~~]
18	4,313 [~~4,063~~]
19	4,372 [~~4,122~~]
20 & Over	4,427 [~~4,177~~]

Figure: 25 TAC §97.91(d)

SAMPLE DELEGATION FORM

SIDE A: DELEGATION OF AUTHORITY TO GIVE INFORMED CONSENT FOR IMMUNIZATIONS OF A MINOR

I give permission for

_____

(Name of Adult to Whom Consent is Delegated)

to consent for

_____DOB_____/_____/_____/ to

(Name of Minor)

receive the appropriate immunizations.

Relationship of adult to minor: _____

_____ _____/_____/_____

Signature/Parent, Managing Conservator, Legal Guardian, or Authorized Person — Date of Signature

_____ _____/_____/_____

Signature/Initials of Clinic Staff — Date of Immunization

Figure: 31 TAC §57.157(b)

Species	**Ring ID in Inches**
Washboard, Megalonaias nervosa	4.00
Threeridges and roundlakes, Amblema spp.	2.75
Mapleleafs and pimplebacks, Quadrula spp.	2.75
Tampico pearlymussel, Cyrtonaias tampicoenisis	2.75
Bleufer, Potamilus purpuratus	2.75
All Other Species of Freshwater Mussels	2.50

Figure: 37 TAC §159.19(a)

MEMORANDUM OF UNDERSTANDING

Between the Texas Department of Criminal Justice and the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services

For the purpose of establishing a continuity of care and service program for offenders with physical disabilities, the elderly, the significantly or terminally ill, and the mentally retarded involved in the criminal justice system, the Texas Department of Criminal Justice (TDCJ), the Department of Assistive and Rehabilitative Services (DARS), the Department of Aging and Disability Services (DADS), and the Department of State Health Services (DSHS), hereinafter the Entities, agree to the following:

1. AUTHORITY AND PURPOSE:
   a) Texas Health and Safety Code, §§614.014 - 614.015 authorize TDCJ, DARS, DADS and DSHS to establish a Memorandum of Understanding (MOU) that identifies methods for:
      - identifying offenders with physical disabilities, the elderly, the significantly or terminally ill, and those with mental retardation (hereinafter referred to as offenders with special needs);
      - developing interagency rules, policies, procedures and standards for the coordination of care and services of and exchange of information on offenders with special needs; and
      - identifying services needed by offenders with special needs to reenter the community successfully.
2. ALL ENTITIES AGREE TO:
   a) Follow the statutory provisions in Chapter 614 of the Texas Health and Safety Code relating to the exchange of information (including electronic) about offenders with special needs for the purpose of providing or coordinating services among the Entities; and when appropriate, include such requirements in any relevant rules, policies or contract/grants.
   b) Develop rules, policies, procedures, or standards that describe the agency's role and responsibility in the continuity of care process for offenders with special needs.

c) Develop procedures that provide for the preparation and sharing of assessments or diagnostics for offenders with special needs prior to the imposition of community supervision, incarceration, or parole, and the transfer of such diagnostics on offenders with special needs between local and state entities described in this agreement.

d) Participate in cross training or educational events targeted for improving each agency's knowledge and understanding of the criminal justice, DARS, DADS and DSHS systems' roles and responsibilities.

e) Inform each other of any proposed policy, procedure, standard or rule change which could affect the continuity of care system for offenders with special needs with each agency afforded thirty (30) days after receipt of proposed change(s) to respond to the recommendations prior to the adoption.

f) Provide information to Texas Correctional Office on Offenders With Medical or Mental Impairments (TCOOMMI) on the implementation of initiatives outlined in this MOU, as requested, and available to assist in the completion of their annual report.

g) Actively seek federal grants or funds to operate and expand the program.

h) Operate the continuity of care and service program for special needs offenders in the criminal justice system with funds appropriated for that purpose.

3. TDCJ THROUGH ITS DIVISIONS SHALL:

a) Cross-reference offender database and make information available to the DARS, DADS and DSHS as allowed by applicable statutes, rules or policies.

b) Develop a process to ensure that any medical, diagnostic or treatment information pertaining to offenders with special needs shall be provided to relevant local and state criminal justice agencies or other contract providers.

c) Ensure that offenders with special needs being released from institutional facilities have access to a ten-day supply of medications upon their release.

d) Contact the DARS Deaf and Hard of Hearing Services Regional Specialist 60 days prior to release of offenders with hearing impairments to ensure access to appropriate services and resources upon their release.

e) Establish an internal procedure in cooperation with TCOOMMI to review Motion to Revoke cases involving any offender with special needs. This

review shall address interventions that have been made or should be made prior to final revocation action.

4. DARS SHALL:

   a) Develop continuity of Services Procedures specific to offenders with special needs who are involved in the criminal justice system.

   b) Provide a list of regional contacts that will coordinate connecting applicants to the appropriate field office that will accept appropriate referrals in the applicant community for offenders with special needs within 60 days prior to release and determine eligibility in accordance with federal and state laws and policies of the DARS.

   c) Resources permitting, participate in any relevant research or studies specific to offenders with special needs.

   d) Subject to time and fiscal constraints, provide and/or coordinate training and/or technical assistance to TCOOMMI and other participating agencies concerning issues related to persons served by the department.

5. DADS SHALL:

   a) Develop continuity of care rules specific to offenders with special needs; and

   b) Include in the performance contract requirements for local aging, mental retardation and long term care centers to adhere to and implement the activities outlined in the MOU, including statutory provisions specific to sharing of information, and cross-referencing data with local and state correctional and criminal justice entities.

6. DSHS SHALL:

   a) Develop continuity of care policies specific to offenders with special needs who are involved in the criminal justice system;

   b) Accept appropriate referrals in the applicant community within 30 days prior to release for offenders with special needs and determine eligibility in accordance with federal and state laws and policies of DSHS;

   c) Resources permitting, participate in relevant research or studies specific to offenders with special needs with the approval of the DSHS Institutional Review Board;

   d) Respond to TDCJ's data requests to cross-reference offender data against relevant DSHS information on offenders with special needs; and

e) Subject to time and fiscal constraints, provide and/or coordinate training and/or technical assistance to TCOOMMMI and other participating agencies concerning issues related to offenders with special needs.

7. REVIEW AND MONITORING:

a) This MOU shall be adopted by the Departments of Assistive and Rehabilitative Services, Aging and Disability Services and State Health Services and the Texas Department of Criminal Justice. Subsequent to adoption, all parties shall provide status reports to TCOOMMI. Amendments to this MOU may be made at any time by mutual agreement of the parties.

b) TCOOMMI shall serve as the dispute resolution mechanism for conflicts concerning this MOU at both the local and statewide level.

TCOOMMI, in coordination with each state agency or department identified, shall develop a standardized process for collecting and reporting the MOU implementation outcomes. The findings of these reports shall be submitted to the Texas Board of Criminal Justice and the Legislature by September 1 of each even-numbered year and shall be included in recommendations in TCOOMMI's biennium report.

8. RENEWAL: This agreement shall be renewed every four years by mutual agreement of all the parties.

Certification

This Memorandum of Understanding is adopted to be effective_____2007.

_____
Executive Director
Texas Department of Criminal Justice

_____
Commissioner
Department of Assistive and Rehabilitative Services

_____
Commissioner
Department of Aging and Disability Services

_____
Commissioner
Department of State Health Services

Figure: 37 TAC §159.21(a)

MEMORANDUM OF UNDERSTANDING

Between the Texas Correctional Office on Offenders with Medical or Mental Impairments and the Texas Commission on Law Enforcement Officer Standards and Education and the Texas Commission on Jail Standards

For the purpose of establishing a continuity of care and service program for offenders with mental impairments, elderly, physically disabled, terminally ill, or significantly ill, the Texas Correctional Office on Offenders with Mental and Medical Impairments (TCOOMMI), the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and the Texas Commission on Jail Standards (TCJS) (The Entities) agree to the following:

1. AUTHORITY AND PURPOSE:

   Texas Health and Safety Code, §614.016 authorizes TCOOMMI, TCLEOSE, and the TCJS to establish a Memorandum of Understanding (MOU) that identifies methods for:

   - Identifying offenders in the criminal justice system who are mentally impaired, elderly, physically disabled, terminally ill or significantly ill;
   - Developing procedures for the exchange of information relating to offenders who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill by TCOOMMI, TCLEOSE and the TCJS for use in the continuity of care and services program; and
   - Adopting rules and standards that assist in the development of a continuity of care and services program for offenders who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill.

2. ALL ENTITIES AGREE TO THE EXTENT POSSIBLE:

   a) Coordinate on the development of policies, rules or standards that promote the exchange of information (including electronic) about offenders with special needs without consent of the individuals involved for the purpose of providing or coordinating services among the entities;

   b) Coordinate on the development of systems that provide for the timely identification of offenders with special needs who come into contact with law enforcement or jail personnel;

   c) Distribute relevant training seminar and/or educational information toward improving the knowledge and understanding of the identification and management of offenders with special needs;

d) Inform each other of any proposed rule or standard change which could affect the continuity of care system. Each agency shall be afforded thirty (30) days after receipt of proposed change(s) to respond to the recommendations prior to the adoption;

e) Provide annual status reports to TCOOMMI on the implementation of initiatives outlined in this MOU;

f) Provide opportunities for cross-training for each others staff; and

g) Provide technical assistance and professional consultation to the affected entities toward enhancing the coordination and response to offenders with special needs.

3. TCOOMMI SHALL:

a) Provide technical assistance toward the development of improved medical and psychiatric screening standards;

b) Provide training and technical assistance to state or local law enforcement or jails on enhancing identification and management strategies for offenders with special needs;

c) Monitor and coordinate the implementation of the activities of this MOU;

d) Provide reports to the Legislature on the status of implementation of activities; and

e) Participate in any relevant research or studies relevant to offenders with special needs who come into contact with law enforcement or who are incarcerated in county jails.

4. TCLEOSE SHALL:

a) Coordinate with TCOOMMI on the development of curriculum changes relating to offenders with special needs for pre and/or in-service training requirements for peace officers;

b) Provide annual status reports to TCOOMMI on the number of peace officers who have received training and/or certification in specialized mental health or related course work; and

c) Coordinate with TCOOMMI on any research and/or evaluation activities designed to measure the effectiveness of specialized peace officer training.

5. TCJS SHALL:

a) Develop rules and/or standards to enhance the mental health and medical screening processes utilized by the local jails;

b) Monitor the implementation of any screening standard through on-site audits conducted by TCJS staff in the course of routine jail inspections;

c) Encourage local jails to develop written procedures with local mental health or health/human service agencies that describe activities for cross-referencing inmate census with the above referenced social service agencies;

d) Provide quarterly reports to TCOOMMI on MOU implementation activities; and

e) Coordinate with TCOOMMI on any proposed rule or standard change involving offenders with special needs.

6. REVIEW AND MONITORING:

a) TCOOMMI, TCLEOSE, and TCJS shall monitor implementation of the Continuity of Care and Service Program as outlined in this MOU. The intent of all agencies is to provide timely communication, discussion and resolution of transitional problems should any occur.

b) This MOU shall be adopted by the Texas Correctional Office on Offenders with Medical and Mental Impairments, the Texas Commission on Law Enforcement Officer Standards and Education and the Texas Commission on Jail Standards. Subsequent to adoption, all parties to this memorandum shall annually review this memorandum and provide status reports to the Texas Correctional Office on Offenders with Medical and Mental Impairments. Amendments to this Memorandum of Understanding may be made at anytime by mutual agreement of the parties.

7. Renewal: This agreement shall be reviewed for renewal every four years.

Certification

This Memorandum of Understanding is adopted to be effective: _____2007.

_____
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education

_____
Executive Director
Texas Commission on Jail Standards

_____
Executive Director
Texas Department of Criminal Justice

Figure: 40 TAC §745.37(1)

Child Day-Care Operations	Description of Operation	Type of Permit
(A) Listed Family Home	A caregiver at least 18 years old that provides care in her own home for compensation, for three or fewer children unrelated to the caregiver, birth through 13 years, for at least four hours a day, three or more days a week, and more than nine consecutive weeks. The total number of children in care, including children related to the caregiver, may not exceed 12.	Listing (A caregiver who is subject to regulation as a listed family home may instead become a registered family home.)
(B) Registered Family Home	A caregiver who provides care in her own home for four to six children, birth through 13 years. Child day care can be provided for six additional school-aged children before and/or after the customary school day. The total number of children in care, including children related to the caregiver, may not exceed 12.	Registration
(C) Group Day-Care Home	An operation that provides care for seven to 12 children, birth through 13 years.	License
(D) Day-Care Center	An operation that provides care for 13 or more children, birth through 13 years.	License
(E) Drop-in Care Center	An operation that provides care for children, birth through 13 years. It does not provide care for the same child for more than five consecutive days or for more than 15 days in one calendar month.	License
(F) School: Kindergarten and Above	An operation that provides an educational program in one or more grades for children ages four through 13 years. The school operates only during the customary public school day.	License
(G) Kindergarten and Nursery School	An operation that provides an educational program that is four hours or less per day and more than two days a week for children two through six years.	License

Figure: 40 TAC §745.37(2)

Child Day-Care Operations	Description of Operation	Type of Permit
(A) Listed Family Home	A caregiver at least 18 years old that provides care in her own home for compensation, for three or fewer children unrelated to the caregiver, birth through 13 years, for at least four hours a day, three or more days a week, and more than nine consecutive weeks. The total number of children in care, including children related to the caregiver, may not exceed 12.	Listing (A caregiver who is subject to regulation as a listed family home may instead become a registered family home.)
(B) Registered Child-Care Home	The primary caregiver provides regular care in the caregiver's own residence for not more than six children from birth through 13 years, and may provide care after school hours for not more than six additional elementary school children. The total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	Registration
(C) Licensed Child-Care Home	The primary caregiver provides care in the caregiver's own residence for children from birth through 13 years. The total number of children in care varies with the ages of the children, but the total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	License
(D) Child-Care Center	An operation providing care for seven or more children under 14 years of age for less than 24 hours per day at a location other than the permit holder's home.	License

Figure: 40 TAC §745.37(3)

Residential Child-Care Operations	Description	Type of Permit
(A) Foster Family Home (Independent)	An operation that provides care for six or fewer children up to the age of 18 years.	License
(B) Foster Group Home (Independent)	An operation that provides care for seven to 12 children up to the age of 18 years.	License
(C) General Residential Operation	An operation that provides child care for 13 or more children up to the age of 18 years. The care may include treatment services.	License
(D) Residential Treatment Center	An operation that exclusively provides care and treatment services for emotional disorders for 13 or more children up to the age of 18 years.	License
(E) Child-Placing Agency (CPA)	A person, agency, or organization other than a parent who places or plans for the placement of a child in an adoptive home or other residential care setting.	License
(F) Maternity Home	An operation that provides care for four or more minor and/or adult women and her children during pregnancy and/or during the six-week postpartum period, within a period of 12 months.	License
(G) Child-Placing Agency Foster Family Home	An operation that provides care for six or fewer children, up to the age of 18 years, under the regulation of a child-placing agency.	Verification (The CPA issues this. A CPA regulates its own foster family homes.)
(H) Child-Placing Agency Foster Group Home	An operation that provides care for seven to 12 children, up to the age of 18 years, under the regulation of a child-placing agency.	Verification (The CPA issues this. A CPA regulates its own foster group homes.)

Figure: 40 TAC §745.243

Type of Application	Required Application Materials
(1) Application for Listing a Family Home	(A) A completed Listing Request Form; (B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter (relating to Background Checks); and (C) The listing fee.
(2) Application for Registering a Child-Care Home	(A) A completed Registration Request Form; (B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter; (C) A notarized Affidavit for Applicants for Employment with a Child-Care Facility or Registered Child-Care Home Form for any employee of the registered child-care home or any applicant you intend to hire; (D) Proof of current certification in infant/child/adult CPR; (E) Proof of current certification in first aid, which must include rescue breathing and choking; (F) The registration fee; (G) Verification that the applicant completed the required orientation within one year prior to the date of application; and (H) Proof of a high school diploma or high school equivalent.
(3) Application for Licensing a Child Day-Care Operation	(A) A completed Child Day-Care Licensing Application Form; (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space; (C) A completed Governing Body/Director Designation Form. This form is not required if the governing body is a sole proprietorship and the proprietor is also the director; (D) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter; (E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, and all persons designated as director or co-director; (F) Proof that the corporation is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title (relating to How do I demonstrate that the governing body is not delinquent in paying the franchise tax?); (G) Except for licensed child-care homes, proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title (relating to What insurance coverage must I have for my licensed operation? and What are acceptable reasons for not obtaining liability insurance?); (H) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you plan to comply with the minimum standards; (I) The application fee; and (J) The initial license fee.

(4) Application for Licensing a Residential Child-Care Operation including a Child-Placing Agency and Maternity Home	(A) An Application for License to Operate a Residential Child-Care Facility, Child-Placing Agency, or Maternity Home; (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space; (C) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter; (D) A completed Controlling Person Form as set forth in Subchapter G of this chapter (relating to Residential Controlling Person and Certain Employment Prohibited); (E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed child-care administrator; (F) Proof that the corporation is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title; (G) Proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title; (H) Policies, procedures, and documentation required by minimum standard rules; (I) The application fee; and (J) The initial license fee, if applicable.
(5) Application for Certifying a Child Day-Care Operation	(A) A completed Child Day-Care Licensing Application Form; (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space; (C) A completed Governing Body/Director Designation Form; (D) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter; (E) A completed Personal History Statement Form for all persons designated as director or co-director; and (F) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you plan to comply with the minimum standards.
(6) Application for Certifying a Residential Child-Care Operation including a Child-Placing Agency and Maternity Home	(A) A completed Application for License to Operate a Residential Child-Care Facility, Maternity Home, or Child-Placing Agency, as appropriate; (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space; (C) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter; (D) A completed Controlling Person Form as set forth in Subchapter G of this chapter; (E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed child-care administrator; and (F) Policies, procedures, and documentation required by minimum standard rules.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Automobile Theft Prevention Authority

Request for Grant Applications under the Automobile Theft Prevention Authority Fund

Notice of Invitation for Applications:

The Automobile Theft Prevention Authority (ATPA) is soliciting applications for supplemental grants to be awarded for projects to reduce the incidence of economic automobile theft. This grant cycle will be eight months in duration, and will begin on January 22, 2007 and end August 31, 2007.

Law Enforcement/Detection/Apprehension Projects, to establish motor vehicle theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, precinct commissioner, general or home rule cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding.

Prosecution/Adjudication/Conviction Projects, to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with motor vehicle theft offenses.

Prevention, Anti-Theft Devices and Automobile Registration Projects, to test experimental equipment which is considered to be designed for auto theft deterrence and registration of vehicles in the Texas Help End Auto Theft (H.E.A.T.) Program.

Reduction of the Sale of Stolen Vehicles or Parts Projects, to provide vehicle identification number labeling, including component part labeling and etching methods designed to deter the sale of stolen vehicles or parts.

Public Awareness and Crime Prevention/Education/Information Projects, to provide education and specialized training to law enforcement officers in auto theft prevention procedures, provide information linkages between state law enforcement agencies on auto theft crimes, and develop a public information and education program on theft prevention measures.

Eligible Applicants:

Current ATPA funded agencies are eligible to apply for supplemental grants for automobile theft prevention assistance projects.

Grant Offering:

The Texas Automobile Theft Prevention Authority will consider funding grant application requests from existing grant programs for Equipment, Technology, Research and Direct Operating Expenses for Fiscal Year 2007.

Contact Person:

Detailed specifications, including selection process for applicants is available from ATPA.

Contact Susan Sampson, Director,

Texas Automobile Theft Prevention Authority,

4000 Jackson Avenue, Austin, Texas 78731, (512) 374-5101.

Application Deadline and Submission Requirements:

The Authority must receive applications by 5 p.m., November 17, 2006 or postmarked by November 17, 2006. Each Application must:

1. Include all signed certifications and signature pages.

2. Application must be mailed or delivered to: Texas Automobile Theft Prevention Authority, 4000 Jackson Avenue Austin, Texas 78731

3. Submit one (1) original and four (4) copies of the proposal

4. Facsimile transmissions will not be accepted.

If mailed, applications must be marked "Personal and Confidential" and addressed to the contact person listed above. If delivered, please leave application with the contact person (or designee) at the address listed.

Selection Process:

Applications will be selected according to rules §57.2, §57.4, §57.7, and §57.14, as published in Title 43 Chapter 57, Texas Administrative Code.

Grant award decisions by ATPA are final and not subject to judicial review.

Grants will be awarded on or before January 18, 2007.

TRD-200606015
Susan Sampson
Director
Automobile Theft Prevention Authority
Filed: October 31, 2006

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Brazos Valley Council of Governments

Request for Quotes

Policy Studies, Inc., seeks to procure eligible vendors for the purchase of general office supplies to be used in its various offices in the Brazos Valley. Potential vendors will be required to submit pricing information on a list of 25 specific, commonly ordered general office supplies as delineated in the Request for Quotes from PSI.

PSI Staff will evaluate vendor responses to this solicitation based on vendor eligibility, pricing, and locations served. HUB businesses are encouraged to apply. PSI reserves the right to not award any contracts under this RFQ. PSI reserves the right to contract with multiple vendors and makes no guarantees of quantities to be purchased.

Vendors interested in receiving a copy of the RFQ may contact Philip Beard at 3991 East 29th St., Bryan, Texas; (979) 595-2800 x2243; Fax (979) 595-2812; www.bvjobs.org; pbeard@bvcog.org. Completed requests must be received by 4 p.m. on November 16, 2006 to receive consideration.

TRD-200605895
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: October 26, 2006

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Request for Quotes

Policy Studies, Inc., seeks to procure eligible vendors for the purchase of toner supplies to be used in its various offices in the Brazos Valley. Potential vendors will be required to submit pricing information on a list of specific, commonly ordered toner supplies as delineated in the Request for Quotes from PSI.

PSI Staff will evaluate vendor responses to this solicitation based on vendor eligibility, pricing, and locations served. HUB businesses are encouraged to apply. PSI reserves the right to not award any contracts under this RFQ. PSI reserves the right to contract with multiple vendors and makes no guarantees of quantities to be purchased.

Vendors interested in receiving a copy of the RFQ may contact Philip Beard at 3991 East 29th St., Bryan, Texas; (979) 595-2800 x2243; Fax (979) 595-2812; www.bvjobs.org; pbeard@bvcog.org. Completed requests must be received by 4 p.m. on November 16, 2006 to receive consideration.

TRD-200605899
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: October 27, 2006

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/06/06 - 11/12/06 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/06/06 - 11/12/06 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 11/01/06 - 11/30/06 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/06 - 11/30/06 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200606021
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 31, 2006

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Texas Education Agency

Request for Applications Concerning the Texas Science, Technology, Engineering, and Math (T-STEM) Network Acceleration Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-07-102 from school districts and open-enrollment charter schools on behalf of eligible high school campuses. Eligible high school campuses shall include campuses with less than 50 percent of students meeting the Grade 9 mathematics passing standard or campuses with less than 50 percent of students meeting the Grade 10 science passing standard as determined by the first administration of the Texas Assessment of Knowledge and Skills (TAKS) tests in the spring of 2006.

Campuses receiving funding from any of the following sources are not eligible to receive funds under this grant program: the Texas High School Project through a High School Redesign and Restructuring Grant, Cycle 1 or Cycle 2; a Middle College/Early College Expansion Grant; a High Schools That Work Enhanced Design Network Grant; an Early College High School Grant; a T-STEM Academy Grant; a Texas High School Completion and Success Grant, Cycle 3, from the Texas Education Agency; or an Early College High School Grant, a Redesigned High School Grant, or a New Schools Grant from the Communities Foundation of Texas.

Description. The purpose of this program is to increase student achievement in mathematics and science by creating a network of secondary schools committed to a common set of T-STEM core elements and by providing resources for the implementation of highly effective mathematics and science acceleration strategies. T-STEM Network grantees will commit to providing a rigorous, well-rounded education; establishing a personalized, college- and work-ready culture; and providing teacher and leadership development. Grantees will also be required to use student performance data in order to identify the mathematics and science needs of their students and to implement mathematics and science acceleration strategies that have demonstrated effectiveness in improving student achievement results.

Dates of Project. Implementation of the T-STEM Network Acceleration Grant will begin during the 2006-2007 school year. Applicants should plan for a starting date of no earlier than May 1, 2007, and an ending date of no later than February 28, 2009.

Project Amount. A total of approximately $3 million is available for funding approximately 50 T-STEM Network Acceleration grants. This project is funded 100 percent from Rider 59 general revenue funds appropriated by the state legislature.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-07-102 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website

at http://www.tea.state.tx.us/opge/disc/index.html for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Karen Harmon, Division of Discretionary Grants, TEA, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://www.tea.state.tx.us/opge/disc/index.html.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, January 18, 2007, to be considered for funding.

TRD-200606029
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: November 1, 2006

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 11, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 11, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Phuong Duy Nguyen dba 1.25 Antoine Cleaner; DOCKET NUMBER: 2006-1168-DCL-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN104963079; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 Texas Administrative Code (TAC) §337.10(a) and Texas Health & Safety Code (THSC), §374.102, by failing to complete and submit the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Chevron U.S.A. Inc.; DOCKET NUMBER: 2006-0835-AIR-E; IDENTIFIER: RN100217538; LOCATION: near Garden City, Sterling County, Texas; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §122.146(1) and (2), Federal Operating Permit (FOP) Number O-02678, General Terms and Conditions, and THSC, §382.085(b), by failing to certify compliance with the terms and conditions of FOP Number O-02678; PENALTY: $2,340; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(3) COMPANY: Citation Corporation; DOCKET NUMBER: 2006-1004-AIR-E; IDENTIFIER: RN100218288; LOCATION: Lufkin, Angelina County, Texas; TYPE OF FACILITY: iron foundry; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A) and (B), FOP Number O-01427, Special Condition Number 7, and THSC, §382.085(b), by failing to submit semi-annual deviation reports; PENALTY: $1,680; ENFORCEMENT COORDINATOR: Sherronda Martin, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Comet Cleaners Franchise Group, LLC dba Comet Cleaners; DOCKET NUMBER: 2006-0838-DCL-E; IDENTIFIER: RN104303193 and RN104213145; LOCATION: Plano and Pantego, Tarrant and Collin Counties, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facilities' registration by completing and submitting the required registration forms; PENALTY: $201; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: ConocoPhillips Pipe Line Company; DOCKET NUMBER: 2006-1221-AIR-E; IDENTIFIER: RN100212778; LOCATION: Seminole, Gaines County, Texas; TYPE OF FACILITY: crude oil and natural gas liquids pipeline storage and compression; RULE VIOLATED: 30 TAC §122.146(2), FOP Number O-1186 General Terms and Conditions, and THSC, §382.085(b), by failing to certify compliance with the terms and conditions of FOP Number O-1186; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(6) COMPANY: Helen Ja Yang dba Dryclean Planet 3; DOCKET NUMBER: 2006-1420-DCL-E; IDENTIFIER: RN103951356; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Terry Harrington; DOCKET NUMBER: 2006-1031-MLM-E; IDENTIFIER: RN104808589; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: residence; RULE VIOLATED: 30 TAC §111.201 and §330.15(a) and (c) and THSC, §382.085(b), by failing to properly conduct outdoor burning and disposal of burned and unburned municipal solid waste (MSW); PENALTY: $1,680; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; RE-

GIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2006-0902-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: petrochemical production plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Air Permit Number 19823, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,700; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: JJ & JM Enterprise, Inc. dba Five Star; DOCKET NUMBER: 2006-1269-DCL-E; IDENTIFIER: RN101951085; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $853; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Ohmstede Ltd.; DOCKET NUMBER: 2006-0863-IWD-E; IDENTIFIER: RN102096666; LOCATION: LaPorte, Harris County, Texas; TYPE OF FACILITY: fabricated plate work; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0001318000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; PENALTY: $5,280; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Paul Mauricio & Sons, Inc. dba Snow White Cleaners No. 15, dba Snow White Cleaners No. 27, dba Zip Cleaners No. 6, dba Snow White Cleaners No. 24, dba Snow White Cleaners No. 1, dba Snow White Cleaners No. 12, dba Sudden Cleaners No. 10, dba Sudden Cleaners No. 1, dba Zip Cleaners No. 1, dba Snow White Cleaners No. 9, and dba Snow White Cleaners No. 23; DOCKET NUMBER: 2006-0716-DCL-E; IDENTIFIER: RN104101464, RN104101373, RN104101407, RN104966395, RN100634435, RN104101480, RN104086590, RN104101613, RN104101365, RN104101621, RN100718121; LOCATION: San Antonio and Universal City, Bexar County, Texas; TYPE OF FACILITY: dry cleaning and/or dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew its registration by completing and submitting the required registration form for the facilities; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: $6,996; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Racetrac Petroleum, Inc. dba Racetrac 501; DOCKET NUMBER: 2006-1218-PST-E; IDENTIFIER: RN102275468; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: retail gasoline station; RULE VIOLATED: 30 TAC § 115.242(3), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition and free of defects; 30 TAC §115.222(3) and §115.242(4), by failing to ensure no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance systems; and 30 TAC §115.248(1), by failing to have employees trained in Stage II VRS operation; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: City of Ralls; DOCKET NUMBER: 2006-1111-MSW-E; IDENTIFIER: RN104984240; LOCATION: Ralls, Crosby County, Texas; TYPE OF FACILITY: MSW landfill; RULE VIOLATED: 30 TAC §330.15(c), by failing to dispose of waste at an authorized facility; and 30 TAC §330.9(b)(1), by failing to obtain authorization to operate an MSW transfer station; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(14) COMPANY: RM Walsdorf, Inc.; DOCKET NUMBER: 2006-0756-MLM-E; IDENTIFIER: RN104807987; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: industrial service company; RULE VIOLATED: 30 TAC §330.15(c) (formerly 30 TAC §330.5(c)) and §328.13(a), by failing to prevent the unauthorized disposal of MSW including lead acid batteries; 30 TAC §335.4, by failing to prevent the discharge of industrial solid or municipal hazardous waste including lead acid batteries; 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct a hazardous waste determination; 30 TAC §328.56(d)(4), by failing to conduct monitoring for vectors and appropriate vector control methods; 30 TAC §324.4(1), 40 CFR §279.22(b)(2) and (d), and THSC, §371.041, by failing to prevent an unauthorized discharge of used oil to soil and ensure that used oil is stored in a manner that does not endanger the public health or environment; 30 TAC §324.1 and 40 CFR §279.22(c)(1), by failing to label or mark clearly containers storing used oil; and 30 TAC §328.23(c), by failing to securely close a container filled with used oil filters; PENALTY: $13,300; Supplement Environmental Project offset amount of $6,650 applied to Audubon Society-Restoration and Revegetation of Green and Three Islands; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: Phu Nguyen dba TC Cleaners; DOCKET NUMBER: 2006-1109-DCL-E; IDENTIFIER: RN104986880; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay dry cleaners registration fees; PENALTY: $948; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: THS Properties, L.L.C. and Pineview Woods, L.P.; DOCKET NUMBER: 2006-1330-WQ-E; IDENTIFIER: RN104814553; LOCATION: Jasper, Jasper County, Texas; TYPE OF FACILITY: residential apartment complex; RULE VIOLATED: the Code, §26.039(b) and §26.121(a)(1), by failing to notify the commission as soon as possible and not later than 24 hours after an accidental discharge or spill and by failing to prevent unauthorized discharges of sewage; PENALTY: $5,320; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Seong D. Roh dba Valley Ranch Cleaners; DOCKET NUMBER: 2006-0960-DCL-E; IDENTIFIER: RN102918414; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: dry cleaning facility; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew its registration by completing and submitting the required registration form; PENALTY: $948; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Viewpoint Energy, Inc.; DOCKET NUMBER: 2006-0906-AIR-E; IDENTIFIER: RN104614904; LOCATION: San Leon, Galveston County, Texas; TYPE OF FACILITY: blasting and surface coating plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain authorization for sand blasting and surface coating operations; PENALTY: $2,640; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: VNP, Inc. dba Greg's Cleaners; DOCKET NUMBER: 2006-1419-DCL-E; IDENTIFIER: RN102333226; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Zaffar Hashim dba Zac's Cleaners; DOCKET NUMBER: 2006-1122-DCL-E; IDENTIFIER: RN103994398; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200606016

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 31, 2006

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Enforcement Orders

An agreed order was entered regarding Haafiz & Aman, Inc., Docket No. 2003-1195-PST-E on October 25, 2006 assessing $1,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Torres Ready-Mix, Inc., Docket No. 2004-0252-MLM-E on October 25, 2006 assessing $61,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding North San Gabriel Overlook, Ltd., Docket No. 2004-0361-MLM-E on October 25, 2006 assessing $22,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Goodspeed Sand Company, Inc., Docket No. 2004-1142-WQ-E on October 25, 2006 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Zag Petroleum Inc. dba Z.P.I. Chevron, Docket No. 2004-1161-PST-E on October 25, 2006 assessing $2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Emel G. Rubio dba La Bahia, Docket No. 2004-1507-PWS-E on October 25, 2006 assessing $3,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose Garcia dba Neighborhood Trucks & Auto Repair, Docket No. 2004-1998-AIR-E on October 25, 2006 assessing $9,240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shaheen International, Inc. dba Fisco, Docket No. 2005-0131-PST-E on October 25, 2006 assessing $21,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Lazaro Camacho, Docket No. 2005-0148-LII-E on October 25, 2006 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Douglas Adcock dba McDonald's, Docket No. 2005-0427-MWD-E on October 25, 2006 assessing $2,520 in administrative penalties with $504 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell County Water Control & Improvement District (WCID) 2, Docket No. 2005-0474-MWD-E on October 25, 2006 assessing $28,220 in administrative penalties with $5,644 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ellinger Sewer and Water Supply Corporation, Docket No. 2005-0548-MWD-E on October 25, 2006 assessing $11,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RCF Investments Inc dba The Brock Junction, Docket No. 2005-1206-PST-E on October 25, 2006 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mine Service, Ltd., Docket No. 2005-1361-AIR-E on October 25, 2006 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney at (512) 239-0252, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles Leonard Hagerman dba 100th Meridian Stop, Docket No. 2005-1419-PST-E on October 25, 2006 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Express Waste, Inc., Docket No. 2005-1567-MSW-E on October 25, 2006 assessing $11,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Synergy Management Group, L.L.C., Docket No. 2005-1585-MSW-E on October 25, 2006 assessing $8,670 in administrative penalties with $1,734 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding First American Bank, SSB dba Inactive Gas Station Iowa Park, Docket No. 2005-1681-PST-E on October 25, 2006 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Elton W. Thompson dba Peterson Place Subdivision Water System, Docket No. 2006-0010-PWS-E on October 25, 2006 assessing $5,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Curnutt, Staff Attorney at (512) 239-0624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lawn, Docket No. 2006-0164-PWS-E on October 25, 2006 assessing $3,454 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Teresa Gail Allums dba T & A Septic Service, Docket No. 2006-0209-SLG-E on October 25, 2006 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alcoa Inc., Docket No. 2006-0279-AIR-E on October 25, 2006 assessing $90,000 in administrative penalties with $18,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Avinger, Docket No. 2006-0289-PWS-E on October 25, 2006 assessing $1,260 in administrative penalties with $252 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nirmal & Armaan Enterprises, Inc. dba MC Corner Texaco, Docket No. 2006-0333-PST-E on October 25, 2006 assessing $4,800 in administrative penalties with $960 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Chemical Company, Docket No. 2006-0393-AIR-E on October 25, 2006 assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Maud, Docket No. 2006-0418-MWD-E on October 25, 2006 assessing $7,000 in administrative penalties with $1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Instruments Incorporated, Docket No. 2006-0430-IWD-E on October 25, 2006 assessing $28,800 in administrative penalties with $5,760 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rosenberg, Docket No. 2006-0436-MWD-E on October 25, 2006 assessing $12,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Innovene USA LLC, Docket No. 2006-0469-AIR-E on October 25, 2006 assessing $21,375 in administrative penalties with $4,275 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Millennium Petrochemicals Inc., Docket No. 2006-0477-AIR-E on October 25, 2006 assessing $16,050 in administrative penalties with $3,210 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kendall County Water Control and Improvement District No. 1, Docket No. 2006-0518-MWD-E on October 25, 2006 assessing $8,550 in administrative penalties with $1,710 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2006-0528-AIR-E on October 25, 2006 assessing $4,825 in administrative penalties with $965 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fortune 501 Plus, Inc. dba Swif-T Food 23, Docket No. 2006-0539-PST-E on October 25, 2006 assessing $3,745 in administrative penalties with $749 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Alvarado, Docket No. 2006-0542-MWD-E on October 25, 2006 assessing $11,760 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monterey Mushrooms, Inc., Docket No. 2006-0558-IWD-E on October 25, 2006 assessing $38,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wood George & Co., Inc. dba Woodco USA, Docket No. 2006-0617-IHW-E on October 25, 2006 assessing $3,360 in administrative penalties with $672 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D R & S Inc. dba Worthington Laundry & Cleaners, Docket No. 2006-0648-DCL-E on October 25, 2006 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David W. Baker Homes, Inc. dba Regency Cleaners 4 and Regency Cleaners 5, Docket No. 2006-0650-DCL-E on October 25, 2006 assessing $378 in administrative penalties with $78 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Producers Cooperative Elevator, Docket No. 2006-0659-PST-E on October 25, 2006 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rajah-GP, LP dba Expert Dollar Cleaners, Docket No. 2006-0668-DCL-E on October 25, 2006 assessing $948 in administrative penalties with $190 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gladewater, Docket No. 2006-0679-PWS-E on October 25, 2006 assessing $2,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gause Water Supply Corporation, Docket No. 2006-0681-PWS-E on October 25, 2006 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nghiem Phan dba BJ's Cleaners, Docket No. 2006-0714-DCL-E on October 25, 2006 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAK Foster Ranch, L.P., Docket No. 2006-0753-EAQ-E on October 25, 2006 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bengal Corporation dba Cleaners 4 U, Docket No. 2006-0761-DCL-E on October 25, 2006 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kee Ja Rhee dba Colonial Park Cleaners, Docket No. 2006-0764-DCL-E on October 25, 2006 assessing $575 in administrative penalties with $115 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gasgo Markets, Inc., Docket No. 2006-0799-PST-E on October 25, 2006 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clear Creek Rentals, Ltd. dba Tucker Rentals, Docket No. 2006-0834-PWS-E on October 25, 2006 assessing $420 in administrative penalties with $84 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lezli E. McPhail dba 7th St Cleaners, Docket No. 2006-0915-DCL-E on October 25, 2006 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Alison Echlin, Enforcement Coordinator at (512) 239-3308 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Babita Daware dba Ayalas Cleaners, Docket No. 2006-0916-DCL-E on October 25, 2006 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eui K. Song dba Monticello Cleaners, Docket No. 2006-0917-DCL-E on October 25, 2006 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James D. Kim dba Inwood Shirt and Dry Cleaning, Docket No. 2006-0972-DCL-E on October 25, 2006 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thuc X. Bui dba Dry Clean Super Center, Docket No. 2006-0980-DCL-E on October 25, 2006 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John A. Dunaway dba Plaza Cleaners, Docket No. 2006-1011-DCL-E on October 25, 2006 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Oshborn, Inc. dba Fast Stop, Docket No. 2003-0984-PST-E on October 25, 2006 assessing $16,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Amer Khan dba Oakwood One Stop, Docket No. 2004-1518-PST-E on October 25, 2006 assessing $7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney at (512) 239-0972, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200606037
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 1, 2006

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Notice of Availability of the Draft October 2006 Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft October 2006 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft October 2006 WQMP update may be found on the commission's Web site located at *http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on December 11, 2006. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@tceq.state.tx.us*.

TRD-200606017
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 31, 2006

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Notice of Water Quality Applications

The following notices were issued October 26, 2006.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

Flint Hills Resources, LP, which operates the West Refinery, a petroleum refinery (comprised of the West Crude Area, the East Plant, the Mid-Plant, and tank farms), the Mid-Terminal, a tank farm and terminal facility, and irrigated Land Treatment Units (LTU's) 1 and 2, has applied for a major amendment to TPDES Permit No. WQ0000531000 to authorize the intermittent and flow variable discharge of treated storm water associated with construction activities via Outfall 001 or Outfall 012; to discharge storm water associated with construction activities not treated or contained according to a Storm Water Pollution Prevention Plan (SWP3); add the intermittent and variable flow discharge of steam and air condition condensate via Outfall 011; clarify the reuse of firewater, cooling tower and boiler blowdown in the water reuse system; add the intermittent and variable flow emergency discharge of Fluid Catalytic Cracking Unit (FCCU) seal tank water via Outfall 004; report the intermittent and flow variable discharge of wet-weather seepage of Outfall 004 wastewaters via the Outfall 012 weir as Outfall 004 discharges; add reporting Outfall Sum-A (Summation of Outfalls 001 and 012 conventional pollutants); and remove and/or reduce the frequency of Whole Effluent Toxicity (WET) testing at Outfall 001. The current permit authorizes the discharge of treated process wastewaters, marine generated water, storm water, groundwater, domestic wastewater and other utility wastewaters from the West Refinery, and contaminated water generated at other facilities at a daily average flow not to exceed 5,300,000 MGD via Outfall 001 or Outfall 012; discharges of hydrostatic test wastewaters, firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, uncontaminated groundwater, and storm water on an intermittent and flow variable basis via Outfalls 002, 003, 006, 007, and 010; discharges of hydrostatic test wastewaters, firewater test wastewaters, steam and air conditioner condensate, reverse osmosis concentrate wastewaters, uncontaminated groundwater, and storm water, with wet weather discharges of cooling tower blowdown and boiler blowdown on an intermittent and flow variable basis via Outfalls 004, 005, 008, and 009; and firewater and firewater test wastewaters on an intermittent and flow variable basis via Outfall 011. The facility is located east and west of Suntide Road and north of Up River Road in the northwest area of, and on the south side of the end of Tribble Lane, in the northern area of the City of Corpus Christi. LTU's 1 and 2 are located approximately 5,000 feet northwest of the intersection of Suntide Road and Up River Road, in the northwest area of the City of Corpus Christ, Nueces County, Texas.

TXU Generation Company LP, which operates the Lake Ray Hubbard Steam Electric Station, has applied for a renewal of TPDES Permit No. WQ0001245000, which authorizes the discharge of once through cooling water, auxiliary cooling water and previously monitored effluents (PME) (low volume wastewater, metal cleaning waste, and storm water (from diked oil storage areas, yard and storm drains) from internal Outfall 101) at a daily average flow not to exceed 870,000,000 gallons per day via Outfall 001. The facility is located at 555 Barnes Bridge Road, on the west shore of Lake Ray Hubbard, approximately 1.5 miles south of Interstate Highway 30 in the City of Sunnyvale, Dallas County, Texas.

Hilmar Cheese Company, which proposes to operate a facility that converts milk solids into cheese, whey and animal feed products, has applied for a new permit, proposed Permit No. WQ0004796000 to authorize the disposal of treated process wastewater, cooling tower blowdown, and boiler blowdown at a daily average flow not to exceed 1,500,000 gallons per day via irrigation of 4,479 acres of corn, winter wheat and alfalfa. The application rate shall not exceed 1.7 acre-feet/acre-irrigated/year. This permit will not authorize a discharge of pollutants into water in the State. The proposed facility will be located on the east side of U.S. Highway 385, approximately 0.5 mile north of the City of Dalhart and the disposal site will be located approximately 0.5 mile north of the City of Dalhart, between U.S. Highway 54 and U.S. Highway 87 in Dallam County, Texas.

City of Dallas has applied for a renewal of TPDES Permit No. WQ0010060005, which authorizes the discharge of filter backwash effluent from a water treatment plant at an annual average flow not to exceed 5,000,000 gallons per day. The facility is located approximately 300 yards west of Interstate Highway 35E and approximately 300 yards south of Sandy Lake Road in the City of Carrollton in Dallas County, Texas.

City of Frisco has applied for a renewal of TPDES Permit No. 10172-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located immediately east of St. Louis-San Francisco Railroad and approximately 2500 feet north of Farm-to-Market Road 720 in Collin County, Texas.

The City of Silsbee has applied for a renewal of TPDES Permit No. 10282-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located approximately 400 feet east and 800 feet south of the intersection of U.S. Highway 96 and Third Street in the southern portion of the City of Silsbee in Hardin County, Texas

City of Webster has applied for a major amendment to TPDES Permit No. 10520-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,650,000 gallons per day to an annual average flow not to exceed 3,300,000 gallons per day. The facility is located at 613 Magnolia, at the east corner of the intersection of Texas Street and Magnolia Street in the City of Webster in Harris County, Texas.

City of Elkhart has applied for a renewal of TPDES Permit No. 10735-001, which authorizes the discharge of treated domestic wastewater at

a daily average flow not to exceed 210,000 gallons per day. The facility is located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861 in Anderson County, Texas.

City of Malakoff has applied for a renewal of TPDES Permit WQ0010738002, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 60,000 gallons per day. The facility is located along Farm-to-Market Road 3062, approximately 0.5 mile west of the intersection of Farm-to-Market Road 3062 and State Highway 198, northwest of the City of Malakoff in Henderson County, Texas.

Polk County Fresh Water Supply District No. 2 has applied for a renewal of Permit No.11298-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 330,000 gallons per day via surface irrigation of 120 acres of non-public access of agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 3 miles north of Onalaska from the intersection of Farm-to-Market Road 3459 and U.S. Highway 190 in Polk County, Texas. The facility and disposal site are located in the drainage basin of Lake Livingston in Segment No. 0803 of the Trinity River Basin.

Texas Parks and Wildlife Department has applied for a renewal of Permit No. WQ0011627001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day via surface irrigation of 1.65 acres of non-public access agricultural land. The facility and disposal site are located within the boundaries of Fairfield Lake State Park, at the southern extremity of Fairfield Lake approximately two miles northeast of the intersection of Farm-to-Market Road 2570 and Farm-to-Market Road 3285 in Freestone County, Texas. The disposal site is located in the drainage basin of Trinity River Above Lake Livingston in Segment No. 0804 of the Trinity River Basin.

Mercy Ships Foundation has applied for a renewal of Permit No. 11771-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day via surface irrigation of 30 acres of non-public access Bahia grassland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at 15862 Highway 110 North, approximately 0.5 mile north of Interstate Highway 20 on State Highway 110 (Van Highway) and approximately 5 miles west of the Community of Lindale in Smith County, Texas. The facility and disposal site are located in the drainage basin of the Sabine River Below Lake Tawakoni in Segment No. 0506 of the Sabine River Basin.

Tex-Sun Parks, L.C., 11451 Katy Freeway, Suite 205, Houston, Texas 77079, operator of a mobile home park has applied for a renewal of TPDES Permit No. 12189-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 1000 feet north of Morton Road and 2000 feet west of Fry Road in Harris County, Texas.

Fairview Joint Venture has applied for a renewal of TPDES Permit No. 13806-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located east of U.S. Route 75, one mile south of the intersection of State Route 121 and U.S. Route 75 in Collin County, Texas.

City of Zavalla has applied for a renewal of TPDES Permit No. 13871-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day. The facility is located approximately 0.5 mile west and 1.0 mile south of the intersection of State Highways 69 and 63, and southwest of the City of Zavalla in Angelina County, Texas.

Aviation Utilities Services, Inc., has applied for a renewal of TPDES Permit No. WQ0013920001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility will be located 2,500 feet west of the North West Regional Airport landing strip, 3000 feet east of Interstate Highway 35W and approximately 4,000 feet south of the intersection of State Highway 1171 and Interstate Highway 35W in Denton County, Texas.

Bolivar Utility Services, L.L.C., has applied for a major amendment to TPDES Permit No. 14452-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 50,000 gallons per day to a daily average flow not to exceed 100,000 gallons per day and to move the point of discharge approximately 1500 feet. The facility is located approximately 0.25 mile north and 0.9 mile west of the intersection of State Highway 87 and Broadway Avenue (Loop 108) in Galveston County, Texas.

Centex Homes has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014704001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located approximately 0.8 miles east and 0.2 miles north of the intersection of Greensbusch Road and Gaston Road in Fort Bend County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200606036
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 1, 2006

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 31, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Billy G. Hall; SOAH Docket No. 582-05-3166; TCEQ Docket No. 2002-0332-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Billy G. Hall on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any

questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200606038
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 1, 2006

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 20, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Mario A. Cardenas dba Cashway Food Store; SOAH Docket No. 582-05-7608; TCEQ Docket No. 2004-1692-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Mario A. Cardenas dba Cashway Food Store on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200606039
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 1, 2006

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Department of State Health Services

Notice of Enforcement Orders

Notice is hereby given that the Department of State Health Services (department) issued a Default Order to the following registrant:

Robert Gene Gant (Registration #R23322) of Houston. Respondent shall surrender the certificate of x-ray registration for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional requirements.

Agreed Orders have been issued by the department as follows:

Pre-Test Laboratory (License #L02424-001) of Georgetown. A total penalty of $1,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

RNA, Inc., dba PCI Services (License #L04596) of Corpus Christi. A total penalty of $1,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Drash Consulting Engineers, Inc. (License #L04724) of San Antonio. A total penalty of $3,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Injury Medical Clinic, P.A. (Registration #R24674) of El Paso. A total penalty of $7,750 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200606027
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 1, 2006

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Texas Department of Housing and Community Affairs

Request for Proposals from Property Management Companies to Provide Property Management Services

SUMMARY. The Texas Department of Housing and Community Affairs ("TDHCA" or "Department"), through its Real Estate Analysis Division, is issuing a Request for Proposals (RFP) for qualified property management companies to provide property management services on a temporary basis for income and rent restricted multifamily rental properties located throughout Texas that are under a receivership or foreclosure action by the Department.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposal is 3:00 p.m., Central Daylight Time, Thursday, December 14, 2006. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve as a description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for making a selection of the company or companies for providing property management services. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Property Management companies interested in submitting a proposal should visit our website at www.tdhca.state.tx.us , for a complete copy of the RFP, or contact Mr. David Burrell, Asset Management, at (512) 475-2319, 221 East 11th. Street, Austin, TX 78701.

TRD-200606030
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 1, 2006

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of FIRST BENEFITS ADMINISTRATORS, INC., a domestic third party administrator. The home office is DALLAS, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200606035
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 1, 2006

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Board of Nurse Examiners

Disciplinary Sanction Policies

The Board of Nurse Examiners originally adopted four disciplinary sanctions on July 26, 2002. The policies address issues as they pertain to the practice of nursing such as: sexual misconduct; fraud, theft, and deception; lying and falsification; and chemical dependency. These policies have been updated and modified as indicated in each policy. In compliance with chapter 53 of the Texas Occupations Code (Tex. Occ. Code §53.025) and the Administrative Procedure Act (Tex. Gov't Code §2001.004), the Board is publishing these policies in the *Texas Register.* These disciplinary sanction policies have been and continue to be available on the Board's web site.

Disciplinary Sanctions for Sexual Misconduct

The Board of Nurse Examiners for the State of Texas (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is imperative to take a strong position regarding the licensure of individuals who engage in sexual misconduct towards patients or former patients in the workplace, who have been convicted of or put on probation for sexual misconduct, or whose sexual misconduct outside the workplace may affect the ability to safely care for patients.

The Board's position applies to all nurse license holders and applicants for licensure.

The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship.

2. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized.

3. Nurses are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients. Nurses may also care for these patients without direct supervision.

4. Nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability.

5. There are appropriate boundaries in the nurse-patient relationship which nurses must clearly understand and be trusted not to cross.

6. Sexual misconduct towards patients or in the workplace raises serious questions regarding the individual's ability to provide safe, competent care to vulnerable patients.

7. Sexual misconduct which occurs outside of the workplace, including conviction or deferred adjudication of or probation for a crime, may raise questions as to whether that same misconduct will be repeated in the workplace and therefore affects the ability of the nurse to safely provide patient care.

8. A nurse's duty to maintain boundaries extends beyond a patient's discharge from nursing care, especially when it pertains to confidential medical records.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Sexual Misconduct

The Board may rely solely on the conviction or deferred adjudication of a crime or probation for a crime, with or without an adjudication of guilt, to limit, deny, suspend, or revoke a license. Sexual misconduct is a crime of moral turpitude.

Crimes of sexual misconduct which involve abuse of a minor or a vulnerable person or taking advantage of another person are extremely serious grounds for denial of an initial application for licensure or revocation of the license. The length of time between the conviction and the application for licensure is not a factor due to the high recidivism rate for sex offenders, lack of empirical evidence regarding the success of treatment, and the fact that many victims do not report that a sexual offense has been committed against them. Crimes which disqualify an individual for licensure include Rape, Sodomy, Sexual Abuse, Contributing to the Sexual Delinquency of a Minor and other crimes related to children. Effective September 1, 2005, Texas Occupations Code §301.4535 requires suspension, revocation, or refusal of a license for initial convictions of certain offenses. The sexually-related offenses are as follows: sexual assault, aggravated sexual assault, indecency with a child, and any offense for which a defendant is required to register as a sex offender under chapter 62, Texas Code of Criminal Procedure. This includes offenses of a similar nature in other jurisdictions. Once a final conviction or a plea of guilty or nolo contendere is entered, eligibility for licensure is not available until five years after successful completion and dismissal from community supervision or parole. There are other sexual misconduct crimes which do not involve children or taking advantage of another person. There are also crimes which involve conduct between consenting adults. These crimes are considered by the Board to be of a serious nature but not necessarily a disqualification for licensure. Conviction or deferred adjudication of these crimes will be considered on an individual basis in regards to the circumstances surrounding the crime and may require a forensic psychological evaluation with a sexual predator component - the sex MMPI. This evaluation is to be performed by an approved psychologist or psychiatrist with forensic credentials who has expertise in evaluating sexual offenders.

Finally, it should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving sexual misconduct, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code §213.28 governs the consequences of criminal convictions. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct.

Sexual Misconduct Toward Patients

Sexual misconduct toward patients is never acceptable. Conduct such as rape, sex disguised as treatment (unnecessary or prolonged pelvic/breast exams or touching intimate body parts when the touch is not necessary for care) and "sneaky sex" (surreptitious touch, voyeurism, or exposing the patient's body when not necessary) are grounds for limitation, denial, or revocation of licensure. Nurses should never engage in conduct with a patient that is sexual or may reasonably be interpreted as sexual or in any verbal behavior that is seductive or sexually demeaning to a patient, or engaging in sexual exploitation of a patient or former patient. Even if a client initiates the

sexual contact, a sexual relationship is still considered sexual misconduct for the nurse. The nurse should never use the patient to satisfy the nurse's need for personal amusement, gratification, power, control, sexual stimulation or satisfaction. It is always the responsibility of the nurse to establish appropriate boundaries with present and former clients.

Other sexual misconduct such as sexual harassment of a patient, verbal interaction of a sexual nature, or a romantic-like relationship with a patient are unacceptable but not necessarily a disqualification from licensure. These cases will be considered on an individual basis and may be disciplined at the level of a Reprimand or Warning following a thorough investigation. Some factors to be considered are the length of time between the nurse-client relationship and the personal relationship, the nature of the therapy the client received, the nature of the knowledge the nurse has had access to and how will that affect the future relationship, whether the client or the former client will need therapy in the future, and the risk to the patient. Subsequent conduct of a similar nature indicates a pattern and may require revocation. The Board believes that employers of nurses have a responsibility to discourage this conduct and take measures to ensure that patients are not subjected to this conduct.

Consensual sex between a nurse whose relationship or past relationship with the patient is that of a mental health therapist is serious and not acceptable to the Board. The nature of the therapist nurse-patient relationship places the patient or former patient in a vulnerable position and raises the question of ability for true consensual sex on the part of the patient. This conduct is grounds for limitation, denial, or revocation of licensure.

Consensual sex between a nurse and a former patient often involves exploitation by the nurse of the former patient's vulnerability and may be evidence of violations of appropriate nursing boundaries. Some factors to be considered are the length of time between the nurse-client relationship and the personal relationship, the nature of the therapy the client received, the nature of the knowledge the nurse has had access to and how will that affect the future relationship, whether the client or the former client will need therapy in the future, and the risk to the patient.

Recommendations to Guide Nurses

1. Nurses should be aware of any feelings of sexual attraction to a patient and should discuss such feelings with a supervisor or trusted colleague. Under no circumstances should a nurse act on these feelings or reveal/discuss them with the patient.

2. Nurses should transfer the care of a patient to whom they are sexually attracted to another nurse. Recognizing that such feelings in themselves are neither wrong or abnormal, nurses should seek help in understanding and resolving them.

3. Nurses must be alert to signs that a patient may be interested in or encouraging a sexual relationship. All steps must be taken to ensure that the boundaries of the professional relationship are maintained. This could include transferring the care of the patient.

4. Nurses must respect a patient's dignity, independence, and privacy at all times. They should be particularly aware that examinations and treatments involving the sexual or private parts of the body can increase the patient's vulnerability and, therefore, should take steps to prevent or minimize any such trauma.

5. Nurses should provide a professional explanation of the need for each of the various components of examinations, procedures, tests, and aspects of care to be given. This can minimize any misunderstandings a patient might have regarding the nurse's intentions and the care being given.

6. Nurses' communications with patients should be clear, appropriate, and professional.

7. Nurses should never engage in communications with patients that could be interpreted as flirtatious, or which employ sexual innuendo, off-color jokes, or offensive language.

8. Nurses should not discuss their personal problem(s), or any aspects of their intimate lives with patients, and should not interfere with their client('s) personal relationships.

9. Nurses should avoid dual relationships where the nurse has a personal or business relationship, as well as the professional one.

10. Nurses should always be aware of feelings and behavior, observant of the behavior of other professionals, and always act in the best interest of the patient.

(Adapted from the Washington Board of Nursing, 1994, with additions)

Sexual Misconduct in the Workplace - Not Toward Patients

The Board's mission is protection of the public. The Board is not charged with protecting nurses and therefore believes that sexual misconduct in the workplace is the responsibility of the employer. If sexual misconduct in the workplace occurs in view or hearing of a patient or may affect the patient's care or feeling of safety, the Board believes this conduct should be treated the same as similar conduct towards a patient as described above. However, should any conduct lead to a criminal charge, conviction, or deferred judicial action, the Board should be notified.

Petition for Reconsideration or Reinstatement of License

An individual who has been denied licensure or whose license has been revoked has the right to petition the Board for reconsideration of the Board's decision to deny or revoke the license. The burden of proof that the individual no longer poses a risk to the health, safety, and welfare remains with the petitioner. At a minimum, the petitioner must show evidence of successfully completing treatment specific to sexual misconduct and must obtain a current evaluation which addresses risk for re-offense, and includes recommendations on limitations in practice, patient population cared for, work setting and other issues related to the problem which originally brought the individual to the Board's attention. The evaluator must be a health care professional whose credentials and expertise are approved by the Board. The recommended discipline for sexual misconduct may be revocation.

(Portions of this policy adapted from the Oregon Board of Nursing Policy, 1999, with additions, modifications, and/or deletions)

Approved and adopted on July 26, 2002, modified on April 23, 2004, and October 20, 2005.

Disciplinary Sanctions for Fraud, Theft, and Deception

The Board of Nurse Examiners for the State of Texas (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is important to take a strong position regarding the licensure of individuals who have stolen or misappropriated property, money, or other possessions from patients, who have engaged in fraudulent behavior towards patients, who have engaged in fraud towards government programs or funds, e.g., Medicare and/or Medicaid, or who have been convicted or received a judicial order involving a crime or criminal behavior of theft or deception to an extent that such conduct may affect the ability to safely care for patients. Furthermore, the Board's policy is consistent with and supports the Governor's Executive Order RP36 dated July 12, 2004, relating to preventing, detecting, and eliminating fraud, waste, and abuse which can be found at www.governor.state.tx.us/divisions/press/exorders/rp36.

The Board's position applies to all nurse license holders and applicants for licensure.

The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship.

2. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized.

3. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility.

4. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse.

5. Nurses frequently provide care in settings without direct supervision.

6. Theft from a patient raises serious concerns whether the nurse can be trusted to respect a patient's property/possessions in the future.

7. Theft or deception which occurs outside of the workplace, including conviction or a judicial order involving criminal behavior, may raise concerns as to whether the same misconduct will be repeated in the workplace and, therefore, place patients at risk for theft and deception.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Fraud, Theft, and Deception

Fraudulent behavior is a crime of moral turpitude. The Board may rely solely on the conviction of a crime or probation for a crime, with or without an adjudication of guilt, to deny, suspend, limit, or revoke a license. Criminal conduct involving fraud, theft, and/or deception may also reflect a lack of good professional character (rule 213.27). In addition, the Board is also concerned with fraud involving government funds or programs, such as Medicare or Medicaid. This type of fraud increases the price employers pay for worker's compensation, drains the unemployment insurance fund, and steals from those in need of vital Medicaid and/or Medicare services.

A conviction or a judicial order involving the criminal behaviors of fraud, theft, or deception is a concern to the Board but does not in and of itself disqualify a person from licensure. The magnitude of the behavior is not necessarily a major factor the Board will consider. Factors related to the crime which would concern the Board the most are evidence of premeditation, lack of remorse, and failure to pay restitution. The presence of these factors is evidence to the Board that the likelihood of the same behavior being repeated is great enough that patients may be at risk for the same conduct. Acts of an impulsive nature where there is insight/remorse regarding the conduct may be mitigating factors for the Board to consider. The criminal behavior of fraud, theft, or deception will be evaluated on an individual basis considering the foregoing factors.

It should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving fraud, theft, or deception, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code governs the consequences of criminal convictions and requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct.

Acts of fraud, theft, or deception will preclude a nurse from working in a home health or independent setting during the stipulation period. If circumstances do not warrant removal from that practice setting, supervision in the home health or independent setting will be required. Discipline by the Board will likely require the nurse to pay a civil penalty or fine and restitution as authorized by the Nursing Practice Act and Board rules. The Board will take under consideration any conviction or conduct that falls within the "youthful indiscretion" factors as stated in Board rules (rule 213.28), factors stated in Texas Occupations Code chapter 53 regarding criminal conviction consequences, and other factors in rules 213.27 and 213.28 (Good Professional Character and Licensure of Persons with Criminal Convictions).

Theft from a Patient

Theft from a patient or engaging in fraudulent or deceitful behavior or conduct with or involving a patient is never acceptable. Theft of patient money, property, medicine, valuables, or items of sentimental value is ground for suspension or revocation of licensure. A license may be denied if the applicant engaged in theft while functioning in the role of a care giver. Other fraudulent conduct or deception towards a patient is unacceptable, but not necessarily a disqualification from licensure. These cases will be considered on an individual basis and may be disciplined at a level less than revocation or may be reprimanded or warned and limited from independent settings following a thorough investigation. Factors such as insight, remorse and premeditation will be considered as to whether a disciplinary sanction is imposed. The Board believes that employers of nurses have the responsibility to have safeguards in place to ensure that patients are not subjected to acts of fraud, theft, or deception.

Theft from the Workplace

Theft is an intentional act regardless who is the victim of the theft. The Board's position on theft from an employer is not as strong as its position on theft from a patient. However, if a nurse engages in fraud, theft, or deception toward his/her employer, there is the possibility that the nurse will also engage in the same behavior towards patients. The Board will consider the factors of premeditation, remorse and restitution as well as the steps taken by the employer toward the nurse in deciding whether or not discipline should be imposed.

Petition for Reinstatement

A person who has been denied licensure or whose license has been revoked has the right to petition the Board for reconsideration or reinstatement after one year has elapsed. The burden of proof that the person does not pose a danger for fraud, theft, or deception toward patients remains with the petitioner or applicant.

Recommended Sanctions

The minimum allowed sanction for fraud, deceit, intentional, and/or willful misconduct will be removal from practice in an independent setting, including but not limited to home health and agency nurse, practice under the supervision of another registered nurse, if practicing as a RN, or under the supervision of a licensed vocational nurse or registered nurse, if practicing as a LVN, employer reports, and a punitive fine. The recommended sanction may be revocation.

Approved and adopted on July 26, 2002, modified on April 23, 2004, modified on October 22, 2004 (included Medicare/Medicaid fraud).

Disciplinary Sanctions for Lying and Falsification

The Board of Nurse Examiners for the State of Texas (Board), in keeping with its mission to protect the public health, safety, and welfare,

believes it is imperative to take a strong position regarding the licensure of individuals who have engaged in deception in the provision of health care. This deception includes falsifying documents related to patient care, falsifying documents related to employment, and falsifying documents related to licensure. The Board is also concerned about persons who have been convicted of a crime involving deception to the extent that such conduct may affect the ability to safely care for patients.

The Board's position applies to all nurse license holders and applicants for licensure.

The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship.

2. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized.

3. Critical care, pediatric, and geriatric patients are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition.

4. Nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct.

5. Honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care (rule 213.27).

6. Patients have the right to expect that the nurse will always accurately report patient conditions, signs and symptoms, and the care the nurse provided.

7. Falsification of documents regarding patient care, incomplete or inaccurate documentation of patient care, failure to provide the care documented, or other acts of deception raise serious concerns whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future.

8. Falsification of employment applications and failing to answer specific questions that would have affected the decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity (rules 217.12 and 213.27).

9. Falsification of documents or deception/lying outside of the workplace, including falsification of an application for licensure to the Board, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing.

10. A conviction or judicial order involving a crime of lying or falsification raises concern that the person may engage in similar conduct while practicing nursing and place patients at risk.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Lying and Falsification

The Board may rely solely on the conviction of a crime or probation for a crime, with or without an adjudication of guilt, to deny, suspend, or revoke a license. A crime involving dishonesty is a crime of moral turpitude. Reliance on judicial orders is designed to avoid subsequent collateral attacks by nurses when the nurse has already been convicted or has admitted to the criminal conduct.

The Board has adopted a policy on fraud, theft, and deception which, in part, addresses the issues of lying and falsification. The crime of lying or falsification is a concern to the Board if the conduct involved defrauding a vulnerable person; if the occurrence was within a short period of time prior to the application for initial licensure; if there is a demonstration of a pattern of lying or falsification; or if the act was obviously premeditated and the individual demonstrates a lack of insight or remorse related to the conduct. The presence of these factors is evidence to the Board that the same behavior is likely to be repeated towards patients and may place their well-being at risk. Crimes involving lying and falsification will be evaluated on an individual basis considering the above factors.

It should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving lying or falsification, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code §213.28 governs the consequences of criminal convictions and requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct.

Lying on or Falsification of Licensing Documents to the Board

Each licensure form or document, whether it is an initial application, application by endorsement, or a renewal application, contains questions which require a "yes" or "no" answer. These forms contain several questions that might affect the ability of an individual to function safely as a nurse. In addition, the Board asks the applicant, petitioner, or licensee to provide information to determine if he/she meets the practice requirements for nursing licensure. Answers to these questions are used by the Board to determine the applicant's fitness for initial licensure/recognition in regards to conviction history, physical or mental condition, chemical dependency, and eligibility to renew licensure or gain initial licensure/recognition by endorsement related to meeting the continuing education (CE) and practice requirements. The Board can understand that an applicant may mark a "yes" or "no" answer in error, or misunderstand the question being asked. The Board believes, however, that supplying false information in regards to eligibility requirements for licensure is a serious matter, not only because of the lying or falsification itself, but because those false answers would allow an otherwise disqualified applicant to be licensed. Proof of falsification on initial licensure is enough to establish the Board's right to revocation or denial of licensure. It should not be the Board's burden to answer or overcome Respondent's claims of current character or current practice once it is established an applicant or petitioner has knowingly falsified information upon which licensure was based. If Respondent believes he/she has good professional character, they should be required to start the application process over anew under non-deceptive means without the benefit of consideration of the intervening practice as a nurse.

The Board also asks questions on its applications for licensure to verify the individual's identity and provide the Board with demographic information. Falsification of that information is considered serious by the Board, but not as critical as information that directly relates to eligibility for licensure unless the falsification of this information was intended to hide relevant background information of the applicant.

Each case of falsifying an application for licensure will be considered on an individual basis. The investigative process will be used to determine whether the question was answered in error, misunderstood, or purposely answered falsely to deceive the Board. Intentional falsifica-

tion may result in denial of licensure or revocation of a license. The Board may show leniency towards an applicant for initial licensure because that person may be more likely to misunderstand the questions on the application. The Board believes that an applicant for renewal of licensure should understand the questions and the importance of answering them honestly. A pattern of falsification of information on an application for licensure will not be tolerated and is grounds for revocation.

Failure to cooperate during the course of a Board investigation by supplying false documents or failing to disclose information is grounds for denial or revocation of the license. Reckless disregard for the Nursing Practice Act, the Board's rules and regulations, and/or a Board Order is also grounds for denial or revocation and will require at a minimum, the imposition of a punitive fine in addition to other stipulations.

Nurse Imposter

The Board has no jurisdiction over a person who does not have a license to practice nursing in the State of Texas yet holds him or herself out to be a nurse. The Board does have jurisdiction over an individual who has a nursing license or has had one in the past and represents him or herself as licensed for a broader scope of practice, e.g., LVN to RN, RN to APN. The Board has no tolerance for any form of impostering and will impose the maximum dollar amount of fine allowed under Board rules and may impose a disciplinary sanction. The following factors will be considered in deliberating the level of discipline from remedial education with fine through revocation: intent, potential or actual harm to patients, length of time as an imposter, and insight/remorse.

The Board believes that employers of nurses should verify licensure and thereby avoid hiring a nurse imposter or allowing a nurse to practice beyond his/her scope. The Board may impose a disciplinary sanction to the nurse employer found responsible for hiring a nurse imposter.

Lying or Falsification within the Practice of Nursing

The safe and effective practice of nursing as a licensed vocational nurse, registered nurse, or advanced practice nurse requires integrity, accuracy, and honesty in the provision of nursing care, including: performing nursing assessments; applying the nursing process; reporting changes in patient condition; acknowledging errors in practice and reporting them promptly; accurate charting and reporting, whether verbal or written; implementing care as ordered; compliance with all laws and rules affecting the practice of nursing; and compliance with minimum nursing standards. Failure to be accurate and honest while providing patient care and keeping accurate records related to care, is potentially harmful to the overall care patients receive because nurses who provide subsequent care do not have a complete and accurate picture of the client's care and/or condition.

Each case of lying and falsification will be considered on an individual basis. The Board will consider the following factors:

1. actual harm to the patient as a result of the lying or falsification;

2. the potential for harm to clients;

3. the past performance record of the nurse;

4. prior complaints;

5. accountability for the act of falsification;

6. insight;

7. remorse; and

8. other mitigating or aggravating factors. The Board will also consider whether or not the nurse was unduly influenced by a more experienced or supervising licensed nurse to falsify patient records or care, in which case that nurse's conduct will be investigated by the Board. The investigative process will be used as an opportunity to educate and reinforce acceptable standards of care. Disciplinary sanctions may range from remedial education with fine to revocation. The level of sanction may be directly proportionate to the harm caused to the patient.

If a nurse falsifies, alters, fabricates, back-dates records, or any other form of lying in the home health setting, the nurse will be sanctioned with stipulations, and fined. During the stipulation period, home health and any other form of independent employment settings will be prohibited. Supervision in home health will be required where circumstances do not warrant removal from that practice setting.

Lying/Falsification to an Employer, Nursing Education Program, or other Nursing Training Program

The Board believes that falsification of an application to an employer, school of nursing, or other nursing training program is generally the responsibility of the employer, school, or training program to resolve, unless the falsification involves misrepresentation of credentials, competencies or work experience. Misrepresentation of credentials to an employer will be investigated and viewed by the Board in the same way that lying or falsification within the practice is viewed. A student nurse who falsifies patient records or engages in other dishonesty in patient care gives the Board reason to suspect that he or she will continue the same dishonest acts after licensure. If the Board is made aware of acts committed as a student, an investigation will be conducted once the student makes application for licensure. The Board will consider the same factors as described above for lying and falsification within the practice of nursing.

Petition for Reconsideration or Reinstatement of License

A person who has been denied licensure, or whose license has been surrendered, suspended, or revoked has the right to petition the Board for reconsideration or reinstatement. The burden of proof that the person no longer poses a danger for deception, lying or falsification regarding patient care, record keeping related to nursing practice, or other acts of deception remains with the petitioner.

(Portions of this policy adapted from the Oregon Board of Nursing Policy, 1999, with additions, deletions, and modifications.)

Approved and adopted on July 26, 2002, modified on April 23, 2004.

Disciplinary Sanctions for Nurses with Chemical Dependency

The Texas Board of Nurse Examiners (Board), in keeping with its mission to protect public health, safety, and welfare, believes it is important to have a clear position on how it will deal with nurses who have a diagnosis of chemical dependence or who demonstrate a pattern of use of addictive substances which may affect the ability to safely perform the duties of a nurse and/or threaten public safety. This policy applies to all nurses.

The Board adopts the following assumptions as the basis for its position:

1) Patients[1] under the care of a nurse are vulnerable by virtue of illness or injury and the dependent nature of the nurse-patient relationship.

2) Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, patients whose mental or cognitive ability is compromised and patients who are disabled and immobilized.

3) Critical care, geriatric, and pediatric patients are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition.

4) Nurses are able to provide care in private homes and home-like setting without direct supervision.

5) Nurses who are chemically dependent or who abuse drugs or alcohol and whose judgment may be impaired while caring for patients are at risk for harming patients.

6) The disease of chemical dependence is a treatable disease. Nurses who are in active recovery may be able to safely provide care to vulnerable patients. Recovery is a process of learning new behaviors, attitudes and life style which takes time after initial treatment to assure that the person is in a stable state of recovery.

7) Nurses who demonstrate a pattern of substance abuse, without a diagnosis of chemical dependence and without recommended treatment, may require monitoring to assure the Board of their ability to safely perform the duties of a nurse.

The Board believes it has a responsibility to both the public and the nurse when information about use of addictive substances by a nurse that may impact public safety comes to the Board's attention. The responsibility to the public is for swift action to remove a nurse from performing duties involving direct patient care until the nurse is deemed safe to return to those duties. The Board's responsibility towards the nurse is to recognize that person's past service in the provision of patient care and give that person an opportunity to seek treatment at an approved treatment facility[2] for the substance abuse problem and then return to providing patient care when able to submit verifiable, documented proof that he/she has a year of sobriety and is in stable recovery. If the Board finds disciplinary action is warranted, under no circumstance will a nurse be eligible for an unencumbered license until the nurse has successfully completed an approved treatment program plus a year of verifiable, documented sobriety and subsequent probationary monitoring by the Board for a minimum of three (3) years. If a nurse fails to maintain compliance with the Board order, the Board will accept the voluntary surrender of the nurse's license or the Board will seek revocation subject to the Administrative Procedures Act, Nursing Practice Act, and Board rules.

Impairment in the Workplace

A nurse may be impaired in the workplace due to consumption of drugs and/or alcohol either before coming to work or during work hours. The Board encourages both employers and co-workers of nurses to be familiar with the myriad of signs and symptoms associated with impairment and to report suspicion of impairment so the nurse can be removed from a patient care assignment and the risk of harming patients. The Board would encourage that the facility implement a policy requiring "for cause" drug screens to eliminate the often unverifiable claims by the facility or the nurse regarding suspected workplace impairment. Impairment or likely impairment of a nurse's practice by chemical dependency should be reported to the Texas Peer Assistance Program for Nurses (TPAPN) or the Board for investigation (TEX. OCC. CODE ANN. §301.401). The Nursing Practice Act imposes a duty to report to the Board any practice violation in which a nurse has unnecessarily or likely exposed a patient or other person to a risk of harm.

Nurses may also obtain medications through theft from the facility or from a patient in a home or home-like setting. Theft of drugs raises the question of substance abuse and possible patient harm and must also be investigated. A nurse who fails to participate in or complete the TPAPN program and is reported to the Board for impairment in the workplace or diversion of drugs will be required to obtain a chemical dependency evaluation[3] from an evaluator who possesses credentials approved by the Board. If the person is diagnosed as chemically dependent, the nurse may be given the opportunity to enter an approved treatment facility, provide proof of verifiable, documented sobriety for the preceding twelve month period, and participate in Board monitoring for at least three years. In addition, if TPAPN determines that a nurse is ineligible for its program, a nurse may be eligible to return to work under monitoring conditions determined through a suspend/probate agreement with the Board if he/she has verifiable, documented proof of sobriety for the previous twelve consecutive months and successful completion of a treatment program within the past six (6) months and subsequent to the last relapse. At a minimum those conditions will include an enforced suspension until a year of verifiable recovery and sobriety with supporting documentation and successful completion of an approved treatment program with a recommendation from the treatment program regarding fitness to return to work. The nurse will be required to provide proof of working an active program of recovery, employer monitoring by another nurse, employer evaluations of performance, abstinence from drugs and alcohol unless prescribed by a licensed provider for a legitimate purpose with notification to the Board, random drug testing, proof of support group attendance for a period of at least three (3) years, and may be limited in practice settings and in his/her access to controlled substances in the workplace. A nurse who is not willing or able to attend and complete treatment will be offered the opportunity to voluntarily surrender his/her license or will be served with Formal Charges and be given the opportunity for a hearing as provided in the Administrative Procedures Act, Nursing Practice Act, and/or Board rules.

If the person does not receive a diagnosis of chemical dependence, the Board will take any recommendations of the evaluator into account, i.e., pain or disease management, and/or mental health issues, and determine whether or not a period of monitoring by the Board is in the best interest of public health and safety. In addition, if the evaluator determines that the nurse has a pain management, disease management, or mental health issue, the nurse will be sent to an appropriate specialist or clinic approved by the Board for evaluation and additional recommendations. If the evaluator determines that the individual has a low probability for substance abuse, but the evidence supports identical drug discrepancies, the Board will determine whether or not a period of monitoring is necessary to ensure public safety and welfare.

Crimes Related to Substance Abuse

The Board may rely solely on the conviction of a crime to impose a disciplinary sanction on a nurse. In addition, evidence of the conduct which is the basis for the conviction may be of concern to the Board in that it implicates a nurse's professional character pursuant to rule 213.27 (Good Professional Character). The Board will also consider a pattern of arrests for crimes related to substance abuse in regards to a pattern of behavior which may be of concern to the Board.

Crimes related to substance abuse range from those that are primarily harmful to the nurse to those that are harmful to others. Nurses who have committed crimes such as Minor in Possession of Drugs/Alcohol, Possession of a Controlled Substance or Driving Under the Influence of Intoxicants will be required to obtain an evaluation by an evaluator with credentials approved by the Board to determine if the person has a diagnosis of chemical dependence. The Board may additionally use the results of that evaluation to determine fitness to function as a nurse and whether monitoring by the Board is necessary for protection of the public. Nurses who have committed crimes which are clearly a danger to others, such as Manufacture and Distribution of a Controlled Substance or Conspiracy to Distribute Opium will be considered on an individual basis and may be required to complete a drug and alcohol or forensic psychological evaluation. The Board views crimes related to substance abuse which are harmful to others as more serious than those where harm is directed mainly at the nurse. If the individual facts of a case show harm to others, the Board will serve Formal Charges against the nurse and the nurse will have the opportunity to a hearing as

provided in the Administrative Procedures Act, Nursing Practice Act, and/or Board rules.

It should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving drugs, alcohol, or substance abuse, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code §213.28 governs the consequences of criminal convictions and chapter 53 requires revocation of a nurse's license if there is imprisonment as stated above.

Petition for Reinstatement of License

A nurse whose license has been revoked or suspended or who has voluntarily surrendered the license due to chemical dependence or crimes related to substance abuse has the right to petition the Board for reinstatement of the license after one year has elapsed from the effective date of the Board action unless agreed otherwise. The burden of proof will be on the license holder that he/she is in recovery from chemical dependence, no longer abuses drugs or alcohol and has been rehabilitated to the extent that he/she no longer poses a threat to the public health, safety, and welfare. It is highly recommended that evidence of sobriety include random drug screens, letters and evaluations from present and past employers, and signed logs of support group attendance. Should the Board reinstate licensure, the nurse may be required to take a refresher course before a license is issued to him/her.

[1]The terms "resident" or "client" are often used interchangeably with the term "patient" in health care facilities. For the purpose of this policy, the term "patient" includes all of these terms.

[2]An approved treatment facility means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the Texas Commission on Alcohol and Drug Abuse, or a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office. TEX. HEALTH & SAFETY CODE §461.002(9).

[3]A chemical dependency evaluation requires:

a) a release signed by the nurse which allows the Board to send the investigatory file to the evaluator for review prior to the evaluation;

b) a release which allows the evaluator to send the evaluation directly to the Board;

c) review of the Board's investigatory file by the evaluator prior to the evaluation;

d) administration of a SASSI-III and/or MAST test by the evaluator; and

e) a face-to-face interview between the evaluator and nurse.

Original policy adopted on July 26, 2002, amended on April 25, 2003, and revised on April 23, 2004.

TRD-200605955

Katherine Thomas
Executive Director
Board of Nurse Examiners
Filed: October 30, 2006

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 25, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33425 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33425.

TRD-200606022
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 27, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA) as follows:

Project Title and Number: Application of Southwestern Bell Telephone, L.P. d/b/a AT&T Texas for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33441 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33441.

TRD-200606025
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2006

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On October 24, 2006, Eagle Broadband filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60267. Applicant intends to relinquish its certificate.

The Application: Application of Eagle Broadband to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 33420.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 15, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33420.

TRD-200606009
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2006

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 26, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Ygnition Networks, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 33428 before the Public Utility Commission of Texas.

Applicant intends to provide ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, optical services, T1-Private Line, Switch 56 KBPS, frame relay, and Fractional T1 services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 15, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33428.

TRD-200606023
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2006

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries in Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on October 23, 2006, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (West Lake Subdivision). Docket Number 33405.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received letters requesting electric utility service to a proposed 85-acre subdivision, West Lake Subdivision Section 1. The area is presently undeveloped. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than November 17, 2006, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33405.

TRD-200606006
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2006

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries in Concho County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on October 24, 2006, for an amendment to certificated service area boundaries within Concho County, Texas.

Docket Style and Number: Application of Cap Rock Energy Corporation-McCulloch Division to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception within Concho County, Texas. Docket Number 33418.

The Application: Cap Rock Energy filed an application for a service area exception to amend certificated service area boundaries within Concho County, Texas. Cap Rock Energy seeks to provide service to a specific customer, Mike Lillis, located within the certificated service area of Concho Valley Electric Cooperative, Inc. (Concho Valley).

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 17, 2006, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33418.

TRD-200606008
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2006

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries in Deaf Smith County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on October 24, 2006, for an amendment to certificated service area boundaries within Deaf Smith County, Texas.

Docket Style and Number: Application of Deaf Smith Electric Cooperative to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception within Deaf Smith County, Texas. Docket Number 33417.

The Application: Deaf Smith filed an application for a service area exception to amend certificated service area boundaries within Deaf Smith County, Texas. Deaf Smith seeks to provide service to a specific customer, Mr. Jim Friemel, located within the certificated service area of Xcel Energy (Xcel).

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 17, 2006, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33417.

TRD-200606007
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2006

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries in Lampasas County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on October 27, 2006, for an amendment to certificated service area boundaries within Lampasas County, Texas.

Docket Style and Number: Application of City of Lampasas to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Lampasas County (Sunrise Hills Subdivision). Docket Number 33430.

The Application: The City of Lampasas requests a service area boundary amendment to supply power to a proposed subdivision. Pedernales Electric Cooperative, Inc. is in full agreement with the territory amendment. The amount of money expected to be expended on new facilities if the application is granted is approximately $300,000.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 17, 2006, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33430.

TRD-200606024
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2006

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries in Oldham County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on October 23, 2006, for an amendment to certificated service area boundaries within Oldham County, Texas.

Docket Style and Number: Application of Deaf Smith Electric Cooperative to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception within Oldham County, Texas. Docket Number 33404.

The Application: Deaf Smith filed an application for a service area exception to amend certificated service area boundaries within Oldham County, Texas. Deaf Smith seeks to provide service to a specific customer, Mr. Roger Brorman, located within the certificated service area of Xcel Energy (Xcel).

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 17, 2006, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33404.

TRD-200606005
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2006

♦ ♦ ♦

Notice of Petition for Inquiry and Petition for Declaratory Order

Notice is given to the public of a petition for declaratory order and petition for an inquiry filed with the Public Utility Commission of Texas (commission) on September 1, 2006, and October 27, 2006, respectively, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.201 and §38.005 (Vernon 1998 & Supplement 2006) (PURA).

Docket Style and Number: Commission Staff's Petition for an Inquiry into the Management and Affairs of TXU Electric Delivery Company and TSAEW's Petition for Declaratory Order, Docket Number 33156.

The Petitions: The Texas Association of Electrical Workers (TSAEW) filed a Petition for Declaratory Order Regarding Safety and Reliability. TXU Electric Delivery Company's (TXU) parent company, TXU Corp., and Infrastrux Group, Inc. entered into an agreement forming a new joint venture, Infrastrux Energy Services, Inc. (IES), to provide to TXU certain construction and maintenance services (Agreement). TSAEW requested that the commission issue a declaratory order that the Agreement is in violation of PURA §38.005(c) and P.U.C. Substantive Rule §25.52(b)(4).

Commission Staff filed a Petition for an Inquiry into the Management and Affairs of TXU Electric Delivery and Motion to Consolidate. Staff's petition states that TXU's proposal to transfer virtually all of its construction and maintenance activities to a third-party joint venture is unprecedented for a utility of its size in Texas, and the proposed transaction may not conform with regulatory requirements established by the commission. The petitions have been consolidated into Docket Number 33156.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477.

Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 33156.

TRD-200606031
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2006

♦ ♦ ♦

Public Notice of Workshop on Demand-Response Programs in the ERCOT Market

The staff of the Public Utility Commission of Texas (commission) will hold workshops regarding Demand-Response Programs in the ERCOT Market on Friday, December 8, Monday, December 18, 2006 and Tuesday, December 19, 2006, all beginning at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, at 1701 North Congress Avenue, Austin, Texas 78701. Project Number 32853, *Evaluation of Demand-Response Programs in the Competitive Electric Market* has been established for this proceeding.

Questions concerning the workshop or this notice should be referred to Shawnee Claiborn-Pinto, Electric Industry Oversight Division, (512) 936-7388. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200606028
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2006

♦ ♦ ♦

Railroad Commission of Texas

Request for Comments on Changes to Certain Railroad Commission Oil and Gas Division Forms

The Railroad Commission of Texas requests comments on certain Oil and Gas Division forms as part of the proposed amendments to 16 TAC §3.80, relating to Commission Oil and Gas Forms, Applications, and Filing Requirements, published in this issue of the *Texas Register* (as part of a proposal of some non-substantive amendments to §§3.2, 3.5, 3.14, 3.25, 3.56, and 3.58, relating to Commission Access to Properties; Application To Drill, Deepen, Reenter, or Plug Back; Plugging; Use of Common Storage; Scrubber Oil and Skim Hydrocarbons; and Oil, Gas, or Geothermal Resource Operator's Reports). The proposed amendments to §3.80 are found only in the Table and refer to changes in the Form L-1, Electric Log Status Report, and Form ST-1, Application for Texas Severance Tax Incentive Certification. The Commission is requesting comments on both the proposed amendments to §3.80 and the other rules, and these proposed form changes.

RAILROAD COMMISSION OF TEXAS Oil and Gas Division	ELECTRIC LOG STATUS REPORT	FORM L-1 Draft Rev. 10-2006

Instructions

When to File Form L-1:
- with Forms G-1, W-2, and GT-1 for new and deepened gas, oil, and geothermal wells
- with Form W-3 for plugged dry holes
- when sending in a log which was held under a request for confidentiality and the period for confidentiality has not yet expired.

When is Form L-1 NOT required:
- with Forms W-2, G-1, and GT-1 filed for injection wells, disposal wells, water supply wells, service wells, re-test wells, re-classifications, and plugbacks of oil, gas or geothermal wells
- with Form W-3 for plugging of other than a dry hole

Where to File Form L-1:
- with the appropriate Commission district office

Filling out Form L-1:
- Section I and the signature section must be filled out for all wells
- complete only the appropriate part of Section II

Type of log required:
- any wireline survey run for the purpose of obtaining lithology, porosity, or resistivity information
- no more than one such log is required but it must be of the subject well
- if such log is NOT run on the subject well, do NOT substitute any other type of log; just select Section II, Part A below

SEE REVERSE SIDE

SECTION I. IDENTIFICATION

Operator Name:	District No.	Completion Date:
Field Name	Drilling Permit No.	
Lease Name	Lease/ID No.	Well No.
County	API No. 42-	

SECTION II. LOG STATUS (Complete either A or B)

☐ A. BASIC ELECTRIC LOG NOT RUN

☐ B. BASIC ELECTRIC LOG RUN. (Select one)

☐ 1. Confidentiality is requested and a copy of the header for each log that has been run on the well is attached.

☐ 2. Confidentiality already granted on basic electric log covering this interval (applicable to deepened wells only).

☐ 3. Basic electric log covering this interval already on file with Commission (applicable to deepened wells only).

☐ 4. Log attached to (select one):

☐ (a) Form L-1 (this form). If the company/lease name on log is different from that shown in Section I, please enter name on log here: _____

Check here if attached log is being submitted after being held confidential. ☐

☐ (b) Form P-7, Application for Discovery Allowable and New Field Designation.

☐ (c) Form W-4, Application for Multiple Completion: Lease or ID No(s). _____ _____ Well No(s). _____

_____ Signature	_____ Title
_____ Name (print)	(___) _____ Phone _____ Date

-FOR RAILROAD COMMISSION USE ONLY-

Form L-1, Electric Log Filing Requirements

Rev. Effective __-____

As required by statute (Texas Natural Resources Code, Chapter 91, Subchapter M) and defined by Statewide Rule 16 (see below), a legible, unaltered final copy of a basic electric log run on a well must be filed with the completion report for that well (Form W2 and Form G-1) or the plugging report for that well is it is a dry hole (Form W-3). The electric log will become part of the public record.

You may, however, request a one-year period of confidentiality during which you will keep the log in your possession. Prior to the expiration of the initial period of confidentiality, you may request a renewal for a two-year period. Logs of wells drilled on land submerged in State water may be granted an additional two-year extension. At the end of the period(s) of confidentiality, a copy of the basic electric log must be filed with the Commission. The Commission will send you a notice prior to the expiration of the confidentiality period(s). NOTE: Electric logs submitted in conjunction with an application for multiple completion or a new field designation or tax exemptions/exclusions are considered part of the public records and confidentiality cannot be granted to them.

§3.16. Log and Completion or Plugging Report.

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

(1) Basic electric log--A density, sonic, or resistivity (except dip meter) log run over the entire wellbore.

(2) Drilling operation--A continuous effort to drill or deepen a wellbore for which the Commission has issued a permit.

(3) Operator--A person who assumes responsibility for the regulatory compliance of a well as shown by a form the person files with the Commission and the Commission approves.

(4) Well--A well drilled for any purpose related to exploration for or production or storage of oil or gas or geothermal resources, including a well drilled for injection of fluids to enhance hydrocarbon recovery, disposal of produced fluids, disposal of waste from exploration or production activity, or brine mining.

(b) Completion and plugging reports. The operator of a well shall file with the Commission the appropriate completion report within 30 days after completion of the well or within 90 days after the date on which the drilling operation is completed, whichever is earlier. The operator of a well shall file with the Commission an amended completion report within 30 days of any physical changes made to the well, such as any change in perforations, or openhole or casing records. If the well is a dry hole, the operator shall file with the Commission an appropriate plugging report within 30 days after the well is plugged.

(c) Basic electric logs. Except as otherwise provided in this section, not later than the 90th day after the date a drilling operation is completed, the operator shall file with the Commission a legible and unaltered copy of a basic electric log, except that where a well is deepened, a legible and unaltered copy of a basic electric log shall be filed if such log is run over a deeper interval than the interval covered by a basic electric log for the well already on file with the Commission. In the event a basic electric log, as defined in this section, has not been run, subject to the Commission's approval, the operator shall file a lithology log or gamma ray log of the entire wellbore. In the event no log has been run over the entire wellbore, subject to the Commission's approval, the operator shall file the log which is the most nearly complete of the logs run.

(d) Delayed filing based on confidentiality. Each log filed with the Commission shall be considered public information and shall be available to the public during normal business hours. If the operator of a well desires a log to be confidential, on or before the 90th day after the date a drilling operation is completed, the operator must submit a written request for a delayed filing of the log. When filing such a request, the operator must retain the log and may delay filing such log for one year beginning from the date the drilling operation was completed. The operator of such well may request an additional filing delay of two years, provided the written request is filed prior to the expiration date of the initial confidentiality period. If a well is drilled on land submerged in state water, the operator may request an additional filing delay of two years so that a possible total delay of five years may be obtained. A request for the additional two-year filing delay period must be in writing and be filed with the Commission prior to the expiration of the first two-year filing delay. Logs must be filed with the Commission within 30 days after the expiration of the final confidentiality period, except that an operator who fails to timely file with the Commission a written request under this subsection for an extension of the period of log confidentiality shall file the log with the Commission immediately after the conclusion of the period for filing the request.

(e) Sanctions. If an operator fails to file a completion report or log in accordance with the provisions of this section, the Commission may refuse to assign an allowable to a well, set the allowable for such well at zero, and/or initiate penalty action pursuant to the Texas Natural Resources Code, Title 3.

RAILROAD COMMISSION OF TEXAS
Oil and Gas Division
PO Box 12967
Austin, Texas 78711-2967

APPLICATION FOR TEXAS SEVERANCE TAX INCENTIVE CERTIFICATION

ST-1
Rev. 10/03
WWW-1

Section I READ INSTRUCTIONS ON REVERSE SIDE

1. Operator name, exactly as shown on P-5, Organization Report	2. Operator P-5 No.	3. RRC Dist. No.

4. Operator address, including city, state, and zip code	5. Incentive being filed for: (select one)
	☐ **High-cost Gas** – Sec I,II
	☐ **2-Year Inactive Well** – Sec I,III
	☐ **Flared/Vented Gas Marketing** – Sec I,IV
	Complete the indicated sections and the Certification area
	Use Form H-12 for EOR incentive applications

6. Field Name	7. Field No,

8. Lease Name	9. Lease/ID No.

Section II. HIGH-COST GAS Incentive. Read Instruction No. 1 Attachments required.

10. Check NGPA high-cost category for which incentive certification is required.
☐ 107 Tight Sands — Area Designation Docket No. _____ ☐ 107 Deep Gas ☐ 107 other — specify _____

Section III. TWO-YEAR INACTIVE WELL Incentive. Read Instruction No. 2

11. API Wellbore No.	12. Well Number	13. Has this wellbore produced more than one month in the 2 years prior to the application	14. Have you received notice from RRC that well is designated as a candidate for certification?
42-		☐ No ☐ Yes	☐ No ☐ Yes

15. Check as appropriate. *If either is checked, give all other ID numbers used in last two years in space provided*
☐ Re-entry in plugged well plugging date: _____ ☐ consolidation, workover, unitization, field transfer or other action in the last two years which resulted in an identification change

Lease/ID No.: Well No.

Section IV. MARKET PREVIOUSLY FLARED OR VENTED CASINGHEAD GAS Incentive. Read Instruction No. 3

16. Identify the twelve consecutive months in which flaring or venting took place and MCF volume flare/vented each month

	month/year	*volume*		*month/year*	*volume*		*month/year*	*volume*		*month/year*	*volume*
1.			4.			7.			10.		
2.			5.			8.			11.		
3.			6.			9.			12.		

17. Name of gas gatherer filed on Form P-4 to gather the marketed gas.	18. Date first marketed gas carried by the named gatherer *month/year*

CERTIFICATION: I declare under penalties prescribed in TNRC §91.143 that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that data and facts stated herein are true, correct and complete, to the best of my knowledge.

_____ signature _____ name (type or print)

_____ title _____ phone w/AC _____ date

DRAFT 8-2006

ST-1: Application for Texas Severance Tax Incentive Certification

DRAFT2 10-2006

INSTRUCTIONS

Use the ST-1 when applying for the following incentive programs: High-Cost Gas, 2-Year Inactive Well, Marketing of Previously Flared or Vented Casinghead Gas. Use the H-12 to apply for the Enhanced Oil Recovery (EOR) Reduced Tax Rate. File the ST-1 and any required attachments with the Railroad Commission in Austin. Particular requirements for the individual incentives are given below. For information on the Two-Year Inactive well incentive, call (512)463-6742. For information on the other two incentives, call ~~a more detailed description of a specific incentive, contact the Railroad Commission's Oil and Gas Division,~~ 512-463-6785.

1. **High-Cost Gas.** Gas ~~from wells~~that is defined as high-cost gas ~~wells~~ under 16 Texas Administrative Code 3.101, relating to Certification for Severance Tax Exemption or Reduction for Gas Produced from High-Cost Gas Wells, (Statewide Rule 101), ~~Section 107 of the old Federal Natural Gas Policy Act (NGPA)~~ may be eligible for a state severance tax reduction or exemption. High-cost gas~~Section 107~~ includes gas produced from designated tight formations~~sands~~, completions below 15,000 feet, Devonian shale, coal seams, or geopressured brine. In order to receive the *exemption,* the well~~Wells~~ must be spudded or completed after May 24, 1989 and before September 1, 1996. In order tor eceive the *reduction*, the well must be spudded or completed after August 31, 1996. Attach a copy of the Form G-1 completion report with all applications. Additionally, for a tight formations~~sands~~ applications, provide the area designation docket number and attach a copy of a map outlining the designated tight formations~~and~~ area with the respective well's location shown. Section 110 of House Bill 2425 (78th Legislature, 2003, Regular Session) amended Texas Tax Code, §201.057, effective June 20, 2003, relating to the high-cost gas tax incentive, by changing the filing procedures and dates. For any application for certification submitted to the Commission after January 1, 2004, the total allowable credit for taxes paid for reporting periods before the date the application is filed may not exceed the total tax paid on the gas that otherwise qualified for the exemption or tax reduction and that was produced during the 24 consecutive calendar months immediately preceding the month in which the application for certification was filed with the Commission. In addition, there is a penalty for filing with the Comptroller of Public Accounts later than the 180th day after the date of the first production or the 45th day after the date of the well's certification by the Commission.

2. **Two-Year Inactive well.** If an oil or gas well has no more than one month of production during the two years preceding the date of application, crude oil, casinghead gas, and gas well gas produced may be eligible for up to ten year's severance tax exemption. Beginning Fall 1997 and monthly thereafter, operators are being notified by the Commission when such wells are designated as candidates for certification. The operator of a designated well makes application for certification between September 1, 1997, and August 31, 2009, by filing the ST-1. Because the ten-year exemption period begins with the date of certification, maximum payout occurs when the application is made after a designated well is brought back into production. If operator records indicate that a well might be eligible even if it has not been designated by the Commission, such as re-entry of a plugged well, application is encouraged.

3. **Marketing Previously Flared or Vented Casinghead Gas.** If casinghead gas that has been flared or vented pursuant to Commission rules for 12 months or more is marketed, it is eligible for permanent exemption from state severance taxes. Application to the Commission must be made within 120 days of when the gas is first marketed.

10-03

Comments on the proposed amendments to §3.80 or these proposed forms included in this notice may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments on the forms listed in this notice for 30 days after publication of the proposed amendments to §3.80 in the *Texas Register*, and encourages all interested persons to submit comments on the forms no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Leslie Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas, on October 30, 2006.

TRD-200606020
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: October 31, 2006

♦ ♦ ♦

Stephen F. Austin State University

Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will assess the current condition of our held-in-trust artifacts and prepare a plan of action for future compliance activities. The Notice of Availability was published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6424).

The contract was awarded to Cultural Resource Office, School of Social Sciences, Northwestern State University, Natchitoches, Louisiana 71497, for an amount not to exceed $40,000.

The beginning date of the contract is October 1, 2006 and the ending date is August 31, 2007.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant.

For further information, please call (936) 468-4405.

TRD-200605911
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: October 27, 2006

♦ ♦ ♦

University of Houston

Notice of Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston furnishes this notice of request for proposal. The University of Houston seeks proposals from a firm to provide consulting services to assist its Texas Center for Superconductivity (TcSUH) in developing a strategic business plan for the marketing of its intellectual property. In doing so, the University is in need of a consultant to develop this plan, understand and document the alternatives available for selecting licensee, and to make recommendations for potential licensing opportunities. The University invites firms with demonstrated expertise, experience, and success in these areas to submit comprehensive responses to this request for proposal. Interested parties are invited to express their interest and describe their capabilities on or before December 10, 2006.

The term of the contract is to be for a one (1) year period beginning on or about December 15, 2006 and ending December 15, 2007 subject to two (2) renewal options, each of one (1) years' duration. Further information can be obtained from Dr. Allan Jacobson (713) 743-8200. All proposals must be specific and must be responsive to the criteria set forth in this request.

SCOPE OF WORK: Consulting services to assist the University and its advisory groups in providing information and in attending required meetings and prepare required reports in the following areas: (i) Provide an assessment of the challenges/opportunities in TcSUH's portfolio; (ii) Provide evaluation of federal government's rights to the intellectual property; (iii) Provide licensing options and recommendations on exclusivity and non-exclusivity of rights; Provide recommendations on foreign licenses and licensing opportunities internationally; (iv) Provide recommendations regarding licensing pricing; i.e. investment return forecast; (v) Assess potential licensee's ability to pay and further market the technology; and a multi-phase plan for the marketing, identification of licensees, negotiations of licensing agreements, etc. with time lines for implementing the plan. The scope of work shall not encompass any activities that would require legal advice or lobbying of agencies, organizations or in any way representing the University in lobbying for redress or in expressing opinions thereto.

GENERAL INSTRUCTIONS: Submit one (1) original, three (3) paper copies of your proposal and a CD version in a sealed envelope to: Dr. Allan Jacobson, University of Houston, 202 University Science Center Building, Houston, Texas 77204-5002 before 5:00 P.M. December 10, 2006. The original shall be prepared on a word processor and formatted in at least 11-point-font that is clearly readable. The paper copies shall be of good, readable quality.

COMPLIANCE WITH RFP REQUIREMENTS: By submission of a proposal, a submitter agrees to be bound by the requirements set forth in this RFP. The University, at its sole discretion, may disqualify a proposal from consideration if the University determines a proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

SIGNATURE, CERTIFICATION OF SUBMITTER: The original paper proposal must be signed and dated by a representative of the submitter who is authorized to bind the submitter to the terms and conditions contained in this RFP and to comply with the information submitted in the proposal. Each submitter certifies to both (1) the completeness, veracity, and accuracy of the information provided in the proposal and (2) the authority of the individual whose signature appears on the proposal to bind the submitter to the terms and conditions set forth in this RFP and a resulting agreement should the submitter be selected. Proposals submitted without the required signature shall be disqualified.

OWNERSHIP OF PROPOSALS: All proposals become the physical property of the University upon receipt.

USE, DISCLOSURE OF INFORMATION: Submitters acknowledge that the University is an agency of the State of Texas and is, therefore, required to comply with the Texas Public Information Act. If a proposal includes proprietary data, trade secrets, or information the submitter wishes to except from public disclosure, then the submitter must specifically label such data, secrets, or information as follows: "PRIVILEGED AND CONFIDENTIAL--PROPRIETARY INFORMATION." To the extent permitted by law, information labeled by the submitter as proprietary will be used by the University only for purposes related to or arising out of the (1) evaluation of proposals, (2)

selection of a submitter pursuant to the RFP process, and (3) negotiation and execution of a Contract, if any, with the submitter selected.

RESCISSION OF PROPOSAL: A proposal can be withdrawn from consideration at any time prior to expiration of the deadline for proposals pursuant to a written request sent to the University.

REQUEST FOR CLARIFICATION: The University reserves the right to request clarification of any information contained in a proposal.

ADDENDA TO THE RFP: Each submitter will be provided with copies of University-approved addenda, including amendments, if any, to the RFP. If and as necessary, as determined by the University, submitters will, in turn, be allowed time to revise or supply additional information in response to such addenda.

PRE-PROPOSAL CONFERENCE: There will not be a pre-proposal conference.

COMMUNICATIONS WITH UNIVERSITY PERSONNEL: Except as provided in this RFP and as is otherwise necessary for the conduct of ongoing University business operations, submitters are expressly and absolutely prohibited from engaging in communications with University personnel who are involved in any manner in the review and/or evaluation of the proposals; selection of a submitter; and/or negotiations or formalization of a contract. If any submitter engages in conduct or communications that the University determines are contrary to the prohibitions set forth in this section, the University may, at its sole discretion, disqualify the submitter and withdraw the submitter's proposal from consideration.

EVALUATION OF PROPOSALS: The proposals will be reviewed in accordance with the criteria set forth in this RFP. Proposals that are (1) incomplete, (2) not properly certified and signed, (3) not in the required format, or (4) otherwise non-compliant, in whole or in part, with any of the requirements set forth in this RFP may be disqualified by the University.

DISCUSSIONS WITH SUBMITTERS: The University may conduct discussions and/or negotiations with any submitter that appears to be eligible for award ("Eligible Submitter") pursuant to the selection criteria set forth in this RFP. In conducting discussions and/or negotiations, the University will not disclose information derived from proposals submitted by competing submitters, except as and if law requires disclosure.

MODIFICATION OF PROPOSALS: All Eligible Submitters will be afforded the opportunity to submit best and final proposals if (a) negotiations with any other submitter result in a material alteration to the RFP and (b) such material alteration has a cost consequence that could alter the submitter's quotations regarding rates for Services.

SELECTION OF PROPOSER: The submitter selected for award will be the submitter whose proposal, as presented in response to this RFP and as determined by the University in accordance with the evaluation criteria set forth in this RFP, to be the most advantageous and result in best value to the University. Submitters acknowledge that the University is not bound to accept the lowest-priced proposal.

EVALUATION OF PROPOSALS: Submission of a proposal indicates the submitter's acceptance of the evaluation process set forth in this RFP and the submitter's acknowledgement that subjective judgments must be made by the University in regard to the evaluation process.

CRITERIA FOR EVALUATION: Evaluation of proposals and award to the Selected Submitter will be based on the following factors, as weighted and listed as follows: (1) Five (5) or more years of consulting experience, (2) Completeness of responses to the above parameters (Scope of Work, Deliverables, Objectives), (3) Three or more directly related references. References shall include a point of contact and means thereof, (4) Estimate of fees and rates, and (5) The University may also consider other information it deems relevant to the selection of a consultant.

CONSIDERATION OF ADDITIONAL INFORMATION: The University reserves the right to ask for and consider any additional information deemed beneficial to the University in evaluation of the proposals.

TERMINATION: This Request for Proposal in no manner obligates the University of Houston University to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University of Houston and may be terminated without penalty or obligation at any time prior to the signing of a contract. The University of Houston reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200606034
Brian S. Nelson
Executive Director and Associate General Counsel
University of Houston
Filed: November 1, 2006

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How to Use the Texas Register

Information Available: The 14 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 public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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

Review of Agency Rules - notices of state agency rules review.

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

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 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 "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

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

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

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

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

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

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

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). 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).