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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*.

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FAX (512) 463-5569
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Open Meetings

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

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

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

THE ATTORNEY GENERAL

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

Opinions

Opinion No. GA-0082

The Honorable Frank Madla

Chair, Intergovernmental Relations Committee

Texas State Senate

P.O. Box 12068

Austin, Texas 78711-2068

Re: Whether the City of San Antonio may impose right-of-way fees against a metropolitan transit authority created under chapter 451 of the Transportation Code (RQ-0020-GA)

S U M M A R Y

Section 451.058(d) of the Transportation Code requires a transit authority to pay all construction, alteration, and rerouting costs associated with the installation and relocation of bus stops, and any damages incurred. Because the Transportation Code permits the imposition of only the specific charges listed therein, the City of San Antonio may not by ordinance require the VIA Metropolitan Transit Authority to pay duplicative or additional fees associated with such construction.

Opinion No. GA-0083

Eduardo J. Sanchez, M.D., M.P.H.

Commissioner of Health

Texas Department of Health

1100 West 49th Street

Austin, Texas 78756-3199

Re: Whether chapter 108 of the Health and Safety Code authorizes or requires the Texas Health Care Information Council to provide the Department of Health with individually identifiable health care information (RQ-0010-GA

S U M M A R Y

Under current law, the Texas Health Care Information Council is not authorized to provide the Texas Department of Health with data containing individually identifiable health information.

Opinion No. GA-0084

The Honorable Scott Sherwood

Carson County Attorney

303 Euclid Avenue

P.O. Box 947

Panhandle, Texas 79068-0947

Re: City of Skellytown's authority to enter certain agreements with the Skellytown Area Volunteer Firefighters-EMS Association (RQ-0014-GA)

S U M M A R Y

Because the City of Skellytown executed various agreements (the "Agreements") with the Skellytown Area Volunteer Firefighters-EMS Association (the "Association") over three years ago and no lawsuits to invalidate them have been filed, the Agreements are "conclusively presumed" to be valid unless, among other things, the Agreements were void *ab initio*. *See* TEX. LOC. GOV'T CODE ANN. §51.003 (Vernon Supp. 2003). The fact that a city council member was, at the time the City approved the Agreements, also a director of the Association does not affect the Agreements' validity.

The City had statutory authority to convey to the Association personal property, such as equipment and furniture, and to lease City buildings and facilities to the Association. A conveyance or lease complies with article III, section 52 of the Texas Constitution if (1) it primarily accomplishes a public purpose; (2) the City retains sufficient control to ensure that the public purpose would be accomplished; and (3) the City receives a sufficient return benefit.

A Type A general-law municipality has no statutory authority to attach a $1.50 charge to water bills to fund the costs of volunteer fire fighting services.

Opinion No. GA-0085

The Honorable Melanie Spratt-Anderson

Upton County Attorney

P.O. Box 890

Rankin, Texas 79778

Re: Whether the Upton County Commissioners Court may maintain or work on private non- road property or sell county-owned dirt to private individuals for a reasonable fee (RQ-0015-GA)

S U M M A R Y

Article III, section 52f of the Texas Constitution expressly permits counties with a population of 5,000 or less to construct and maintain private roads if they impose a reasonable charge for the work. In the absence of a statute authorizing a county to maintain or work on private non-road property or a constitutional provision analogous to article III, section 52f, such activities are beyond a commissioners court's authority. Provided that county-owned dirt falls under the definition of either salvage or surplus property, subchapter D of chapter 263 of the Local Government Code would authorize the county to sell it.

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

TRD-200304129
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 8, 2003

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Requests for Opinions

RQ-0071-GA

Requestor:

The Honorable Norma Chavez

Chair, Committee on Border and International Affairs

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Authority of a home-rule city to permit a city council member to participate in the municipal group health insurance program (Request No. 0071-GA)

Briefs requested by August 7, 2003

RQ-0072-GA

Requestor:

The Honorable Charles A. Rosenthal, Jr.

District Attorney, Harris County

1201 Franklin Street, Suite 600

Houston, Texas 77002

Re: Confinement of juvenile for contempt of court prior to a detention hearing; Reconsideration of Attorney General Opinion JC-0454 (2002) (Request No. 0072-GA)

Briefs requested by August 8, 2003

RQ-0073-GA

Requestor:

The Honorable Will Hartnett

Chair, Committee on Judicial Affairs

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Liability of school trustees who improperly pay the attorney's fees of a non-prevailing party: Clarification of Attorney General Opinion GA-0062 (2003) (Request No. 0073-GA)

Briefs requested by August 7, 2003

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

TRD-200304164
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 9, 2003

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EMERGENCY RULES

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

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS

34 TAC §§31.1 - 31.3

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis amendments to §§31.1, 31.2, and 31.3, concerning employment after retirement. The sections being amended relate to definitions, monthly certified statement, and the section providing that exceptions apply only to effective retirements. The amendments are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt emergency amendments if a requirement of state or federal law requires adoption on less than 30 days notice. The amendments are being simultaneously proposed for permanent adoption in this issue of the *Texas Register*.

The amendments are being made in order to immediately comply with HB 2169, which took effect when it was signed by the Governor on June 20, 2003. The amendments to §31.3 include language providing that 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. The amendments to §31.1 include a definition of a third party entity. In addition, the amendments to §31.2 add a requirement that the monthly certified statement of all employment of TRS service or disability retirees furnished by reporting entities must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed on or after May 24, 2003 and are performing duties or providing services on behalf of or for the benefit of the reporting entity. TRS finds that requirements of state law require the adoption of the amendments on fewer than 30 days notice.

The amendments are adopted on an emergency basis under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership. The amendments are also adopted under House Bill 2169, 78th Legislature, Regular Session, which provides that employment of a retiree by a third party entity may be considered employment by a TRS covered employer for purposes of employment after retirement. . As described above, the sections are also adopted under Government Code §2001.034.

No other codes are affected.

§31.1. Definitions.

(a) School year--For purposes of employment after retirement, a twelve-month period beginning on September 1 and ending on August 31 of the calendar year.

(b) Substitute--For purposes of employment after retirement, a person who serves on a daily, on-call basis in a position normally filled by another regular employee. Service as a substitute that does not meet this definition is not eligible substitute service for purposes of an exception to forfeiture of annuity payments.

(c) Third party entity--For purposes of employment after retirement, an entity retained by a Texas public educational institution to provide personnel to the institution who perform duties or provide services that employees of that institution would otherwise perform or provide.

§31.2. Monthly Certified Statement.

A reporting entity shall furnish Teacher Retirement System of Texas (TRS) a monthly certified statement of all employment of TRS service or disability retirees. Effective June 20, 2003, the certified statement must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003 and are performing duties or providing services on behalf of or for the benefit of the reporting entity. The statement shall contain information necessary for the executive director or his designee to classify employment as one of the following:

(1) substitute service;

(2) employment that is not more than one-half time;

(3) employment under the six month exception;

(4) employment under the acute shortage area exception;

(5) employment under the principal or assistant principal exception;

(6) employment under the bus driver exception;

(7) full-time employment;

(8) trial employment of disability retiree for three months; or

(9) employment of a service retiree who retired before January 1, 2001.

§31.3. Exceptions Apply only to Effective Retirements.

The exceptions to forfeiture of annuities provided in this chapter apply only to persons who have effectively retired by ending all employment as described in Government Code, §824.002 and §29.15 of this title (relating to Termination of Employment) and who do not revoke retirement by becoming employed in any position by Texas public educational institutions in the month immediately following the person's

effective date of retirement (or in the two months immediately following the person's effective date of retirement if the effective date of retirement is May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)). 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. A person who has not effectively retired or who revokes retirement because of premature return to employment is not eligible for a retirement annuity and is required to return all annuity or lump sum payments to TRS.

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

Filed with the Office of the Secretary of State on July 2, 2003.

TRD-200304086
Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Effective Date: July 2, 2003
Expiration Date: October 30, 2003
For further information, please call: (512) 542-6115

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SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §§31.11 - 31.18

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis amendments to §§31.11-31.18, concerning employment after retirement. The sections being amended relate to employment resulting in forfeiture of service retirement annuity, exceptions to forfeiture of service retirement annuity, substitute service, one-half time employment, six-month exception, acute shortage area exception, principal or assistant principal exception, and the bus driver exception. The amendments are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt emergency amendments if a requirement of state or federal law requires adoption on less than 30 days notice. The amendments are simultaneously being proposed for permanent adoption in this issue of the *Texas Register*.

The amendments are being made in order to immediately comply with HB 2169 and HB 3237, which took effect when signed by the Governor on June 20, 2003. The amendments to §31.11, §31.12, and §§31.14-31.18 include language providing that 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. In addition, amendments to §31.13-31.15 relating to substitute service clarify that effective September 1, 2003, substitute service and half-time employment may be combined in the same calendar month without forfeiting the annuity payment for that month. TRS finds that requirements of state law require the adoption of the amendments on fewer than 30 days notice.

The amendments are adopted on an emergency basis under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership. The amendments are also adopted under House Bill 2169, 78th Legislature, Regular Session, which provides that employment of a retiree by a third party entity may be considered employment by a TRS covered employer for purposes of employment after retirement. The amendments are also adopted under House Bill 3237, 78th Legislature, Regular Session, which provides that retirees may combine substitute service and one-half time employment in the same calendar month without forfeiting the annuity payment for that month. As described above, the sections are also adopted under Government Code §2001.034.

No other codes are affected.

§31.11. Employment Resulting in Forfeiture of Service Retirement Annuity.

(a) A person who retired prior to January 1, 2001, and who is receiving a service retirement annuity may be employed in any capacity in Texas public education without forfeiture of benefits for the months of employment.

(b) A person who retired after January 1, 2001, and who is receiving a service retirement annuity, is not entitled to an annuity payment for any month in which the retiree is employed by a Texas public educational institution, unless the employment meets the requirements for an exception to forfeiture of payments under this chapter. Effective June 20, 2003 and for purposes of this chapter, 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.

(c) A person who is receiving a service retirement annuity may be employed in private schools, public schools in other states, in private business, or in other entities that are not TRS-covered employers without forfeiting their annuities.

(d) This chapter applies only to persons retired under TRS. It does not apply to persons retired under other retirement or pension systems.

§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). 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) 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) One-half time employment measured in clock hours shall not in any month exceed one-half of the time required for a full time position in a calendar month or 92 clock hours, whichever is less. 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. 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 number of days that the retiree works in those positions in that month does not exceed the number of days per month for work on a one-half time basis.

§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.

(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, [~~or~~] 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.

§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.

§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.

§31.18. Bus Driver Exception.

(a) A retiree who retired under Government Code, §824.202(a) without reduction for retirement at an early age and who drives at least one Texas Education Agency (TEA) approved bus route per day will be considered eligible for the bus driver exception under Government Code, §824.602(a)(6). 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) In the event the retiree wants to use the bus driver exception but 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, report(s).

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

Filed with the Office of the Secretary of State on July 2, 2003.

TRD-200304087

Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Effective Date: July 2, 2003
Expiration Date: October 30, 2003
For further information, please call: (512) 542-6115

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SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

34 TAC §§31.31 - 31.34

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis amendments to §§31.31, 31.32, 31.33, and 31.34 concerning employment after retirement. The sections being amended relate to employment resulting in forfeiture of disability retirement annuity and exceptions to such forfeiture for disability retirees, specifically half-time employment up to 90 days, substitute service up to 90 days, and employment up to three months on a one-time only trial basis. The amendments are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt emergency amendments if a requirement of state or federal law requires adoption on less than 30 days notice. The amendments are simultaneously being proposed for permanent adoption in this issue of the *Texas Register*.

The amendments are being made in order to immediately comply with HB 2169 and HB 3237 which took effect when signed by the Governor on June 20, 2003. The amendments to §§31.31-31.34 include language providing that 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. The amendments to §31.32 and §31.34 relate to substitute service and clarify that effective September 1, 2003, substitute service and half-time employment may be combined in the same calendar month without forfeiting the annuity payment for that month. TRS finds that requirements of state law require the adoption of the amendments on fewer than 30 days notice.

The amendments are adopted on an emergency basis under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership. The amendments are also adopted under House Bill 2169, 78th Legislature, Regular Session, which provides that employment of a retiree by a third party entity may be considered employment by a TRS covered employer for purposes of employment after retirement. The amendments are also adopted under House Bill 3237, 78th Legislature, Regular Session, which provides that retirees may combine substitute service and one-half time employment in the same calendar month without forfeiting the annuity payment for that month. As described above, the sections are also adopted under Government Code §2001.034.

No other codes are affected.

§31.31. Employment Resulting in Forfeiture of Disability Retirement Annuity.

(a) A person receiving a disability retirement annuity forfeits the annuity payment in any month in which the retiree is employed by a public educational institution covered by TRS, unless the employment

falls within one of the exceptions set forth in this subchapter. 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 person receiving a disability retirement annuity may not exercise the exceptions applicable to service retirees in §31.15 of this chapter (relating to Six Month Exception); §31.16 of this chapter (relating to Acute Shortage Area Exception); §31.17 of this chapter (relating to Principal or Assistant Principal Exception); and §31.18 of this chapter (relating to Bus Driver Exception).

§31.32. Half-time Employment Up to 90 Days.

(a) Any person receiving a disability retirement annuity may, without affecting payment of the annuity, be employed for a period not to exceed 90 days during any school year by public educational institution covered by TRS on as much as one-half the full time load for the particular position according to the personnel policies of 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. Total substitute service under §31.33 of this chapter and half-time employment may not exceed 90 days during any school year. Effective September 1, 2003, substitute service under §31.33 of this chapter and half-time employment may be combined in the same calendar month only if the total number of days that the disability retiree works in those positions in that month do not exceed the number of days per month for work on a one-half time basis. This exception does not apply for the first month after the retiree'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) "One-half time" employment measured in clock hours must never exceed one-half of the time required for the full time position in a calendar month or 92 clock hours, whichever is less, and may not exceed a total of 90 days in a school year. Determination of one-half time will be made on a calendar month basis as the full time load may vary from month to month. Actual course instruction in state-supported colleges (including junior colleges), universities, and public schools shall not exceed during any month one-half the normal load for full-time employment at the same teaching level.

(c) "One-half time" employment for bus drivers shall in no case exceed 12 days in any calendar month. Work by a bus driver for any part of a day shall count as a full day for purposes of this section.

§31.33. Substitute Service Up to 90 Days.

(a) A person receiving a disability retirement annuity may work as a substitute in a month without forfeiting the annuity for that month subject to the same conditions as apply to service retirees except that the total substitute service and one-half time employment in the school year may not exceed 90 days. This exception does not apply for the first month after the retiree'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)). 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) Any disability retiree who reports for duty as a substitute during any day and works any portion of that day shall be considered to have worked one day.

§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) 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 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 chapter (relating to Half-time Employment Up to 90 Days) for a disability retiree.

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

Filed with the Office of the Secretary of State on July 2, 2003.

TRD-200304088
Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Effective Date: July 2, 2003
Expiration Date: October 30, 2003
For further information, please call: (512) 542-6115

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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 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.78

The Railroad Commission of Texas proposes to amend §3.78, relating to Fees, Performance Bonds and Alternate Forms of Financial Security Required To Be Filed.

The Commission proposes the amendments to §3.78 under the provisions of Texas Natural Resources Code, §85.167, which specifies fees to be collected by the Commission for reissuance of certificates of compliance for oil leases and gas wells which have been canceled; Texas Natural Resources Code, §91.142, which specifies organization report fees; Texas Natural Resources Code, §91.109, as amended by House Bill (HB) 942, 78th Legislature Regular Session (2003), which relates to bonds, letters of credit, cash deposits and alternate forms of financial security; and Texas Natural Resources Code, §91.114, as amended by Senate Bill (SB) 1484, 78th Legislature Regular Session (2003), which relates to acceptance of organization reports or applications for permits and approval of certificates of compliance.

The proposed amendments to §3.78(a) add new paragraphs (11) through (13) to provide definitions of "officers and owners," "letter of credit," and "bond," as these terms are used in 3.78. The proposed amendments conform the current definition of "officers and owners" in §3.78(e)(1) to the statutory definition in Texas Natural Resources Code, §91.114(c)(2), by adding to the current definition any person determined by a final judgment or final administrative order to have exercised control over an organization.

The proposed fee change amendments to §3.78(b) and (c) implement statutory changes made to the Texas Natural Resources Code by HB 1195 and HB 942, 78th Legislature (2003).

Proposed amendments to §3.78(b) increase the fee for reissuance of a certificate of compliance for an oil lease or gas well that previously has been canceled from $100 to $300 for each severance or seal order issued for the lease or well. Proposed amendments to §3.78(b) also provide that if a check for this fee is not honored upon presentment, the reissued certificate of compliance may be suspended or revoked.

Proposed amendments to §3.78(c) increase fees from $100 to $225 for filing an organization report by an operator of one or more natural gas pipelines. The amendments to §3.78(c) also establish a separate organization report fee category for operators of one or more liquids pipelines and increase the organization report fee for such operators from $500 to $625. The amendments to §3.78(c) clarify that the total organization report fee that must be submitted is a fee equal to the sum of the separate fees applicable to each category of service activity, facility, pipeline, or number of wells operated, and increase the maximum amount of organization report fees that must be submitted by an operator of wells from $1,000 to $1,125.

The proposed fee change amendments are necessary to conform §3.78 to increased fees prescribed or authorized by HB 1195 and HB 942, 78th Legislature Regular Session (2003), and to clarify existing provisions relating to organization report fees. The increased fees implemented by the proposed amendments will financially strengthen the Oil Field Clean Up Fund (OFCUF) and assist in plugging of abandoned wells and cleanup of pollution.

Proposed amendments to §3.78(e) delete paragraph (1) defining "officers and owners" because an amended definition of "officers and owners" is included in the proposed amendments to §3.78(a).

The proposed amendments to §3.78(j) pertain to the amount of bonds, letters of credit, or cash deposits that must be filed by persons filing one of these forms of financial security. These amendments implement the provisions of HB 942, 78th Legislature Regular Session (2003). The proposed amendments to §3.78(j) eliminate the requirement for a person whose only activity is as a first purchaser, survey company, salt water hauler, gas nominator, gas purchaser, or well plugger to file financial security. The proposed amendments to §3.78(j) also clarify that a person who engages in more than one Commission regulated activity or operation is not required to file a separate bond or alternate form of financial security for each activity or operation. Under the proposed amendments, a person with multiple activities or operations is required to file a bond or alternate form of financial security in the greatest amount applicable to any of its activities or operations, except that a separate bond must be filed for commercial facilities activities subject to the financial security requirements of §3.78(p).

The proposed amendments also eliminate the current provision that the owner or operator of a commercial facility may reduce the amount of financial security required under §3.78(p) by $25,000 if the owner or operator holds only one commercial facility permit. This amendment is necessary because the provision being eliminated assumes that the operator of the commercial facility is required to file a bond in the amount of $25,000 under other provisions of §3.78, when in fact the amount of financial security required under other provisions may be a lesser amount. The proposed amendments in §3.78(p) clarify that the owner or operator of one or more commercial facilities may reduce the amount

of financial security required under §3.78(p) for one such facility by the amount, if any, it filed as financial assurance under §3.78(j)(3). These amendments to §3.78(p) are necessary to ensure that operators of commercial facilities have adequate financial security on file to cover commercial facilities operations.

Proposed new subsection (q) relates to the effect of outstanding violations. These proposed amendments conform §3.78 to changes made to Texas Natural Resources Code, §91.114(a)(2), by SB 1484. Proposed new subsection (q) provides that the Commission shall not accept an organization report or an application for a permit or approve a certificate of compliance for an oil lease or gas well submitted by an organization if the organization has outstanding violations, or if an officer or director of the organization was, within seven years preceding the filing of the report, application, or certificate, an officer or director of an organization and during that period, the organization committed a violation that remains an outstanding violation.

Proposed §3.78(q) also creates an exception to the general prohibition against accepting specified filings from an operator with outstanding violations by providing that the Commission shall accept a report or application or approve a certificate of an organization if the conditions that constituted the violation have been corrected or are being corrected in accordance with a schedule agreed to by the organization and the Commission; all administrative, civil, and criminal penalties and all plugging and cleanup costs incurred by the state relating to those conditions have been paid or are being paid in accordance with a schedule agreed to by the organization and the Commission; and the report, application, or certificate is in compliance with all other requirements of law and Commission rules. Proposed §3.78(q) also provides that all fees tendered in connection with a report or application that is rejected under §3.78(q) are nonrefundable.

Leslie Savage, Administrative Planner, Planning and Administration, Oil and Gas Division has determined that for the first year of the first five years the proposed amendments will be in effect, there will be no net fiscal implications for state government as a result of enforcing or administering the amendments. The fee increases implemented by the proposed amendments will be deposited into the OFCUF as mandated by Texas Natural Resources Code, §91.111. Ms. Savage estimates that the proposed amendments implementing statutory changes will increase the revenue to the OFCUF by approximately $1.8 million in fiscal year 2004 and $1.67 million in fiscal years 2005 through 2008. The increased revenue to the OFCUF will be used to cover the cost of plugging additional abandoned wells and for the cleanup of pollution.

The Commission anticipates that the statutory increase in the fee to reissue a certificate of compliance that has been canceled as a result of violations will encourage operators to come into compliance in a more timely manner, thus reducing the amount of Commission field staff time and resources to achieve compliance. Currently, an operator can allow a lease to acquire multiple severance orders, but is required only to pay $100 to have the certificate of compliance reinstated once all rule violation issues have been resolved. If a lease has been severed by multiple sections of the Oil and Gas Division, then each of those sections must verify compliance and resolve cancellation issues. At times, this verification and resolution also requires a lease inspection. It is therefore appropriate that the fees required for reissuance of the certificate of compliance reflect the existence of multiple violations. Raising the reinstatement fee and charging for multiple severances on the same lease or well, as required by HB 1195, will encourage more timely compliance with the violation notices that precede imposition of a severance.

During the first year of implementation of the proposed amendments (fiscal year 2004), the Commission will expend money from the increased revenues for relatively minor document revision, process analysis, and computer programming to implement new fees and changes to financial security requirements. The Commission anticipates that the statutory increase in the fee for reissuance of a certificate of compliance that has been canceled as a result of violations will encourage operators to come into compliance in a more timely manner, thus reducing the amount of Commission field staff time and resources to achieve compliance. The Commission believes these reductions in staff time and resources will offset the relatively small incremental expense of the proposed amendments in the first year of implementation. Any incremental increase in expenditures by the Commission for the first year of implementation will be funded through the OFCUF. As incremental expenditures decrease in subsequent years, increased revenues generated by the fee increases implemented by the proposed amendments will be available for well plugging and cleanup activity.

There will be no fiscal effect on local governments.

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 estimated that the cost of compliance with the proposed amendments to §3.78 (b) and (c) for individuals, small businesses, or micro-businesses will be an increase in the fees for filing organization reports and fees for reissuance of certificates of compliance that have been canceled.

The fee increases contained in the proposed amendments are statutory and reflect recent amendments to statutes enacted by the 78th Legislature Regular Session (2003). The statutory provisions make no distinction in fees required to be paid based on an operator's status as an individual, small business, or micro-business. Because these fees are statutory, the Commission does not have authority to change the amount of the fees or to create exceptions to the imposition of the fees. The only fee for which the Commission has discretion is the organization report fee for operators of liquids pipelines, for which HB 942 authorized the Commission to charge a fee of not less than $425 or more than $625. The current organization report fee for operators of liquids pipelines is $500, and the proposed $125 increase is consistent with other proposed fee increases required by statute.

The proposed fee increase for reissuance of a certificate of compliance that previously has been canceled is in the amount of $200, assuming one severance or seal order. The proposed increase in the organization report fee for natural gas pipelines and liquids pipelines and the proposed increase in the aggregate organization report fee that must be paid by well operators who also have other activities is, in each case, $125.

Because operators are not required to make filings with the Commission reporting number of employees, labor costs, amount of sales, or gross receipts, the Commission cannot determine whether a particular operator may be a small business or a micro- business. However, the Commission has determined that it is likely that some operators would meet the definitions of these terms in Texas Government Code, §2006.001. Assuming that an individual, small business, or micro-business operator incurs, during a given year, an additional $200 in fees for reissuance of a certificate of compliance, the annual cost of the proposed increase to such an entity would be $200 per employee if the entity has one employee, $10 per employee if the entity has 20 employees, and $2.02 per employee if the entity has 99 employees. Operators may avoid this fee by complying with Commission rules.

Assuming that an individual, small business, or micro-business operator incurs, during a given year, an additional $125 in organization report fees, the annual cost of the proposed increase to such an entity would be $125 per employee if the entity has one employee, $6.25 per employee if the entity has 20 employees, and $1.26 per employee if the entity has 99 employees.

Comparable annual cost per employee of the proposed increase for the largest businesses affected by the proposed amendments required to pay one increased fee for reissuance of a certificate of compliance would be $0.40 for an employer of 500 persons and $0.20 for an employer of 1,000 persons. Assuming a requirement to pay one increased organization report fee during a given year, the annual cost per employee of the proposed increase would be $0.25 for an employer of 500 persons and $0.12 for an employer of 1,000 persons.

The number of wells operated, production, and gross receipts of small business and micro-business operators vary greatly from operator to operator. Most small business and micro-business operators have wells that are marginal producers. The Commission cannot specifically identify the universe of small business and micro-business operators from records maintained by the Commission, for the purpose of relating cost of compliance with the proposed amendments to the factors listed in Texas Government Code, §2006.002(c)(2).

The Commission has determined that most, if not all, applications filed with the Commission since September 1, 2001, for approval to file the nonrefundable annual fee of $1,000 as financial security have been filed by operators in the small business or micro-business categories. Based on experience derived from processing these applications and production reports filed with the Commission for 2002, the Commission estimates that the average micro-business operator who has filed such an application produces about 4,000 barrels of oil annually. Using the 2002 average domestic first purchase price of $21.84 per barrel of oil, 4,000 barrels of annual production generates gross sales of $87,360.

Assuming that the average micro-business operator incurs, during a given year, an additional $200 in fees for reissuance of a certificate of compliance as a result of the proposed fee change amendments, the cost of compliance to the operator would be about $0.23 per $100 of gross sales. It is not likely that micro-business operators will be affected by the proposed $125 increases in the organization report fee for operators of natural gas pipelines and liquids pipelines and the maximum organization report fee required of well operators with multiple Commission regulated activities.

Assuming further that the average small business operator has annual production and gross sales five times greater than the average micro-business producer, the cost of compliance to the average small business operator resulting from the need to pay, during a given year, an additional $200 in fees for reissuance of a certificate of compliance would be slightly more than $0.04 per $100 of gross sales. If the same small business operator were required to pay, during a given year, an additional $125 in organization report fees, the cost of compliance would be slightly less than $0.03 per $100 of gross sales. If a small business operator is an operator of one or more liquids pipelines as well as an operator of other service activities or facilities, the proposed establishment of a separate organization report fee category for operators of liquids pipelines could result in an increase in total organization report fees of up to $625 annually. Based on the same assumed annual sales for the average small business operator, the cost of compliance would be $0.14 per $100 of gross sales.

The Commission does not have information regarding the gross sales of the largest operators affected by the proposed fee change amendments, most of whom have operations beyond the state. For comparative purposes, however, the cost of compliance with the proposed fee change amendments to these large operators would be a fraction of one cent per $100 of gross sales.

Ms. Savage has determined that there will be no cost of compliance with the proposed amendments in §3.78(j)(4) exempting certain classes of operators from financial security requirements. For these classes of operators the current cost of compliance with current financial security requirements will be eliminated by the proposed amendments. These amendments are necessary to implement changes in financial security requirements in Texas Natural Resources Code, §91.109, made by HB 942, effective September 1, 2003.

Proposed new subsection (q) to §3.78 implements the provisions of Texas Natural Resources Code, §91.114(a), as amended by SB 1484. The statutory provisions apply without regard to whether an organization is a small business or micro-business. The Commission is without authority to exclude small businesses and micro-businesses from the application of these provisions.

Ms. Savage has also determined that there will be no cost of compliance with any of the clarifying amendments. These amendments reflect current Commission practices and policies and do not impose different or additional obligations on operators. The nature of the proposed amendments to §3.78 is such that they will not have a materially adverse net economic effect on individual, small business, or micro-business operators.

James M. Doherty, Hearings Examiner, Oil and Gas Section, Office of General Counsel, has determined that for each year of the first five years that the amended section will be in effect, the public benefit will be the implementation of fee changes required or authorized by the Legislature, which will assist the Commission in plugging of abandoned wells and cleanup of pollution. The public will also benefit from elimination of the regulatory and financial burden of posting financial security by certain classes of non-well operators whose operations pose no significant risk to usable quality surface or subsurface water. The public will also benefit from the clarifying amendments because the rule will be more understandable and reflective of current Commission policies and practices.

Comments 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 21 days after publication in the *Texas Register*. A lengthy comment period is unnecessary as the proposed amendments implement changes mandated by recent statutory changes and clarify rule language concerning existing Commission policies and procedures. For further information, call James M. Doherty at (512) 463-7152. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments to §3.78 pursuant to Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.201, 85.202, 86.041, 86.042, 91.101,141.011, and 141.012, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil, gas or geothermal wells, persons owning or operating pipelines, and persons engaged in other service activities related to production, storage, transportation or distribution of oil and gas or oil and gas wastes, and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; and pursuant to Texas Government Code, §2001.006, which authorizes the Commission to promulgate rules that implement legislation that has become law but has not taken effect.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.167, 85.201, 85.202, 86.041, 86.042, 91.101, 91.103, 91.104, 91.1042, 91.109, 91.114, 91.142, 141.011, and 141.012.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, and 141.

Issued in Austin, Texas on July 8, 2003.

§3.78. Fees, Performance Bonds and Alternate Forms of Financial Security Required To Be Filed.

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

(1) - (10) (No change.)

(11) Officers and owners--Any persons owning or controlling an organization including officers, directors, general partners, sole proprietors, owners of more than 25% ownership interest, any trustee of an organization, and any person determined by a final judgment or final administrative order to have exercised control over the organization.

(12) Letter of credit--An irrevocable letter of credit issued:

(A) on a Commission-approved form;

(B) by and drawn on a third party bank authorized under state or federal law to do business in Texas; and

(C) renewed and continued in effect until the conditions of the letter of credit have been met or its release is approved by the Commission or its authorized delegate.

(13) Bond--A surety instrument issued:

(A) on a Commission-approved form;

(B) by and drawn on a third party corporate surety authorized under state law to issue surety bonds in Texas; and

(C) renewed and continued in effect until the conditions of the bond have been met or its release is approved by the Commission or its authorized delegate.

(b) Filing fees. The following filing fees are required to be paid to the Railroad Commission.

(1) (No change.)

(2) An application for a permit to drill, deepen, plug back, or reenter a well will be considered materially amended if the amendment is made for a purpose other than:

(A) to add omitted required information;

(B) to correct typographical errors; or

(C) to correct clerical errors.

(3) - (9) (No change.)

(10) If a certificate of compliance for an oil lease or gas well has been canceled, the operator shall submit to the Commission a nonrefundable fee of $300 for each severance or seal order issued for the well or lease [~~$100~~] before the Commission may reissue the certificate pursuant to §3.58 of this title (relating to Oil, Gas, or Geothermal Resource Producer's Reports) (Statewide Rule 58).

(11) - (13) (No change.)

(14) A check or money order for any of the aforementioned fees shall be made payable to the Railroad Commission of Texas. If the check accompanying an application is not honored upon presentment, the permit issued on the basis of that application, the allowable assigned, the exception to a statewide rule granted on the basis of the application, the extension of time to plug a well, the certificate of compliance reissued, or the Natural Gas Policy Act category determination made on the basis of the application may be suspended or revoked.

(15) (No change.)

(c) Organization Report Fee. An organization report required by Texas Natural Resources Code, §91.142, shall be accompanied by a fee as follows:

(1) (No change.)

(2) for an operator of one or more natural gas pipelines, $225 [~~$100~~];

(3) (No change.)

(4) for an operator of one or more liquids pipelines, $625;

(5) [~~(4)~~] for an operator of all other service activities or facilities, [~~including liquids pipelines,~~] $500;

(6) for an operator with multiple activities, a total fee equal to the sum of the separate fees applicable to each category of service activity, facility, pipeline, or number of wells operated shall be submitted, provided that the total fee for an operator of wells shall not exceed $1,125; and

[~~(5) for an operator of wells who also operates one or more service activities, facilities, or pipelines as classified by the Commission, the sum of the fees that would be separately charged for each category of service activity, facility, pipeline, or number or wells operated, provided that such fee shall not exceed $1,000; or~~]

(7) [~~(6)~~] for an entity not currently performing operations under the jurisdiction of the Commission, $300.

(d) (No change.)

(e) Eligibility for nonrefundable $1,000 fee.

[(1) For the purposes of this subsection, "officers and owners" include directors, general partners, owners of more than 25% ownership interest, or any trustee of an organization.]

(1) [(2)] A person filing an organization report for the first time in order to perform any Commission-regulated operations is a new organization and is not eligible to file the nonrefundable fee of $1,000.

(2) [(3)] A person who filed an initial organization report less than 48 months prior to the current filing is not eligible to file the nonrefundable fee of $1,000.

(3) [(4)] A change in name, without any other organizational change, of a person registered with the Commission does not indicate a new organization. If the Commission determines that only a name change has occurred, then a person operating under a new name may file the nonrefundable fee of $1,000 if the person meets all other eligibility requirements.

(4) [(5)] An individual registered with the Commission as a sole proprietor or who is a general partner of a partnership that is registered with the Commission and who reorganizes his or her oil and gas operations under a new legal entity or establishes a new and separate entity will be considered to have satisfied the 48-month eligibility requirement for filing the nonrefundable fee of $1,000.

(5) [(6)] A surviving or new corporation or other entity resulting from a merger under the Texas Business Corporation Act, Part Five, may file the nonrefundable fee of $1,000 if:

(A) the existing record of compliance for each entity that is a party to the merger qualifies;

(B) the records of compliance for the officers and owners of the surviving or new entities qualify; and

(C) the number of surviving or new entities eligible does not exceed the number of parties registered with the Commission at the time of the merger.

(6) [(7)] In any Commission enforcement proceeding, if a person is determined not to be the responsible party for a violation and is dismissed from the proceeding for that reason, that violation shall not be considered in determining whether that person has an acceptable record of compliance.

(f) - (i) (No change.)

(j) Amount of bond, letter of credit, or cash deposit.

(1) (No change.)

(2) A person operating wells may file a blanket bond, letter of credit or cash deposit to cover all wells for which a bond, letter of credit or cash deposit is required in an amount equal to the sum of:

(A) A base amount determined by the total number of wells operated, as follows:

(i) a person who operates 10 or fewer wells [or performs other operations] shall have a base amount of $25,000;

(ii) - (iii) (No change.)

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

(3) A person [operating wells and] performing other operations who is not an operator of wells and who is not a person whose only activity is as a first purchaser, survey company, salt water hauler, gas nominator, gas purchaser or well plugger choosing [, who chooses] to cover all operations by a blanket performance bond, letter of credit or cash deposit shall file a bond, letter of credit or cash deposit in the amount of $25,000 [an amount determined by the total number of wells, but not less than $25,000. Only one blanket performance bond, letter of credit or cash deposit is required for a person performing multiple operations, unless the person is operating a commercial facility subject to the financial security requirements of subsection (p) of this section].

(4) No bond, letter of credit, cash deposit or alternate form of financial security is required of a person who is not an operator of wells if the person's only activity is as a first purchaser, survey company, salt water hauler, gas nominator, gas purchaser and/or well plugger.

(5) A person who engages in more than one activity or operation, including well operation, for which a bond or alternate form of financial security is required is not required to file a separate bond or alternate form of financial security for each activity or operation in which the person is engaged. The person is required to file a bond or alternate form of financial security only in the amount required for the activity or operation in which the person engages for which a bond or alternate form of financial security in the greatest amount is required. The bond or alternate form of financial security filed covers all of the activities and operations for which a bond or alternate form of financial security is required. The provisions of this paragraph do not exempt a person from the financial security required under subsection (p) of this section.

(6) [(4)] Financial security amounts are the minimum amounts required by this section to be filed. A person may file a greater amount if desired.

(k) - (o) (No change.)

(p) Financial security for commercial facilities. The provisions of this subsection shall apply to the holder of any permit for a commercial facility.

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

(4) Amount.

(A) Except as provided in subparagraphs (B) or (C) of this paragraph, the amount of financial security required to be filed under this subsection shall be an amount based on a written estimate approved by the Commission or its delegate as being equal to or greater than the maximum amount necessary to close the commercial facility, exclusive of plugging costs for any well or wells at the facility, at any time during the permit term in accordance with all applicable state laws, Commission rules and orders, and the permit, but shall in no event be less than $10,000.

[(B) The owner or operator of a commercial facility may reduce the amount of financial security required under this subsection by $25,000 if the owner or operator holds only one commercial facility permit.]

(B) [(C)] The owner or operator of one or more [than one] commercial facilities [facility] may reduce the amount of financial security required under this subsection for one such facility by the amount, if any, it filed as financial assurance under subsection (j)(3) of this section [$25,000]. The full amount of financial security required under subparagraph (A) of this paragraph shall be required for the remaining commercial facilities.

(C) [(D)] Except for the facilities specifically exempted under subparagraph (D) of this paragraph [(E)], a qualified professional engineer licensed by the State of Texas shall prepare or supervise the preparation of a written estimate of the maximum amount necessary to close the commercial facility as provided in subparagraph (A) of this paragraph. The owner or operator of a commercial facility shall submit the written estimate under seal of a qualified licensed professional

engineer to the Commission as required under paragraph (1) of this subsection.

(D) [~~(E)~~] A facility permitted under §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials) that does not utilize on-site waste storage or disposal that requires a permit under §3.8 of this title (relating to Water Protection) is exempt from subparagraph (C) [~~(D)~~] of this paragraph.

(E) [~~(F)~~] Notwithstanding the fact that the maximum amount necessary to close the commercial facility as determined under this paragraph is exclusive of plugging costs, the proceeds of financial security filed under this subsection may be used by the Commission to pay the costs of plugging any well or wells at the facility if the financial security for plugging costs filed with the Commission is insufficient to pay for the plugging of such well or wells.

(5) (No change.)

(q) Effect of outstanding violations.

(1) Except as provided in paragraph (2) of this subsection, the Commission shall not accept an organization report or an application for a permit or approve a certificate of compliance for an oil lease or gas well submitted by an organization if:

(A) the organization has outstanding violations; or

(B) an officer or director of the organization was, within seven years preceding the filing of the report, application, or certificate, an officer or director of an organization and during that period, the organization committed a violation that remains an outstanding violation.

(2) The Commission shall accept a report or application or approve a certificate filed by an organization covered by paragraph (1) of this section if:

(A) the conditions that constituted the violation have been corrected or are being corrected in accordance with a schedule agreed to by the organization and the Commission;

(B) all administrative, civil, and criminal penalties and all plugging and cleanup costs incurred by the state relating to those conditions have been paid or are being paid in accordance with a schedule agreed to by the organization and the Commission; and,

(C) the report, application or certificate is in compliance with all other requirements of law and Commission rules.

(3) All fees tendered in connection with a report or application that is rejected under this subsection are nonrefundable.

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 July 8, 2003.

TRD-200304125
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 475-1295

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CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201

The Railroad Commission of Texas proposes new §8.201, relating to Pipeline Safety Program Fees. The proposed new rule sets forth the requirements of Texas Utilities Code, §121.211, enacted by House Bill 1194 (78th Legislature, Regular Session, 2003), effective September 1, 2003. New Texas Utilities Code, §121.211, authorizes the Commission to adopt by rule an inspection fee to be assessed annually to all operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities subject to the Commission's pipeline safety jurisdiction under Texas Utilities Code, Chapter 121. The fee is to be deposited in the general revenue fund for the operation of the Commission's pipeline safety program. The total revenue estimated to be collected under such a rule may not exceed the amount estimated by the Commission to be necessary to recover the costs of administering its pipeline safety program under Texas Utilities Code, Chapter 121, excluding costs that are fully funded by federal sources. For fiscal year 2004, the Commission must recover $1,636,729 from the pipeline safety program fee. To do so, the Commission proposes to assess each master metered system a pipeline safety program fee of $100 annually, and each natural gas distribution system a pipeline safety program fee of $0.37 per service.

Proposed new §8.201(a) establishes the pipeline safety program fee as applicable to all natural gas distribution operators filing a Department of Transportation (DOT) Distribution Annual Report, Form F7100.1-1, including operators of municipally-owned natural gas distribution systems. Each natural gas distribution operator is required to file the DOT distribution annual report each year on March 15, reporting operating information for the previous calendar year. Part B, Section 3, of the form requires each natural gas distribution operator to report the number of services (service lines) in the system at the end of the previous calendar year. The pipeline safety program fee is based on the total number of services reported on the most recently filed DOT distribution annual report and the estimated annual operating budget for the Commission's Pipeline Safety program less federal funds. The master metered systems will be assessed a flat $100 per system, and the remaining amount will be assessed to natural gas distribution system operators as a rate per service (service line).

Commission records show that there are approximately 1,115 master metered systems in Texas. The DOT distribution annual reports filed on March 15, 2003, showed that at the end of calendar year 2002, there were a total of 4,156,794 services in investor-owned and municipally-owned gas distribution systems in Texas. The $100 master meter system fee should generate revenue of $111,500. The remaining $1,525,229 would be recovered from the 4,156,794 service lines reported at the end of calendar year 2002 at a unit rate of $0.37 per service (service line).

Proposed new §8.201(b) establishes the pipeline safety program fee for investor-owned natural gas distribution systems and municipally owned natural gas distribution systems at $0.37 for each service (service line) reported to be in service at the end of calendar year 2003 on the Distribution Annual Report, Form F7100.1-1, to be filed on March 15, 2004. Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system must calculate the total amount of the annual pipeline safety

program fee to be paid to the Commission by multiplying the number of services listed in Part B, Section 3, of Department of Transportation (DOT) Distribution Annual Report, Form F7100.1-1, times $0.37 and remitting that amount with the form on March 15, 2004.

Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system is authorized to recover, by a surcharge to its existing rates, the amount the operator paid to the Commission, pursuant to the following conditions. The surcharge must be a flat rate, one-time surcharge; must not be billed before the operator remits the pipeline safety program fee to the Commission; must be applied in the billing cycle or cycles immediately following the date on which the operator paid the Commission; and must not exceed $0.37 per service or service line.

No later than 60 days after the last billing cycle in which the pipeline safety program fee surcharge is billed to customers, each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system must file with the Commission's Gas Services Division, Pipeline Safety Section, a report showing the pipeline safety program fee amount paid to the Commission; the unit rate and total amount of the surcharge billed to each customer; the date or dates on which the surcharge was billed to customers; and the total amount collected from customers from the surcharge.

Each investor-owned natural gas distribution system that is a utility subject to the jurisdiction of the Commission pursuant to Texas Utilities Code, Chapters 101-105, must file a generally applicable tariff for its surcharge in conformance with the requirements of the Commission's tariff rule, 16 Tex. Admin. Code §7.315, relating to Filing of Tariffs.

Amounts paid to the Commission under subsection (b) by an investor-owned natural gas distribution company may not be included in the revenue or gross receipts of the company for the purpose of calculating municipal franchise fees or any tax imposed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122. Amounts paid to the Commission under this subsection are not subject to a sales and use tax imposed by Chapter 151, Tax Code, or Chapters 321 through 327, Tax Code.

Proposed new §8.201(c) assesses each master meter system an annual inspection fee of $100 per master meter system. Each operator of a natural gas master meter system must pay the annual inspection fee no later than June 30 of each year. The Commission will send an invoice to each affected natural gas master meter operator no later than April 30 of each year as a courtesy reminder. The failure of a natural gas master meter operator to receive an invoice does not exempt the natural gas master meter operator from its obligation to remit the annual pipeline safety program fee on June 30 each year. Each operator of a natural gas master meter system is authorized to recover as a surcharge to its existing rates the amounts paid to the commission under this subsection.

No later than 60 days after the last billing cycle in which the pipeline safety program fee surcharge is billed to customers, each master meter operator must file with the Commission's Gas Services Division, Pipeline Safety Section, a report showing the pipeline safety program fee amount paid to the Commission; the unit rate and total amount of the surcharge billed to each customer; the date or dates on which the surcharge was billed to customers; and the total amount collected from customers from the surcharge.

Proposed new §8.201(d) provides that if an operator of an investor-owned or municipally owned natural gas distribution company or a natural gas master meter operator does not submit payment of the annual inspection fee to the Commission within 30 days of the due date, the Commission will assess a late payment penalty of 10 percent of the total assessment due under subsection (b) or (c) of this section, as applicable, and notify the operator.

Mary McDaniel, Assistant Director for Pipeline Safety, Gas Services Division, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be a positive fiscal impact for the Commission. With a fee of $0.37 per service line and $100 per master metered system, it is estimated that $1.6 million will be deposited into the general revenue account. The funds will be deposited in the general revenue account and used to supplement the funds received from the federal Office of Pipeline Safety to support the Commission's Pipeline Safety program. Ms. McDaniel does not anticipate adverse fiscal implications for state government as a result of enforcing or administering the section. The Commission staff will monitor the collections without the need for additional personnel, equipment, or budget. There will be fiscal implications for local governments that operate natural gas distribution systems or master meter systems, such as municipalities and government housing authorities; however, these entities are authorized to be reimbursed by their customers using a surcharge to the existing rates. It is likely that there will be a mismatch between the amounts the natural gas distribution system operators and the master meter operators remit to the Commission and the amounts they collect from their customers through the surcharge reimbursement mechanism, but the Commission cannot predict whether any windfall will be in favor of the natural gas service provider or the customers.

Ms. McDaniel has also determined that for each year of the first five years that the proposed new rule will be in effect, the public benefit will be the continuation of the Commission's Pipeline Safety program to ensure public safety with regard to pipeline operations. During the recent legislative session, state agencies were required to make reductions to their requested budgets and the Commission's Pipeline Safety Program was placed at risk of not being funded. The user fee established in proposed new §8.201 will enable the Commission to maintain its Pipeline Safety program at the current level of service.

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.

Pursuant to Texas Government Code, §2006.002(c), Ms. McDaniel has also estimated that there will be a cost of compliance

for individual, small business, or micro-business natural gas service providers that are currently regulated under the Commission's Pipeline Safety Program. For each natural gas distribution operator, regardless of its business organization, the cost will be an estimated $0.37 for each service line reported on the DOT Distribution Annual Report, Form 7100.1-1. For each master meter operator, regardless of its business organization, the cost will be $100 per master meter system.

The Commission has determined that it is likely that some natural gas service providers meet the definition of small business or micro-business in Texas Government Code, §2006.001(1) and (2). For a small business or micro-business operator of a natural gas distribution system that has 200 customers, the cost of compliance with proposed new §8.201 will be $74 per year. In addition, this small business or micro- business operator would likely incur a small amount of administrative cost in remitting the pipeline safety program fee to the Commission on a timely basis. Assuming $26 in administrative overhead cost for preparing and remitting the pipeline safety program fee, the total annual cost for this operator is $100. In addition, the operator would be permitted to recover only the $74 pipeline safety program fee through the surcharge to customers. Assessing the surcharge would require the operator to incur additional, administrative costs that would not have an immediate source for reimbursement. Assuming a total of $100 in administrative costs that might not be reimbursed results in a total cost of compliance of $200 for the operator, only $74 of which could be recovered from customers. Using the comparison set forth in Texas Government Code, §2006.002(c)(2)(A), cost per employee, a small business or micro-business operator of a natural gas distribution system with five employees would have a net cost of compliance of $25.20 per employee; with 10 employees, a cost of $12.60 per employee; with 20 employees, a cost of $6.30 per employee.

For a small business or micro-business master meter operator, the cost of compliance will be $100 per year, plus some administrative costs that, for the sake of comparison, the Commission assumes are $26. The master meter operator would be permitted to recover the $100 pipeline safety program fee from its customers through a surcharge to its existing rates; the $26 could not be recovered. In addition, the master meter operator will incur additional administrative costs that would not have an immediate source for reimbursement, assumed to be an additional $26. Thus the small business or micro-business master meter operator would have an annual cost of compliance of $52. Using the comparison set forth in Texas Government Code, §2006.002(c)(2)(A), cost per employee, a small business or micro-business master meter operator with two employees would have a net cost of compliance of $26 per employee; with five employees, a cost of $10.40 per employee; with 20 employees, a cost of $2.60 per employee.

Comparable annual cost per employee of the proposed pipeline safety program fee for the largest businesses affected by proposed new §8.201 would be a fraction of the per employee cost for the small businesses and micro-businesses required to comply with the rule. Even though the largest natural gas distribution system operators will also pay a greater portion of the pipeline safety program fee, these businesses have hundreds of employees. A natural gas distribution system operator with 1,000,000 service lines would pay a $370,000 pipeline safety program fee. Such an operator would have a cost of compliance that includes the administrative costs of both remitting the fee to the Commission and instituting the one-time surcharge to customers. Assuming additional administrative costs of $10,000 and 500 employees, such a business would have a per-employee cost of compliance of $20 per employee; with 1,000 employees, $10 per employee; with 5,000 employees, a cost of $2 per employee.

In addition to the cost of compliance for natural gas service providers, there will be a cost of compliance for individual customers who will be assessed a surcharge by their provider. The residential customer of a natural gas distribution system who has one service line would have an annual cost of compliance of $0.37. Commercial and industrial customers of natural gas distribution systems will have annual costs of compliance of $0.37 for each service line.

For customers of master meter systems, annual compliance costs will be a function of the number of customers served by the master metered system. The master meter operator is likely to assign the $100 annual pipeline safety program fee on a per- customer basis. Customers on a master metered system with five customers will pay an additional $20 annually. Master metered systems with 20 customers would assess each customer an additional $5 annually.

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 21 days after publication in the *Texas Register* and should refer to Gas Utilities Docket No. 9436. For further information, call Mary McDaniel at (512) 463-7058. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html. To enable affected persons to have more time to review the proposed new rule and submit comments, the Commission has posted the rule on its web site on or about July 9, 2003, has given direct notice of the proposed new rule to master meter and distribution system operators, and will accept comments on the proposal beginning on that date.

The Commission proposes new §8.201 pursuant to Texas Utilities Code, §121.211, which authorizes the Commission to adopt rules for the assessment of an annual inspection fee against operators of natural gas distribution pipelines and natural gas master metered pipelines; and Texas Government Code, §2001.006, which authorizes the Commission to promulgate rules that implement legislation that has become law but has not taken effect.

Statutory authority: Texas Utilities Code, §121.211; Texas Government Code, §2001.006.

Cross-reference to statute: Texas Utilities Code, Chapter 121.

Issued in Austin, Texas on July 8, 2003.

§8.201. Pipeline Safety Program Fees.

(a) Pursuant to Texas Utilities Code, §121.211, the Commission establishes a pipeline safety inspection fee, to be assessed annually against operators of natural gas distribution pipelines and pipeline facilities and natural gas master metered pipelines and pipeline facilities subject to the Commission's pipeline safety jurisdiction under Texas Utilities Code, Chapter 121. The total amount of revenue estimated to be collected under this section does not exceed the amount the Commission estimates to be necessary to recover the costs of administering the pipeline safety program under Texas Utilities Code, Chapter 121,

excluding costs that are fully funded by federal sources, for any fiscal year.

(b) The Commission hereby assesses each investor-owned natural gas distribution system and each municipally owned natural gas distribution system an annual pipeline safety program fee of $0.37 for each service (service line) reported to be in service at the end of calendar year 2003 by each system operator on the Distribution Annual Report, Form F7100.1-1, to be filed on March 15, 2004.

(1) Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system shall calculate the total amount of the annual pipeline safety program fee to be paid to the Commission by multiplying the number of services listed in Part B, Section 3, of Department of Transportation (DOT) Distribution Annual Report, Form F7100.1-1, due to be filed on March 15, 2004, by $0.37.

(2) Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system shall remit to the Commission on March 15, 2004, the amount calculated under paragraph (1) of this subsection.

(3) Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system shall recover, by a surcharge to its existing rates, the amount the operator paid to the Commission under paragraph (1) of this subsection. The surcharge:

(A) shall be a flat rate, one-time surcharge;

(B) shall not be billed before the operator remits the pipeline safety program fee to the Commission;

(C) shall be applied in the billing cycle or cycles immediately following the date on which the operator paid the Commission; and

(D) shall not exceed $0.37 per service or service line.

(4) No later than 60 days after the last billing cycle in which the pipeline safety program fee surcharge is billed to customers, each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system shall file with the Commission's Gas Services Division, Pipeline Safety Section, a report showing:

(A) the pipeline safety program fee amount paid to the Commission;

(B) the unit rate and total amount of the surcharge billed to each customer;

(C) the date or dates on which the surcharge was billed to customers; and

(D) the total amount collected from customers from the surcharge.

(5) Each investor-owned natural gas distribution system that is a utility subject to the jurisdiction of the Commission pursuant to Texas Utilities Code, Chapters 101-105, shall file a generally applicable tariff for its surcharge in conformance with the requirements of §7.315 of this title, relating to Filing of Tariffs.

(6) Amounts paid to the Commission under this subsection by an investor-owned natural gas distribution company shall not be included in the revenue or gross receipts of the company for the purpose of calculating municipal franchise fees or any tax imposed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122. Amounts paid to the Commission under this subsection are not subject to a sales and use tax imposed by Chapter 151, Tax Code, or Chapters 321 through 327, Tax Code.

(c) The Commission hereby assesses each master meter system an annual inspection fee of $100 per master meter system.

(1) Each operator of a natural gas master meter system shall pay the annual inspection fee of $100 per master meter system no later than June 30 of each year.

(2) The Commission shall send an invoice to each affected natural gas master meter operator no later than April 30 of each year as a courtesy reminder. The failure of a natural gas master meter operator to receive an invoice shall not exempt the natural gas master meter operator from its obligation to remit the annual pipeline safety program fee on June 30 each year.

(3) Each operator of a natural gas master meter system shall recover as a surcharge to its existing rates the amounts paid to the Commission under this subsection.

(4) No later than 60 days after the last billing cycle in which the pipeline safety program fee surcharge is billed to customers, each master meter operator shall file with the Commission's Gas Services Division, Pipeline Safety Section, a report showing:

(A) the pipeline safety program fee amount paid to the Commission;

(B) the unit rate and total amount of the surcharge billed to each customer;

(C) the date or dates on which the surcharge was billed to customers; and

(D) the total amount collected from customers from the surcharge.

(d) If an operator of an investor-owned or municipally owned natural gas distribution company or a natural gas master meter operator does not submit payment of the annual inspection fee to the Commission within 30 days of the due date, the Commission shall assess a late payment penalty of 10 percent of the total assessment due under subsection (b) or (c) of this section, as applicable, and shall notify the operator.

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 July 8, 2003.

TRD-200304126
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 475-1295

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER R. DIABETES

28 TAC §21.2602, §21.2604

The Texas Department of Insurance (the department) proposes amendments to §21.2602 and §21.2604 to clarify that all requirements of 28 TAC, Chapter 21, Subchapter R (relating to Diabetes) (Subchapter R) apply to health plans provided by risk pools created under Chapter 172, Local Government Code (risk pools). Subchapter R was adopted in 1999 pursuant to Insurance Code art. 21.53D (art. 21.53D), which directs the Commissioner of Insurance (the commissioner), in consultation with the Texas Diabetes Council (TDC), to adopt by rule minimum standards for benefits provided to enrollees with diabetes. Subchapter R, as originally adopted, excluded risk pools from the requirement that health plans that provide benefits for the treatment of diabetes and associated conditions must provide coverage for diabetes equipment, supplies and self-management training programs. Excluding risk pools from providing these coverages does not conform to the applicable statutory mandate and is inconsistent with legislative intent. This proposal resolves that inconsistency.

The general rule, as established by Local Government Code §172.014, is that risk pools are not subject to the jurisdiction of the department. However, the Legislature expressly included risk pools in the scope statement of art. 21.53D. In comments to rule amendments proposed in the January 10, 2003, issue of the *Texas Register* (28 TexReg 430), pertinent parts of which the department is withdrawing by a notice in this issue, a commenter took the position that risk pools cannot be made subject to rules adopted by the commissioner pursuant to art. 21.53D that impose requirements that coverage be provided for diabetes equipment, supplies and self-management training.

In support of this assertion, the commenter pointed to art. 21.53G, a separate statute, that applies to diabetes equipment, supplies and services. The Legislature did not expressly include risk pools in that mandate, as was done in art. 21.53D. Thus, the commenter concluded that risk pools are subject to rules adopted under art. 21.53D, but not to any part of those rules that require coverage for diabetes equipment, supplies and self-management training.

The department has reviewed the legislative history for arts. 21.53D and 21.53G, and believes that it was the manifest intent of the legislature to include risk pools in all of the requirements established pursuant to art. 21.53D. Articles 21.53D and 21.53G were both passed by Texas' 75th Legislature in 1997, as SB 162 and SB 163, respectively.

The bill analyses for both bills emphasized that many Texans had diabetes, and that diabetes-related costs for Texans totaled billions of dollars. The bill analysis for SB 163 pointed out that studies confirmed that training, supplies and equipment necessary for diabetic self-management save money and human suffering by reducing hospital admissions and lowering the risk of complications from diabetes. The bill analysis for SB 162 highlighted a trial program in Maryland that promoted nutrition counseling, case management and structured outpatient diabetes education programs. The Maryland program resulted in a 40 percent decreased risk of hospital admission for enrollees the first year, and a 50 percent reduction the second year. The bill analysis for SB 163 pointed out that the American Diabetes Association had found that lack of reimbursement was the most significant impediment to the development of diabetes outpatient education programs.

SB 162 directed the Health and Human Services Commission (HHSC) to develop a Texas Diabetes Care Pilot Program. The program was to provide continuous care including preventive services such as structured outpatient diabetes education, nutrition counseling and case management. SB 162 directed the HHSC, in developing the program, to take into consideration what was done in the Maryland program noted above. Pursuant to SB 162, the Texas Diabetes Council administered the Texas Diabetes Care Pilot Program under the direction of the HHSC. At the same time, pursuant to SB 162, the TDC worked with the Commissioner of Insurance to develop rules that established minimum standards for benefits to be provided to persons with diabetes who were enrollees of benefit plans identified in art. 21.53D.

It is the department's position that art. 21.53D instructs the commissioner to adopt rules that set standards for the full spectrum of diabetes treatment activities. The legislative histories for SB 162 and SB 163 both lead to the conclusion that rules adopted pursuant to art. 21.53D must address preventive care, and that such preventive care must include, at a minimum, equipment, supplies and self-management training. An examination of the TDC's recommendations for minimum standards for diabetes treatment, found at http://www.tdh.state.tx.us/diabetes/min.htm, reinforces this conclusion. In these minimum standards, the TDC has identified certain care services and monitoring steps that providers need to take with diabetes patients to meet treatment goals and targets in order to minimize costly and deleterious complications. Achieving these goals and targets would be impossible without the coverage for diabetes equipment, supplies and self-management training that Subchapter R requires. Additionally, it should be noted that the legislature enacted SB 162 later than SB 163. SB 163 was signed in both the House and the Senate on April 29, 1997 and sent to the Governor on April 30, 1997. It was signed by the Governor on May 9, 1997.

SB 162 was passed by the Senate and engrossed on March 10, 1997. The House amended SB 162 and passed it on May 24, 1997. The Senate concurred in the House amendments on May 28, 1997. SB 162 was signed by the Governor on June 20, 1997.

Finally, in passing SB 162, the legislature made a specific statement about the applicability of art. 21.53D to risk pools, but made no such specific statement in SB 163. In fact, SB 163 did not address the issue of the applicability of art. 21.53G to risk pools at all. SB 163, as well as its legislative history, are silent on the question of making art. 21.53G applicable to risk pools. It is only because of the language in Local Government Code §172.014 that a reconciliation of the intent of SB 162 and SB 163 is necessary.

Rather than suggesting an intent to include risk pools in the scope of art. 21.53D for only limited purposes, the history gives the clear message that the legislature's manifest intent was to provide persons covered by risk pools (persons working for cities and counties) with the same benefits as everyone else covered by health plans subject to art. 21.53D.

Because the legislature enacted art. 21.53D later than art. 21.53G, art. 21.53D prevails. Thus, this proposal treats risk pools the same as all other benefit plans that are subject to Subchapter R. This includes the requirement that the benefit plans provide coverage for diabetes equipment, supplies and self-management training in accordance with the standards in these rules. The fact that art. 21.53D addressed its applicability to risk pools more specifically than did art. 21.53G buttresses this conclusion.

Additionally, this proposal includes an amendment to §21.2602 to delete unnecessary language and an amendment to §21.2604 to correct a citation.

Kim Stokes, Senior Associate Commissioner, Life, Health and Licensing, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal. Any economic costs to local governments required to comply with these amendments are the result of the legislative enactment of SB 162 in 1997.

The original adoption of this chapter in 1999 has resulted in delaying the experience of those costs for risk pools until these proposed amendments become effective. Thus, if these proposals are adopted, risk pools may experience costs related to providing coverage for diabetes equipment, supplies and self-management training that they have not experienced since the original adoption of Subchapter R. However, those costs are the direct result of the passage of SB 162 in 1997.

Ms. Stokes has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the proposed amendments will be the clarification of the applicability of certain provisions to health benefits provided by a risk pool, and the provision of coverage for equipment, supplies and self-management training for risk pool enrollees that have diabetes. Ms. Stokes also has determined that any economic costs to entities required to comply with these amendments, as well as any costs to a covered entity qualifying as a small or micro business under Government Code §2006.001, for each year of the first five years the proposed amendments will be in effect, are the result of the legislative enactment of SB 162 in 1997, and not as a result of the adoption, enforcement, or administration of the proposed amendments. The total cost to a covered entity would not vary between the smallest and largest businesses. Therefore, it is the department's position that the adoption of these proposed amendments will have no adverse economic effect on small businesses or micro-businesses. Regardless of the fiscal effect, the department does not believe it is either legal or feasible to exempt small businesses or micro-businesses from the requirements of these proposed amendments. To do so would allow differentiation in the provision of diabetes self-management training or coverage for diabetes self-management training between small business health carriers compared to large health carriers.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 18, 2003 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Bill Bingham, Deputy Commissioner for Regulatory Matters, Life, Health and Licensing Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Insurance Code Articles 21.53G and 21.53D, and §36.001. Article 21.53G determines and defines the component or components of self-management training and provides that the commissioner shall adopt rules as necessary for the implementation of the article. Article 21.53D §3 provides that the commissioner shall by rule adopt minimum standards for benefits to enrollees with diabetes and that each health care benefit plan shall provide benefits for the care required by the minimum standards. Section 36.001 provides that the Commissioner of Insurance may adopt rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance.

The following articles are affected by this proposal: Insurance Code Articles 21.53G and 21.53D

§21.2602. Required Benefits for Persons with Diabetes.

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

(c) Health benefits plans delivered, issued for delivery, or renewed on or after January 1, 1998, by an entity other than an HMO, which provide coverage limited to hospitalization expenses, shall provide coverage to each insured for diabetes equipment, diabetes supplies, and diabetes self-management training programs, in accordance with §§21.2603, 21.2605 [~~§21.2603 of this title, §21.2605 of this title,~~] and 21.2606 [~~§21.2606~~] of this title, during hospitalization of the insured.

(d) (No change.)

§21.2604. Minimum Standards for Benefits for Persons with Diabetes, Requirement for Periodic Assessment of Physician and Organizational Compliance.

(a) Health benefit plans provided by HMOs shall provide coverage for the services in paragraphs (1) through (7) of this subsection and shall contract with providers that agree to comply with the minimum practice standards outlined in subsection (b) of this section. Services to be covered include:

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

(6) diabetes equipment and supplies in accordance with §21.2605 of this title (relating to Diabetes Equipment and Supplies)[~~, except notwithstanding §172.014, Local Government Code, or any other law, this subsection does not apply to health benefits provided by a risk pool created under Chapter 172, Local Government Code~~]; and

(7) diabetes self-management training, in accordance with subsection (b)(1)(A)(iii) [~~(b)(1)(ii)~~] of this section and[~~,~~] §21.2606 of this title (relating to Diabetes Self-Management Training) [~~or §21.2607 of this title (relating to Accessibility and Availability of Diabetes Self-Management Training Prior to January 1, 2002), except, notwithstanding §172.014, Local Government Code, or any other law, this subsection does not apply to health benefits provided by a risk pool created under Chapter 172, Local Government Code~~];

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

(d) Health benefit plans provided by entities other than HMOs shall provide coverage at a minimum for:

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

(6) diabetes equipment and supplies in accordance with §21.2605 of this title[~~, except notwithstanding §172.014, Local Government Code, or any other law, this subsection does not apply to health benefits provided by a risk pool created under Chapter 172, Local Government Code~~];and

(7) diabetes self-management training in accordance with §21.2606 of this title [~~or §21.2607 of this title, except, notwithstanding §172.014, Local Government Code, or any other law, this subsection does not apply to health benefits provided by a risk pool created under Chapter 172, Local Government Code~~].

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

Filed with the Office of the Secretary of State on July 7, 2003.

TRD-200304105
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS

34 TAC §§31.1 - 31.3

The Teacher Retirement System of Texas (TRS) proposes amendments to §§31.1, 31.2, and 31.3, concerning employment after retirement. The sections being amended relate to definitions, monthly certified statement, and the application of the exceptions only to effective retirements. The proposed amendments have been adopted on an emergency basis and are published in this issue of the *Texas Register*.

The proposed amendments are being made in order comply with HB 2169, which took effect when signed by the Governor on June 20, 2003. The proposed amendments to §31.1 add the definition of a third party entity. The proposed amendments to §31.2 add a requirement that the monthly certified statement of all employment of TRS service or disability retirees furnished by reporting entities must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed on or after May 24, 2003 and are performing duties or providing services on behalf of or for the benefit of the reporting entity. In addition the amendments to §31.3 include language providing that 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.

Tony Galaviz, Chief Financial Officer, has determined that for each year of the first five years the sections as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

Mr. Galaviz has also determined that the public benefit will be clarification of the provisions relating to employment after retirement as well as notification to reporting entities and retirees of the employment after retirement provisions specifically relating to those retirees employed by a third party entity. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the sections will be in effect.

Comments may be submitted in writing to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than 30 days after publication of the sections for proposal.

The amendments are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership. The amendments are also proposed under House Bill 2169, 78th Legislature, Regular Session, which provides that employment of a retiree by a third party entity may be considered employment by a TRS covered employer for purposes of employment after retirement.

No other codes are affected.

§31.1. Definitions.

(a) School year--For purposes of employment after retirement, a twelve-month period beginning on September 1 and ending on August 31 of the calendar year.

(b) Substitute--For purposes of employment after retirement, a person who serves on a daily, on-call basis in a position normally filled by another regular employee. Service as a substitute that does not meet this definition is not eligible substitute service for purposes of an exception to forfeiture of annuity payments.

(c) Third party entity--For purposes of employment after retirement, an entity retained by a Texas public educational institution to provide personnel to the institution who perform duties or provide services that employees of that institution would otherwise perform or provide.

§31.2. Monthly Certified Statement.

A reporting entity shall furnish Teacher Retirement System of Texas (TRS) a monthly certified statement of all employment of TRS service or disability retirees. Effective June 20, 2003, the certified statement must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003 and are performing duties or providing services on behalf of or for the benefit of the reporting entity. The statement shall contain information necessary for the executive director or his designee to classify employment as one of the following:

(1) substitute service;

(2) employment that is not more than one-half time;

(3) employment under the six month exception;

(4) employment under the acute shortage area exception;

(5) employment under the principal or assistant principal exception;

(6) employment under the bus driver exception;

(7) full-time employment;

(8) trial employment of disability retiree for three months; or

(9) employment of a service retiree who retired before January 1, 2001.

§31.3. Exceptions Apply only to Effective Retirements.

The exceptions to forfeiture of annuities provided in this chapter apply only to persons who have effectively retired by ending all employment as described in Government Code, §824.002 and §29.15 of this title (relating to Termination of Employment) and who do not revoke retirement by becoming employed in any position by Texas public educational institutions in the month immediately following the person's

effective date of retirement (or in the two months immediately following the person's effective date of retirement if the effective date of retirement is May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)). 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. A person who has not effectively retired or who revokes retirement because of premature return to employment is not eligible for a retirement annuity and is required to return all annuity or lump sum payments to 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 July 2, 2003.

TRD-200304089
Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: September 25, 2003
For further information, please call: (512) 542-6115

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SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §§31.11 - 31.18

The Teacher Retirement System of Texas (TRS) proposes amendments to §§31.11-31.18 concerning employment after retirement. The sections relate to employment resulting in forfeiture of service retirement annuity, exceptions to forfeiture of service retirement annuity, substitute service, one-half time employment, six-month exception, acute shortage area exception, principal or assistant principal exception, and the bus driver exception. The proposed amendments have been adopted on an emergency basis and are published in this issue of the *Texas Register*.

The amendments are being proposed in order to comply with HB 2169 and HB 3237, which took effect when signed by the Governor on June 20, 2003. The proposed amendments to §31.11, §31.12, and §§31.14-31.18 include language providing that 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. In addition, amendments to §31.13-31.15 relate to substitute service and clarify that effective September 1, 2003, substitute service and half-time employment may be combined in the same calendar month without forfeiting the annuity payment for that month.

Tony Galaviz, Chief Financial Officer, has determined that for each year of the first five years the sections as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

Mr. Galaviz has also determined that the public benefit will be clarification of the provisions relating to employment after retirement and notification to reporting entities and retirees of the employment after retirement provisions specifically relating to those retirees employed by a third party entity. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the sections will be in effect.

Comments may be submitted in writing to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than 30 days after publication of the sections for proposal.

The amendments are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership. The amendments are also proposed under House Bill 2169, 78th Legislature, Regular Session, which provides that employment of a retiree by a third party entity may be considered employment by a TRS covered employer for purposes of employment after retirement. The amendments are also proposed under House Bill 3237, 78th Legislature, Regular Session, which provides that retirees may combine substitute service and one-half time employment in the same calendar month without forfeiting the annuity payment for that month.

No other codes are affected.

§31.11. Employment Resulting in Forfeiture of Service Retirement Annuity.

(a) A person who retired prior to January 1, 2001, and who is receiving a service retirement annuity may be employed in any capacity in Texas public education without forfeiture of benefits for the months of employment.

(b) A person who retired after January 1, 2001, and who is receiving a service retirement annuity, is not entitled to an annuity payment for any month in which the retiree is employed by a Texas public educational institution, unless the employment meets the requirements for an exception to forfeiture of payments under this chapter. Effective June 20, 2003 and for purposes of this chapter, 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.

(c) A person who is receiving a service retirement annuity may be employed in private schools, public schools in other states, in private business, or in other entities that are not TRS-covered employers without forfeiting their annuities.

(d) This chapter applies only to persons retired under TRS. It does not apply to persons retired under other retirement or pension systems.

§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). 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) 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) One-half time employment measured in clock hours shall not in any month exceed one-half of the time required for a full time position in a calendar month or 92 clock hours, whichever is less. 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. 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 number of days that the retiree works in those positions in that month does not exceed the number of days per month for work on a one-half time basis.

§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.

(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, [~~or~~] 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.

§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.

§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.

§31.18. Bus Driver Exception.

(a) A retiree who retired under Government Code, §824.202(a) without reduction for retirement at an early age and who drives at least one Texas Education Agency (TEA) approved bus route per day will be considered eligible for the bus driver exception under Government Code, §824.602(a)(6). 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) In the event the retiree wants to use the bus driver exception but 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, report(s).

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 July 2, 2003.

TRD-200304090
Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: September 25, 2003
For further information, please call: (512) 542-6115

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SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

34 TAC §§31.31 - 31.34

The Teacher Retirement System of Texas (TRS) proposes amendments to §§31.31, 31.32, 31.33, and 31.34 concerning employment after retirement. The sections being amended relate to employment resulting in forfeiture of disability retirement annuity and exceptions to such forfeiture for disability retirees, specifically, half-time employment up to 90 days, substitute service up to 90 days, and employment up to three months on a one-time only trial basis. The proposed amendments have been adopted on an emergency basis and are published in this issue of the *Texas Register*.

The amendments are being proposed in order to comply with HB 2169 and HB 3237 which took effect when signed by the Governor on June 20, 2003. The proposed amendments to §§31.31-31.34 include language providing that 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. The proposed amendments to §31.32 and §31.34 relating to substitute service clarify that effective September 1, 2003, substitute service and half-time employment may be combined in the same calendar month without forfeiting the annuity payment for that month.

Tony Galaviz, Chief Financial Officer, has determined that for each year of the first five years the sections as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

Mr. Galaviz has also determined that the public benefit will be clarification of the provisions relating to employment after retirement and notification to reporting entities and retirees of the employment after retirement provisions specifically relating to those retirees employed by a third party entity. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the sections will be in effect.

Comments may be submitted in writing to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701. To be

considered, written comments must be received by TRS no later than 30 days after publication of the sections for proposal.

The amendments are proposed the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership. The amendments are also proposed under House Bill 2169, 78th Legislature, Regular Session, which provides that employment of a retiree by a third party entity may be considered employment by a TRS covered employer for purposes of employment after retirement. The amendments are also proposed under House Bill 3237, 78th Legislature, Regular Session, which provides that retirees may combine substitute service and one-half time employment in the same calendar month without forfeiting the annuity payment for that month.

No other codes are affected.

§31.31. Employment Resulting in Forfeiture of Disability Retirement Annuity.

(a) A person receiving a disability retirement annuity forfeits the annuity payment in any month in which the retiree is employed by a public educational institution covered by TRS, unless the employment falls within one of the exceptions set forth in this subchapter. 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 person receiving a disability retirement annuity may not exercise the exceptions applicable to service retirees in §31.15 of this chapter (relating to Six Month Exception); §31.16 of this chapter (relating to Acute Shortage Area Exception); §31.17 of this chapter (relating to Principal or Assistant Principal Exception); and §31.18 of this chapter (relating to Bus Driver Exception).

§31.32. Half-time Employment Up to 90 Days.

(a) Any person receiving a disability retirement annuity may, without affecting payment of the annuity, be employed for a period not to exceed 90 days during any school year by public educational institution covered by TRS on as much as one-half the full time load for the particular position according to the personnel policies of 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. Total substitute service under §31.33 of this chapter and half-time employment may not exceed 90 days during any school year. Effective September 1, 2003, substitute service under §31.33 of this chapter and half-time employment may be combined in the same calendar month only if the total number of days that the disability retiree works in those positions in that month do not exceed the number of days per month for work on a one-half time basis. This exception does not apply for the first month after the retiree'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) "One-half time" employment measured in clock hours must never exceed one-half of the time required for the full time position in a calendar month or 92 clock hours, whichever is less, and may not exceed a total of 90 days in a school year. Determination of one-half time will be made on a calendar month basis as the full time load may vary from month to month. Actual course instruction in state-supported colleges (including junior colleges), universities, and public schools shall not exceed during any month one-half the normal load for full-time employment at the same teaching level.

(c) "One-half time" employment for bus drivers shall in no case exceed 12 days in any calendar month. Work by a bus driver for any part of a day shall count as full day for purposes of this section.

§31.33. Substitute Service Up to 90 Days.

(a) A person receiving a disability retirement annuity may work as a substitute in a month without forfeiting the annuity for that month subject to the same conditions as apply to service retirees except that the total substitute service and one-half time employment in the school year may not exceed 90 days. This exception does not apply for the first month after the retiree'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)). 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) Any disability retiree who reports for duty as a substitute during any day and works any portion of that day shall be considered to have worked one day.

§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) 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 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 chapter (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 July 2, 2003.

TRD-200304091

Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: September 25, 2003
For further information, please call: (512) 542-6115

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PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 81. INSURANCE

34 TAC §81.1, §81.5

The Employees Retirement System of Texas (ERS) proposes amendments to Title 34, Texas Administrative Code, §81.1 and §81.5, concerning Definitions and Eligibility in the Texas Employees Group Benefits Program (GBP). These sections are amended to comply with and conform to Acts of the 78th Legislature and to update the rules for changes under the Texas Insurance Code, Chapter 1551.

Paula A. Jones, General Counsel, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be simplified administration of the GBP in accordance with recent changes to the law. It should be noted that there may be existing rules within Chapter 81 that are not presently being amended but that may conflict with recently enacted legislation. To the extent of any conflict, applicable statutory law shall control. There will be no affect on small businesses. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at pjones@ers.state.tx.us.

The amendments are proposed under Texas Insurance Code, §1551.052 which provides authorization for the Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities.

No other statutes are affected by the proposed amendments.

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

(1) Accelerated life benefit--An amount of term life insurance to be paid in advance of the death of an insured employee, annuitant, or dependent, as requested by the employee or annuitant and approved by the carrier, in accordance with the terms of the group term life plan as permitted by Chapter 1551.254 of the [~~Article 3.50-6,~~] Insurance Code. Accelerated life benefit payment may be requested only upon diagnosis of a terminal condition and only once during the lifetime of the insured employee, annuitant, or dependent. A terminal condition is a non-correctable health condition that with reasonable medical certainty will result in the death of the insured within 12 months.

(2) Act--The Texas Employees Group Benefits Act, Act of the 77th Legislature, 2001, as amended (the Insurance Code), Chapter 1551 [~~The Texas Employees Uniform Group Insurance Benefits Act, Chapter 79, Acts of the 64th Legislature, 1975, as amended (the Insurance Code, Article 3.50-2)~~].

(3) - (8) (No change.)

[~~(9) Committee or GBAC--The Group Benefits Advisory Committee as established by the Act, §18.~~]

(9) [~~(10)~~] Contract year--A contract year begins on the first day of September and ends on the last day of the following August.

(10) [~~(11)~~] Department--Commission, board, agency, division, institution of higher education, or department of the State of Texas created as such by the constitution or statutes of this state, or other governmental entity whose employees or retirees are authorized by the Act to participate in the program.

(11) [~~(12)~~] Dependent--The spouse of an employee or retiree and unmarried children under 25 years of age, including:

(A) the natural child of an employee/retiree;

(B) a legally adopted child (including a child living with the adopting parents during the period of probation);

(C) a stepchild whose primary place of residence is the employee/retiree's household;

(D) a foster child whose primary place of residence is the employee/retiree's household and who is not covered by another governmental health program;

(E) a child whose primary place of residence is the household of which the employee/retiree is head and to whom the employee/retiree is legal guardian of the person;

(F) a child who is in a parent-child relationship to the employee/retiree, provided the child's primary place of residence is the household of the employee/retiree, the employee/retiree provides the necessary care and support for the child, and if the natural parent of the child is 21 years of age or older, the natural parent does not reside in the same household;

(G) a child who is considered a dependent of the employee/retiree for federal income tax purposes and who is a child of the employee/retiree's child;

(H) an eligible child, as defined in this subsection, for whom the employee/retiree must provide medical support pursuant to a valid order from a court of competent jurisdiction; or

(I) a child eligible under Chapter 1551.004 [~~Section 3(a)(8)B~~] of the Act, provided that the child's mental retardation or physical incapacity is a medically determinable condition which prevents the child from engaging in self-sustaining employment, that the condition commences before the date of the child's 25th birthday, and that satisfactory proof of such condition and dependency is submitted by the employee/retiree within 31 days following such child's attainment of age 25 and at such intervals thereafter as may be required by the system.

(12) [~~(13)~~] Eligible to receive an annuity--Refers to a person who, in accordance with the Act, meets all requirements for retirement from a state retirement program or the Optional Retirement Program.

(13) [~~(14)~~] Employee--A person authorized by the Act to participate in the program as an employee.

(14) [~~(15)~~] Employing office--For a retiree covered by this program, the office of the Employees Retirement System of Texas in Austin, Texas or the retiree's last employing department; for an active employee, the employee's employing department.

(15) [~~(16)~~] Evidence of insurability--Such evidence required by a qualified carrier for approval of coverage or changes in coverage pursuant to the rules of §81.7(h) of this title (relating to Enrollment and Participation).

(16) [~~(17)~~] Former COBRA unmarried child--a child of an employee or retiree who is unmarried; whose GBP [~~UGIP~~] coverage as a dependent has ceased; and who upon expiration of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272 (COBRA) reinstates GBP [~~UGIP~~] coverage.

(17) [~~(18)~~] HealthSelect of Texas--The statewide point-of-service plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier or HMO.

[~~(19) HealthSelect Plus--The optional managed care plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier of HMO on a regular basis.~~]

(18) [~~(20)~~] HMO--A health maintenance organization approved by the board to provide health care benefits to eligible participants in the program in lieu of participation in the program's HealthSelect of Texas plan.

(19) [~~(21)~~] Insurance premium expenses--Any out-of-pocket premium incurred by a participant, or by a spouse or dependent of such participant, as payment for coverage provided under the program that exceeds the state's or institution's contributions offered as an employee benefit by the employer. The types of premium expense covered by the premium conversion plan include out-of-pocket premium for group term life, health (including HMO premiums), AD&D, and dental, but do not include out-of-pocket premium for long or short term disability or dependent term life.

(20) [~~(22)~~] Leave without pay--The status of an employee who is certified by a department administrator to be absent from duty for an entire calendar month, who does not receive any compensation for that month, and who has not received a refund of retirement contributions based upon the most recent term of employment.

(21) [~~(23)~~] ORP--The Optional Retirement Program as provided in the Government Code, Chapter 830.

(22) [~~(24)~~] Placement for adoption--A person's assumption and retention of a legal obligation for total or partial support of a child in anticipation of the person's adoption of such child.

(23) [~~(25)~~] Preexisting condition--Any injury or sickness, for which the employee received medical treatment, or services, or took prescribed drugs or medicines during the three-month period immediately prior to the effective date of such coverage. However, if the evidence of insurability requirements set forth in §81.7(h) of this title must first be satisfied, the three-month period for purposes of determining the preexisting conditions exclusion will be the three-month period immediately preceding the date of the employee's completed application for coverage.

(24) [~~(26)~~] Premium conversion plan--A separate plan, under the Internal Revenue Code, §79 and §106, adopted by the board of trustees and designed to provide premium conversion as described in §81.7(f) of this title.

(25) [~~(27)~~] Program--The Texas Employees Group Benefits Act [~~The Texas Employees Uniform Group Insurance Program~~] as established by the board.

(26) [~~(28)~~] Retiree--An employee who retires or is retired and who:

(A) is authorized by the Act to participate in the program as a retiree;

(B) on August 31, 1992, was a participant in a group insurance program administered by an institution of higher education; or

(C) on the date of retirement, meets the service credit requirements of the Act for participation in the program as an annuitant; and

(i) on August 31, 2001, was an eligible employee with a department whose employees are authorized to participate in the program and, on the date of retirement has three years of service with such a department; or

(ii) on August 31, 2001, had three years of service as an eligible employee with a department whose employees are authorized to participate in the program.

(27) [~~(29)~~] Salary--The salary to be used for determining optional term life and disability income limitations will be the employee's regular salary, including longevity, shift differential, hazardous duty pay, and benefit replacement pay, received by the employee as of the employee's first day of active duty within a contract year. No other component of compensation shall be included. Non-salaried elective and appointive officials and members of the legislature may use the salary of a state district judge or their actual salary as of September 1 of each year.

(28) [~~(30)~~] System--The Employees Retirement System of Texas.

(29) [~~(31)~~] TRS--The Teacher Retirement System of Texas.

§81.5. Eligibility.

(a) Full-time employees. A full-time employee, elected officer, or appointed officer of the State of Texas is eligible for automatic coverage upon completion of the waiting period established in Section 1551.1055 of the Act. However, an employee of an institution of higher education and the employee's eligible dependents are eligible for coverage on the first day that an employee performs services as an employee of an institution of higher education only if [~~on the first day he or she begins active duty with the state. For an elected or appointed officer, the first day of active duty shall be the day he or she takes the oath of office.~~]

(1) the full amount of premiums are paid for the employee's coverage from the first date of employment through the completion of the waiting period defined in §1551.1055(a) of the Act;

(2) any premiums paid as provided in paragraph (1) of this subsection shall not be paid using money appropriated from the general revenue fund; and

(3) any institution of higher education electing to pay the premium for any employee as described in this subsection must do so for all eligible full-time employees.

(b) Part-time employees. A part-time employee or other employee who is not eligible for automatic coverage becomes eligible for coverage upon completion of the waiting period established in §1551.1055 of the Act and upon application to participate in the program, subject to the provisions of §81.7(b) of this title (relating to Enrollment).

(1) However, a part-time employee of an institution of higher education and the employee's eligible dependents are eligible for coverage on the first day that a part-time employee performs services as a part-time employee of an institution of higher education only if

(A) the full amount of premiums are paid for the part-time employee's coverage from the first date of employment through the completion of the waiting period defined in §1551.1055(a) of the Act;

(B) any premiums paid as provided in subparagraph (A) of this paragraph shall not be paid using money appropriated from the general revenue fund; and

(C) any institution of higher education electing to pay any portion of the premium for any part-time employee as described in this subsection or in §1551.101(e)(2) must do so for all eligible similarly situated part-time employees.

(2) An institution of higher education is also not prohibited from contributing a portion or all of the required premium for certain part-time employees described by §1551.101(e)(2) of the Act only if:

(A) the premiums not paid by the general revenue fund are paid by the institution of higher education with funds that are not appropriated from the general revenue fund;

(B) any institution of higher education electing to pay the premiums for any part-time employee as described in §1551.101(e)(2) of the Act must do so for all eligible part-time employees described therein; and

(C) any premiums paid as provided in subparagraph (A) of this paragraph must be paid from the first date of the part-time employee's initial enrollment.

(c) - (l) (No change.)

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

Filed with the Office of the Secretary of State on July 7, 2003.

TRD-200304109
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 867-7125

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CHAPTER 87. DEFERRED COMPENSATION

34 TAC §§87.1, 87.5, 87.7, 87.9, 87.17, 87.19, 87.21, 87.31, 87.34

The Employees Retirement System of Texas proposes amendments to Chapter 87, §§87.1, 87.5, 87.7, 87.9, 87.17, 87.19, 87.21, 87.31, concerning the Deferred Compensation Plan and new §87.34, concerning Independent Investment Advice. Section 87.1 changes are made to make additions to beneficiary designation forms and to non-spousal and spousal beneficiary designations. Section 87.5 changes are made with regard to a participant's enrollment in the Plan. Section 87.7 and §87.9 make changes to the standard required of insurance companies in the Plan for offering continuing coverage. Section 87.17 makes changes with regard to beneficiary designation forms, plan loans and distribution agreements. Section 87.19 makes changes with regard to the date reports are submitted to the Plan administrator by vendors. Section 87.21 makes changes to the standard required of insurance companies in the Plan for offering continuing coverage. Section 87.31 makes changes regarding the termination and resumption of deferrals. New §87.34 is proposed to permit payment for Independent Investment Advice.

Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Jones has also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be added flexibility for State of Texas Deferred Compensation Plan participants. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may e-mail Ms. Jones at pjones@ers.state.tx.us.

The amendments and new section are proposed under Government Code, §609.508, which provides the board of trustees the authority to adopt any rules necessary to administer the deferred compensation plan.

No other statutes are affected by the proposed amendments and new section.

§87.1. Definitions.

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

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

(4) Beneficiary designation form--A form authorized and approved by the plan administrator to designate a participant's beneficiary.

(5) [~~(4)~~] Board of Trustees--The Board of Trustees of the Employees Retirement System of Texas.

(6) [~~(5)~~] Call-in day--The first five working days of the month.

(7) [~~(6)~~] Change agreement--A contract signed by a participant to request certain changes concerning the participant's deferrals, investment income, and participation in the plan.

(8) [~~(7)~~] Data collection center--A private entity used by the State Treasury Department to collect information from state depositories regarding deposits of state funds.

(9) [~~(8)~~] Day--A calendar day.

(10) [~~(9)~~] DCP--Deferred compensation plan.

(11) [~~(10)~~] Deferral--The amount of compensation the receipt of which a participant has agreed to defer under the plan.

(12) [~~(11)~~] Distribution agreement--A contract signed by a participant or beneficiary indicating the disposition of the participant's deferrals and investment income.

(13) [~~(12)~~] Disclosure form--A document completed by a vendor representative and signed by both the representative and an employee disclosing the rate of return, fees, withdrawal penalties, and payout options for the qualified investment product selected.

(14) [~~(13)~~] Emergency withdrawal application--A form completed by a participant requesting the full or partial distribution of the participant's deferrals and investment income because of a sudden and unforeseeable emergency.

(15) [~~(14)~~] Employee--A person who provides services as an officer or employee to a state agency.

(16) [~~(15)~~] Executive director--The executive director of the Employees Retirement System of Texas.

(17) [~~(16)~~] FDIC--The Federal Deposit Insurance Corporation or its successor in function. The FDIC consists of two funds, the Savings Association Insurance Fund (SAIF), which insured savings associations and savings banks, and the Bank Insurance Fund (BIF), which insures commercial banks.

(18) [~~(17)~~] Fee--The term includes a fee, penalty, charge, assessment, market value adjustment, forfeiture, or service charge.

(19) [~~(18)~~] Gross income--The total of:

(A) the present value of salary or wages;

(B) plus the present value of longevity pay, hazardous duty pay, imputed income, special duty pay, and benefit replacement pay; and

(C) minus the present value of contributions to the Employees Retirement System, the Teacher Retirement System, the Optional Retirement Program, and the TexFlex program administered by the Employees Retirement System.

(20) [~~(19)~~] Home office--The primary location at which a qualified vendor maintains its files and other records concerning the vendor's participation in the plan and the participants whose deferrals and investment income have been invested in the vendor's qualified investment products. The term is usually equivalent to the vendor's headquarters.

(21) [~~(20)~~] Inactive qualified vendor--A qualified vendor is an inactive qualified vendor if no new deferrals have been invested in any of the vendor's qualified investment products for 12 consecutive months.

(22) [~~(21)~~] Includes--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(23) [~~(22)~~] Includible compensation--Compensation from a state agency that is includible in a participant's gross income under the Internal Revenue Code of 1986, the Economic Growth and Tax Relief and Reconciliation Act of 2001 (referred to as "EGTRRA") and the Job Creation and Worker Assistance Act of 2002. The term excludes deferrals.

(24) [~~(23)~~] Investment income--The interest, capital gains, and other income earned through the investment of deferrals in qualified investment products.

(25) [~~(24)~~] Investment product--The term includes a life insurance product, fixed or variable rate annuity, mutual fund, certificate of deposit, money market account, or passbook savings account. A vendor's investment product that is in any respect different from another investment product of the same vendor is a different investment product.

(26) [~~(25)~~] NCUA--National Credit Union Administration, a United States Government Agency, which regulates, charters and insures deposits of the nation's federal credit unions. Shares and deposits in credit unions are insured by the NCUSIF as detailed in this section.

(27) [~~(26)~~] NCUSIF--National Credit Union Share Insurance Fund, is administered by the NCUA as detailed in this section and insures members' share and deposit accounts at federally insured credit unions.

(28) [~~(27)~~] Non-filer--A qualified vendor which does not ensure that the plan administrator receives a quarterly report by the due date specified in §87.19(d)(1) of this title (relating to Reporting and Recordkeeping by Qualified Vendors).

(29) Non-spousal beneficiary--Any beneficiary other than a spouse or ex-spouse.

(30) [~~(28)~~] One-time election form--A form completed by a participant requesting the full distribution of deferred compensation funds with a total balance that does not exceed the dollar limit under Internal Revenue Code of 1986, §457(e)(9) and EGTRRA, as of the date of the election.

(31) [~~(29)~~] Participant--A current, retired, or former employee who either has elected to defer a portion of the employee's current compensation or has a balance in a qualified investment product.

(32) [~~(30)~~] Participation agreement--A contract signed by an employee agreeing to defer the receipt of part of the employee's compensation in accordance with the plan and containing certain information regarding vendors, qualified investment products, and other matters.

(33) [~~(31)~~] Plan--The deferred compensation program of the State of Texas that is governed by the Internal Revenue Code of 1986, §457 and EGTRRA, and authorized by Chapter 609, Government Code. This plan is a continuation of the plan previously administered by the Comptroller of Public Accounts.

(34) [~~(32)~~] Plan administrator--The Board of Trustees of the Employees Retirement System of Texas or its designee.

(35) [~~(33)~~] Product approval notice--A written notice from the plan administrator to a vendor informing the vendor that a particular investment product has been approved for participation in the plan.

(36) [~~(34)~~] Product contract--A contract between a qualified vendor and the plan administrator concerning the participation of one of the vendor's investment products in the plan.

(37) [~~(35)~~] Product type--A categorization of an investment product according to its relevant characteristics. Examples of product types are life insurance products, mutual funds, certificates of deposit, savings accounts, share accounts, and annuities.

(38) [~~(36)~~] Qualified investment product--An investment product concerning which the plan administrator and the sponsoring qualified vendor have signed a product contract.

(39) [~~(37)~~] Qualified vendor--A vendor with whom the plan administrator has signed a vendor contract. The term includes a qualified vendor's officers and employees.

(40) [~~(38)~~] Separation from service--A termination of the employment relationship between a participant and the participant's employing state agency, as determined in accordance with the agency's established practice. The term excludes a paid or unpaid leave of absence.

(41) Spousal beneficiary--The current or ex-spouse of a participant who is designated to receive a participant's account balance.

(42) [~~(39)~~] State agency--A board, commission, office, department, or agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education

as defined by the Education Code, §61.003, other than a public junior college.

(43) [~~(40)~~] TPA--Third Party Administrator--An entity under the direction of the Plan Administrator that operates independently of both the employer and investment providers to perform agreed upon administrative services to a tax-deferred defined contribution plan. These tasks may include recordkeeping, preparation of participant statements, monitoring deferral limits, and other specified services.

(44) [~~(41)~~] Transfer--The redemption of deferrals and investment income from a qualified investment product for investment in another qualified investment product.

(45) [~~(42)~~] Trust--The deferred compensation trust fund established to hold and invest deferrals and investment income under the plan for the exclusive benefit of participants and their beneficiaries.

(46) [~~(43)~~] Trustee--The Board of Trustees of the Employees Retirement System of Texas.

(47) [~~(44)~~] Vendor--An insurance company, bank, savings and loan association, credit union, or mutual fund distributor that sells investment products. The term includes a vendor's officers and/or employees.

(48) [~~(45)~~] Vendor contract--A contract between the plan administrator and a vendor concerning the vendor's participation in the plan.

(49) [~~(46)~~] Vendor representative--An agent, independent agent, independent contractor, or other representative of a vendor who is not an employee or officer of the vendor.

(50) [~~(47)~~] 401(a)(9), §401(a)(9) and Section 401(a)(9)--These terms refer to Internal Revenue Code Section 401(a)(9).

(51) [~~(48)~~] 457, §457 and Section 457--These terms refer to Internal Revenue Code Section 457.

§87.5. Participation by Employees.

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

(c) Effective date of enrollment. A participant's enrollment in the Plan [~~a participation agreement. An executed participation agreement~~] is effective for compensation earned beginning with the month following the month in which the participant enrolls.

(d) Contents of a participation agreement.

[~~(1)~~] A participation agreement must contain but shall not be limited to:

(1) [~~(A)~~] the participant's consent for payroll deductions equal to the amount of deferrals during each pay period;

(2) [~~(B)~~] the amount that will be deducted from the participant's compensation during each pay period;

(3) [~~(C)~~] the qualified vendor and qualified investment product in which the participant's deferrals will be invested;

(4) [~~(D)~~] the date on which the payroll deductions will begin or end, as appropriate;

(5) [~~(E)~~] the signature of an individual with authority to bind the qualified vendor;

(6) [~~(F)~~] the signature of an individual with authority to bind the participant; and

(7) [~~(G)~~] an incorporation by reference of the requirements of state law and the sections in this chapter.

[~~(2) A participant may name primary or secondary beneficiaries, or both.~~]

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

(g) Three-year catch-up [~~Catch-up~~] exception to the normal maximum amount of deferrals.

(1) (No change.)

(2) In the event that a participant chooses to begin the three-year catch-up option, the participant is required to complete and provide the plan administrator with a copy of the three-year catch-up provision agreement form.

(3) - (5) (No change.)

(6) The participant's employing agency will calculate and monitor all three-year catch-up limits and furnish the plan administrator with the applicable three-year catch-up forms. If a participant makes deferrals in excess of the participant's three-year catch-up limit, the following actions will be taken.

(A) Upon notification by the participant's agency, the vendor will return to the participant's agency, the amount of deferrals in excess of the three-year catch-up limit without any reduction for fees or other charges.

(B) (No change.)

(7) This subsection applies only if the participant has not previously used the three-year catch-up exception with respect to a different normal retirement age under the plan or another deferred compensation plan governed by the Internal Revenue Code of 1986, §457 and EGTRRA.

(8) If a participant makes deferrals in excess of the normal plan limits under the three-year catch-up provision during or after the calendar year in which the participant reaches normal retirement age, the following actions will be taken.

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

(9) Over age 50 catch-up. A participant age 50 or older during any calendar year shall be eligible to make additional pre-tax contributions in accordance with Internal Revenue Code Section 414(v) applicable to 457 plans, in excess of normal deferral amounts. A participant may make an additional contribution over and above the applicable deferral limit. The additional contribution is $2,000 for 2003, increasing by $1,000 each year up to $5,000 in 2006. After 2006, the amount of the "Over age [~~Age~~] 50 and over catch-up" will be indexed in $500 increments based upon cost-of-living adjustments. A participant who elects to defer contributions under the normal three-year catch-up provisions may not also defer under the special Over age 50 catch-up and code Section 414(v).

(h) Changes before a participant becomes entitled to a distribution.

(1) (No change.)

(2) A participant must execute a change agreement for the prior 457 Plan funds and file the agreement with the participant's agency coordinator when the participant:

(A) (No change.)

(B) changes the participant's primary or secondary beneficiary, or both; or

[~~(C) changes the qualified vendor or qualified investment product that receives the participant's deferrals; or~~]

(C) [~~(D)~~] performs a combination of the items specified in subparagraphs (A) or (B) [~~- (C)~~] of this paragraph.

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

(i) Conflict in beneficiary designations. The designation of a primary or secondary beneficiary, or both, in a beneficiary designation form, participation agreement, change agreement, or distribution agreement prevails over a conflicting designation in any other document.

(j) - (k) (No change.)

(l) Unpaid leave of absence. If a Participant separates from service or takes a leave of absence from the State because of service in the military and does not receive a distribution of his/her account balances, the Plans will allow suspension of loan repayments until after the conclusion of the period of military service.

(m) [~~(l)~~] Termination and resumption of deferrals.

(1) An employee may voluntarily terminate additional deferrals to the prior plan by completing a participation agreement.

[~~(2) An employee who has terminated additional deferrals, but who has not separated from service, may resume deferrals by completing a participation agreement.~~]

(2) [~~(3)~~] An employee who returns to active service after a separation from service must execute a new participation agreement before deferrals may resume. Deferrals after a resumption of service may not be made to the same account that received the deferrals before the separation from service occurred.

(n) [~~(m)~~] Ownership of deferrals and investment income.

(1) Until December 31, 1998, a participant's deferrals and investment income are the property of the State of Texas until the deferrals and investment income are actually distributed to the employee.

(2) Effective January 1, 1999, in accordance with Chapter 609, Government Code and Internal Revenue Code §457(g), all amounts currently and hereafter held under the plan, including deferrals and investment income, shall be held in trust by the Board of Trustees for the exclusive benefit of participants and their beneficiaries and may not be used for or diverted to any other purpose, except to defray the reasonable expenses of administering the plan. In its sole discretion, the Board of Trustees may cause plan assets to be held in one or more custodial accounts or annuity contracts that meet the requirements of Internal Revenue Code §457(g), §401(f) and EGTRRA. In addition, effective January 1, 1999, the Board of Trustees does hereby irrevocably renounce, on behalf of the State of Texas and participating state agencies, any claim or right which it may have retained to use amounts held under the plan for its own benefit or for the benefit of its creditors and does hereby irrevocably transfer and assign all plan assets under its control to the Board of Trustees in its capacity as the trustee of the trust created hereunder. Adoption of this rule shall constitute notice to vendors holding assets under the plan to change their records effective January 1, 1999, to reflect that assets are held in trust by the Board of Trustees for the exclusive benefit of the participants and beneficiaries. Failure of a vendor to change its records on a timely basis may result in the expulsion of the vendor from the plan.

(o) [~~(n)~~] Market risk and related matters.

(1) The plan administrator, the trustee, an employing state agency, or an employee of the preceding are not liable to a participant if all or part of the participant's deferrals and investment income are diminished in value or lost because of:

(A) market conditions;

(B) the failure, insolvency, or bankruptcy of a qualified vendor; or

(C) the plan administrator's initiation of a transfer in accordance with the sections in this chapter.

(2) A participant is solely responsible for monitoring his or her own investments and being knowledgeable about:

(A) the financial status and stability of the qualified vendor in which the participant's deferrals and investment income are invested;

(B) market conditions;

(C) the resulting cost of making a transfer or distribution from a qualified investment product;

(D) the amount of the participant's deferrals and investment income that are invested in a qualified vendor's qualified investment products;

(E) the riskiness of a qualified investment product; and

(F) the federal tax advantages and consequences of participating in the plan and receiving distributions of deferrals and investment income.

(p) [~~(o)~~] Alienation of deferrals and investment income. A participant's deferrals and investment income may not be:

(1) assigned or conveyed;

(2) pledged as collateral or other security for a loan;

(3) attached, garnished, or subjected to execution; or

(4) conveyed by operation of law in the event of the participant's bankruptcy, or insolvency.

§87.7. Vendor Participation.

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

(g) Voluntary termination of participation in the plan.

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

(6) When a qualified vendor that is an insurance company voluntarily terminates its participation in the plan, this paragraph applies in addition to the preceding paragraphs of this subsection.

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

(C) An insurance company that voluntarily terminates its participation in the plan must offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in a terminated life insurance product offered by the company. The insurance company must offer continuing coverage in a life insurance product that is comparable [~~equivalent~~] to the terminated life insurance product in which the participant's deferrals and investment income were invested.

(D) - (H) (No change.)

(h) - (k) (No change.)

(l) Limits on account balances in credit unions.

(1) (No change.)

(2) A qualified vendor may not accept deferrals to an account if the deferrals would cause the balance of the account to exceed $100,000 (as amended), the amount insured by the National Credit Union Administration and National Credit Union Share Insurance Fund unless the vendor or participant has complied with paragraph (6) of this subsection.

(3) In this subsection, the term "deferred compensation information" means:

(A) the amount by which the balance of each account as of the end of the previous month exceeds $100,000 (as amended);

(B) (No change.)

(C) the total amount by which the balances of all reported accounts exceed $100,000 (as amended).

(4) Once each month, a qualified vendor shall report deferred compensation information to the plan administrator no later than 1 p.m., central time, on a call-in day. If a qualified vendor has no accounts that exceed $100,000 (as amended), the vendor must report that fact to the plan administrator.

(5) The plan administrator shall notify the agency coordinator for each participant whose account exceeds $100,000 (as amended). Upon receiving the notice, the agency coordinator shall request the participant to specify in a change agreement:

(A) the qualified investment product to which at least the amount in the account in excess of $100,000 (as amended) will be moved; and

(B) (No change.)

(6) If a participant does not want funds in excess of $100,000 (as amended) transferred from the credit union, the participant may keep funds at the credit union if:

(A) the credit union will pledge collateral for all funds in excess of $100,000 (as amended) in accordance with plan administrator procedures; or

(B) (No change.)

(7) If a participant does not submit a change agreement to the agency coordinator immediately after receiving a request from the participant's agency coordinator in accordance with paragraph (5) of this subsection and if paragraph (6) of this subsection is not complied with, the agency coordinator shall notify the plan administrator. Upon receiving the notification, the plan administrator shall:

(A) initiate a transfer of the amount in the account in excess of $100,000 (as amended) in accordance with §87.15(e)(1) of this title; and

(B) (No change.)

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

§87.9. Investment Products.

(a) (No change.)

(b) New qualified investment products.

(1) (No change.)

(2) Paragraph (1)(A) and (B) [~~and (C)~~] of this subsection do not apply to a qualified investment product that the plan administrator approved for participation in the plan before May 7, 1990. If the plan administrator has not executed a product contract with a qualified vendor that is sponsoring a qualified investment product, the plan administrator and the qualified vendor shall execute a product contract no later than the 90th day after May 7, 1990. If a product contract is not executed, the plan administrator shall terminate the qualified investment product's participation in the plan.

(c) - (e) (No change.)

(f) Withdrawal of a qualified investment product from the plan.

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

(6) When a qualified vendor that is an insurance company with existing life policies in the plan withdraws a life insurance product from the plan, this paragraph applies in addition to the preceding paragraphs of this subsection.

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

(C) If the insurance company has a life insurance product remaining in the plan that is comparable [~~equivalent~~] to the withdrawn life insurance product, this paragraph applies. The insurance company shall offer continuing coverage in:

(i) a qualified investment product that is comparable [~~equivalent~~] to the withdrawn life insurance product; and

(ii) a life insurance product that is not a qualified investment product but is comparable [~~equivalent~~] to the withdrawn life insurance product.

(D) If the insurance company does not have a life insurance product remaining in the plan that is comparable [~~equivalent~~] to the withdrawn life insurance product, this paragraph applies. The company must offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in the withdrawn life insurance product. The insurance company shall offer continuing coverage in a life insurance product that is comparable [~~equivalent~~] to the withdrawn life insurance product.

(E) - (I) (No change.)

§87.17. Distributions.

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

(f) Minimum distributions during the life of a participant.

(1) (No change.)

(2) The amount distributed to the participant must be calculated so that the distributions:

[~~(A) will be made in substantially non-increasing amounts;~~]

[~~(B) will be made annually or more frequently than annually after the first distribution;~~]

(A) [~~(C)~~] will be distributed over a period not exceeding the life expectancy of the participant or the life expectancy of the participant and the participant's named beneficiary; and

(B) [~~(D)~~] will satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9), EGTRRA and associated statutes and regulations.

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

(g) (No change.)

(h) Amendments of distribution agreements.

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

(4) Beneficiaries.

(A) The primary and secondary beneficiaries named in a distribution agreement may be changed at anytime by filing a change agreement with the agency coordinator of the state agency at which the participant was employed or by submitting a beneficiary designation form directly with the TPA, for the revised plan.

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

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

(7) Effective date of amended distribution agreements is 30 days after the plan administrator receives the form. An amended distribution agreement is effective with the first distribution.

(i) Procedure for making distributions.

[~~(1) After the plan administrator has approved a distribution agreement, the plan administrator shall send a letter of authorization to the qualified vendor covered by the agreement.~~]

(1) [~~(2)~~] Upon receiving a letter of authorization, the qualified vendor shall issue checks payable to the participant or beneficiary and mail the checks as instructed in the letter of authorization.

(2) [~~(3)~~] The plan administrator may not complete any forms provided by a qualified vendor in connection with a distribution. A qualified vendor may not require the plan administrator to submit periodic letters of authorization beyond the initial letter of authorization unless the plan administrator has agreed in writing [~~for a participant unless the plan administrator agrees in writing to the contrary after May 7, 1990~~]. A qualified vendor may not impose any requirements as a prerequisite to a distribution that are not specifically mentioned in the sections in this chapter.

(3) [~~(4)~~] The plan administrator shall provide each qualified vendor with the names and signatures of the individuals who are authorized to sign letters of authorization.

(4) [~~(5)~~] A qualified vendor shall confirm each letter of authorization as instructed in the letter.

(j) Emergency withdrawals.

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

(3) The plan administrator shall approve the emergency withdrawal if the plan administrator determines that:

(A) (No change.)

(B) the severe financial hardship caused by the unforeseeable emergency cannot be relieved:

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

(iii) by cessation of deferrals under the plan; [~~or~~]

(iv) by other distributions or nontaxable loans from the Plan or any other qualified retirement plan, or by borrowing from commercial sources on reasonable commercial terms; or

(v) [~~(iv)~~] through a combination of the actions specified in clauses (i) - (iii) of this subparagraph; and

(C) (No change.)

(4) - (10) (No change.)

(k) - (l) (No change.)

(m) Death of a participant when the participant has named a beneficiary.

(1) This subsection applies only if a participant has named a beneficiary in a participation agreement, change agreement, beneficiary designation form or distribution agreement.

(2) - (10) (No change.)

(11) This paragraph applies when the plan administrator orders other than a lump-sum distribution to a primary or secondary beneficiary and distributions to the participant did not begin before the participant's death. Notwithstanding a primary or secondary beneficiary's distribution agreement, the amount distributed must be calculated so that the distributions:

(A) will begin no [~~not~~] later than December 31 in the year that the participant would have attained age 70.5 or December 31 of the year following the participant's death, whichever is later for a spousal beneficiary; or [~~the first anniversary of the participant's death;~~]

(B) December 31 of the year following the participant's death and entire amount must be distributed by the end of the fifth year following the year of participant's death for non-spousal beneficiary.

(C) [~~(B)~~] will be made over the life of the person receiving the distributions or over a period not extending beyond the life expectancy of the person[~~, not to exceed 15 years~~];

(D) [~~(C)~~] will be made in substantially non-increasing amounts;

(E) [~~(D)~~] will be made annually or more frequently than annually after the first distribution; and

(F) [~~(E)~~] will satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9), and EGTRRA and associated statutes and regulations.

(12) This paragraph applies when the plan administrator orders other than a lump-sum distribution to a primary or secondary beneficiary and distributions to the participant began before the participant's death. Notwithstanding a primary or secondary beneficiary's distribution agreement, the amount distributed to the primary or secondary beneficiary must be calculated so that the distributions:

(A) (No change.)

(B) will satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9) and EGTRRA.

(13) - (15) (No change.)

(n) Death of a participant when the participant has not named a beneficiary.

(1) (No change.)

(2) The plan administrator shall order the [~~immediate lump-sum~~] distribution to the participant's estate of the balance of the participant's deferrals and investment income.

(o) Death of a beneficiary.

(1) This subsection applies if:

(A) a participant named a beneficiary in a participation agreement, change agreement, or distribution agreement or a beneficiary designation form;

(B) - (E) (No change.)

(2) If the deceased beneficiary filed a distribution agreement and the agreement names a primary beneficiary, the plan administrator shall:

(A) allow the primary beneficiary to have a distribution which will be made at least as rapidly as under the method of distribution selected by the participant, and which will also satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9) and EGTRRA; or

(B) (No change.)

(3) - (5) (No change.)

(p) - (r) (No change.)

(s) Loans to participants. The plan administrator is authorized to implement procedures to establish a loan program for the revised

plan in compliance with Code §72(p)(2). Plan loans shall be permitted only from assets deposited in the revised plan. Participants with account balances in the previous plan must transfer those balances to the revised plan in order to qualify for a plan loan.

(1) In accordance with the federal Soldiers' & Sailors' Civil Relief Act of 1940, interest will accrue during the period of suspended payments at the original loan rate or at the rate of six percent (6%), whichever is less. In no event will interest exceed the maximum rate permitted by applicable law.

(2) In accordance with Internal Revenue Code §72 p and associated Treasury Regulations at §1.72(p)-1, the Plans will suspend payments for up to twelve (12) months for non-military leaves of absence if the Participant is on a bona fide leave of absence and the leave is either without pay or the Participant's after-tax pay is less than the installment payment amount under the terms of the loan. When payments resume, installment payments may not be less than the amount required under the terms of the original loan. In no event may the term of the loan be extended beyond its original due date; accept upon express approval of the hardship committee. Therefore, the participant must seek a revised amortization schedule and pay higher monthly payments or continue the original payment schedule and make one or more additional payments before the end of the loan term in sufficient amounts to pay the loan in full when due.

(t) Federal withholding and reporting requirements.

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

(3) When reporting to the Internal Revenue Service, the qualified vendor shall use the vendor's Federal Employer Identification Number and shall comply with all requirements of Revenue Procedure 70-6 as set out in Internal Revenue Service Publication 1271 and as subsequently amplified or superseded by subsequent Revenue Procedures. A qualified vendor may not use the federal employer identification number of the plan, plan administrator, TPA, or the State of Texas. Regardless of how many qualified investment products a qualified vendor sponsors, the vendor must use the same federal employer identification number for all reports to the Internal Revenue Service.

(4) - (6) (No change.)

§87.19. Reporting and Recordkeeping by Qualified Vendors.

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

(d) Reports to the plan administrator.

(1) Frequency and coverage of reports. Every vendor that has participant or beneficiary deferrals, investment income, and/or annuitized accounts must ensure that the plan administrator receives a report no later than the 15th [~~35th~~] day after the end of each calendar quarter. Every vendor must ensure that the plan administrator receives a special report at the end of the fiscal year (August 31st), no later than fifteen days past fiscal year end - September 15th, in addition to the normal quarterly reporting schedule. The report must be in the format specified in this subsection and must cover all transactions during the calendar quarter.

(2) (No change.)

(3) Format of reports.

(A) All reports must be in the format prescribed by the plan administrator and follow the DCP quarterly reporting specifications on a:

~~*[(i)* 10 1/2 inch magnetic tape;]~~

~~*[(ii)* 3380 magnetic cartridge;]~~

(i) [~~(iii)~~] 5 1/4 or 3 1/2 inch high quality PC diskette;

(ii) [~~(iv)~~] manual form; or

(iii) [~~(v)~~] electronic file transfer - use of file transfer protocol (FTP), via the Internet or as an attachment to an electronic mail (E-mail).

(B) (No change.)

(C) Before a qualified vendor may use a medium other than a manual form to file a quarterly report with the plan administrator, the vendor must submit a written request along with a [~~test tape, cartridge,~~] electronic transfer file, or diskette to the plan administrator. The ERS must approve and make arrangements with the qualified vendor prior to testing the electronic file transfer described in subparagraph (A)(v) of this paragraph. The [~~test tape, cartridge,~~] electronic transfer file, or diskette must be in the format and contain the information prescribed by the DCP reporting specifications and contain the information that the plan administrator requires including the items listed in paragraph [~~(d)~~](2)(A) - (J) of this subsection. Failure to submit data in the specified format will result in the return of the media without processing. If the plan administrator determines that the [~~test tape, cartridge,~~] electronic transfer file, or diskette is inadequate, the plan administrator shall ensure that the number of participants whose deferrals and investment income are invested at any given time in the vendor's qualified investment products does not exceed 49.

(D) - (E) (No change.)

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

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

§87.21. Remedies.

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

(c) Continuation of life insurance coverage.

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

(4) If an insurance company has not been terminated from participation in the plan, this paragraph applies. The company must offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in a terminated life insurance product offered by the company. The insurance company shall offer continuing coverage in:

(A) an existing qualified investment product that is comparable [~~equivalent~~] to the terminated life insurance product; and

(B) a life insurance product that is not a qualified investment product but is comparable [~~equivalent~~] to the terminated life insurance product.

(5) If an insurance company has been terminated from participation in the plan, this paragraph applies. The company shall offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in a terminated life insurance product offered by the company. The insurance company must offer continuing coverage in a life insurance product that is comparable [~~equivalent~~] to the terminated life insurance product in which the participant's deferrals and investment income were invested.

(6) - (10) (No change.)

(d) - (h) (No change.)

§87.31. Revised Plan.

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

(c) Transition from the previous plan.

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

(7) Termination and resumption of deferrals.

(A) An employee may voluntarily terminate additional deferrals by providing appropriate notice to the TPA.

(B) An employee who has terminated additional deferrals, but who has not separated from service, may resume deferrals by re-enrolling in the plan.

§87.34. Independent Investment Advice.

(a) The plan administrator may offer independent investment advice through a qualified independent advisor in accordance with applicable federal regulations.

(b) Applicability.

(1) This section applies to the Texa$aver 401(k) Plan and Texa$aver 457 Plan, as amended and adopted by the Employees Retirement System of Texas.

(2) The investment advisor(s) used by the plan administrator must meet reasonable qualifications, and agree to act as a fiduciary on behalf of the participants.

(3) Payments for investment advice under this rule may only be made when the plan administrator has determined that it considers the payment to be a reasonable plan expense.

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 July 7, 2003.

TRD-200304110
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 867-7480

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION AND PLACEMENT

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.35

The Texas Youth Commission (TYC) proposes an amendment to §85.35, concerning Maximum Length of Stay for General Offenders. The amendment to the section will change the name of the rule as shown, as well as deleting the references to parole risk score. The rule will now apply to general offenders, as defined in §85.23, who meet additional criteria as specified in this rule.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to avoid undue confinement in an institutional setting for youth who have not completed the resocialization program, but have exceeded their assigned minimum length of stay. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to discharge a youth form control when it is satisfied that discharge will best serve the child's welfare and the protection of the public.

The proposed rule affects the Human Resource Code, §61.034.

§85.35. Maximum Length of Stay for General [~~Low and Medium Risk~~] Offenders.

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

(c) Explanation of Terms Used.

(1) General [~~Low or Medium Risk~~] Offender - means a youth who[~~:~~]is classified as a general offender as defined in (GAP) §85.23 of this title (relating to Classification) and has never been classified as a Sentenced Offender, Type A or B Violent Offender, Chronic Serious Offender, Controlled Substances Dealer, or Firearms Offender.

[~~(A) is classified as a general offender and has never been classified as a Sentenced Offender, Type A or B Violent Offender, Chronic Serious Offender, Controlled Substances Dealer, or Firearms Offender. See (GAP) §85.23 of this title (relating to Classification); and ~~]

[~~(B) has a parole risk score of low or medium.~~]

(2) Minimum Length of Stay - means the assigned minimum length of stay for the youth's classification, see (GAP) §85.23 of this title [~~(relating to Classification)~~], plus any disciplinary extensions to the minimum length of stay. See (GAP) §85.25 of this title (relating to Minimum Length of Stay).

(d) Parole Release for General [~~Low or Medium Risk~~] Offenders.

(1) A general [~~low or medium risk~~] offender who has completed the minimum length of stay, but has not earned phase 4 [~~four (4)~~] on all three (3) components of Resocialization, see (GAP) §87.3 of this title (relating to Resocialization Program), will be released on parole when the following requirements are met:

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

(2) Notwithstanding the time that has elapsed since completion of the minimum length of stay, a general [~~low or medium risk~~] offender who has not earned phase 4 on all three (3) components of Resocialization must not have been found during the 90 days immediately preceding the release to have:

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

(3) Notwithstanding the time that has elapsed since completion of the minimum length of stay or since an incident of misconduct, a general [~~low or medium risk~~] offender who has not earned phase 4 on all three (3) components of Resocialization[~~,~~] will not be released on parole unless:

(A)-(B) (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 July 1, 2003.

TRD-200304031
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 424-6301

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37 TAC §85.61

The Texas Youth Commission (TYC) proposes an amendment to §85.61, concerning Discharge/Transfer of Custody. The amendment to the section will specify that youth other than other than sentenced offenders shall be discharged prior to the youth's 21st birthday or if sentenced offenders who have not completed their sentence shall be transferred from TYC's custody prior to, or on the youth's 21st birthday (wording change from "discharge" to "transfer from custody"). Due to the wording change the title of this rules has been changed to read Discharge/Transfer of Custody to be consisted with practice and procedures. Minor grammatical changes were also included in the amendment.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the fiscal impact would be one less day in TYC custody for youth otherwise released on their 21st birthday for age of majority reached. The impact on performance measures would be slight decrease in either residential or parole ADP.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will demonstrate that TYC has an effective classification plan that would timely release of eligible youth, which complies with the Texas Human Resources Code, Chapter 61 which states that TYC only has jurisdiction over youth under 21 years old. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to discharge a youth from its control when it is satisfied that discharge will best serve the youth's welfare and the protection of the public.

The proposed rule affects the Human Resource Code, §61.034.

§85.61. Discharge/Transfer of Custody .

(a) (No change.)

(b) Non-sentenced offenders shall by law, be discharged prior to the youth's 21st birthday. [~~All TYC youth shall by law, be discharged by age 21.~~]

(c) Sentenced offenders shall by law, be transferred from TYC's custody no later than the youth's 21st birthday.

(d) [~~(c)~~] Youth may be recommended for early discharge when specific criteria have been met. Discharge criteria shall be applied according to classification or to special circumstance. Eligibility for discharge according to classification is controlled by the most serious offense for which the youth has ever been classified.

(e) [~~(d)~~] Discharge Criteria.

(1) Classification.

(A) Youth who are sentenced for an offense committed before January 1, 1996, shall be discharged from TYC jurisdiction when one of the following occurs:

(i) expiration of the sentence imposed by the juvenile court, including the time spent in detention in connection with the committing case plus time spent at TYC under the order of commitment:

(I) Time spent in detention in connection with the committing case includes all time in detention from the time of arrest for the committing offense until admission to TYC, including pre-hearing detention for adjudication/disposition of the offense or for modification of the disposition, but excluding detention time that is ordered as a condition of probation.

(II) For youth committed under concurrent determinate and indeterminate commitment orders, refer to (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders);

(ii) the youth is transferred to the Texas Department of Criminal Justice (TDCJ)[~~(TDJC)~~] pursuant to an order issued by the juvenile court at a transfer hearing;

(iii) prior to age 18 if ordered by committing court; or

(iv) age 21 is reached.

(B) Youth who are sentenced for an offense committed after January 1, 1996, shall be discharged from TYC jurisdiction when one of the following occurs:

(i) expiration of the sentence imposed by the juvenile court unless under concurrent commitment orders as specified in (GAP) §85.33 of this title [~~(relating to Program Completion and Movement of Sentenced Offenders)~~]. Time on the sentence includes the time spent in detention in connection with the committing case plus time spent at TYC under the order of commitment:

(I) Time spent in detention in connection with the committing case includes all time in detention from the time of arrest for the committing offense until admission to TYC, including pre-hearing detention for adjudication/disposition of the offense or for modification of the disposition, but excluding detention time that is ordered as a condition of probation.

(II) For youth committed under concurrent determinate and indeterminate commitment orders, refer to (GAP) §85.33 of this title [~~(relating to Program Completion and Movement of Sentenced Offenders)~~];

(ii) the youth is transferred to TDCJ [~~the Texas Department of Criminal Justice (TDCJ)~~] consistent with (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders).

(C) Youth ever classified as Type [~~type~~] A violent offenders shall be discharged prior to the 21st birthday, unless the youth is subject to a determinate sentence [~~when age 21 is reached~~].

(D) Youth classified as a Type [~~type~~] B violent offender, chronic serious offender, controlled substance dealer, or firearms offender and never classified as Type [~~type~~] A violent or sentenced offender, shall be discharged when one of the following occurs:

(i) prior to the 21st birthday [~~age 21 is reached~~]; or

(ii) completion of 12 consecutive months on parole status in the home or home substitute and the youth;

(I) has had no delinquency adjudications or criminal convictions during the period;

(II) has no pending delinquency petitions or criminal charges;

(III) is on minimum supervision level; and

(IV) has had a positive parole adjustment, as defined in this policy.

(E) General offenders and violators of CINS probation and never classified as Type [~~type~~] A violent or sentenced offender, shall be discharged when one of the following occurs;

(i) prior to the 21st birthday [~~age 21 is reached~~]; or

(ii) completion of nine (9) consecutive months on parole status in the home or home substitute and the youth:

(I) has had no delinquency adjudications or criminal convictions during the period;

(II) has no pending delinquency petitions or criminal charges;

(III) is on minimum supervision level; and

(IV) has had a positive parole adjustment as defined in this policy.

(2) Special Circumstances.

(A) Youth of any classification except sentenced offenders shall be discharged under the following circumstances:

(i) court [~~Court~~] ordered reversal of commitment; [~~.~~]

(ii) the [~~The~~] youth being sentenced to prison; [~~.~~]

(iii) commitment [~~Commitment~~] to Texas Department of Mental Health and Mental Retardation when the minimum length of stay has been completed; [~~.~~]

(iv) enlistment [~~Enlistment~~] in the military; [~~.~~]

(v) closing [~~Closing~~] of records following a youth's death or recommitment; [~~.~~]

(vi) discharge [~~Discharge~~] by the executive director or his designee for any other reason, such as an illness or injury which prevents a youth's return to active program participation; [~~.~~]

(vii) youth [~~Youth~~] who have completed length of stay requirements and who are unable to progress in the agency's rehabilitation programs because of mental illness or mental retardation as specified in (GAP) §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(B) Youth place out of the state who are of any classification except sentenced offender may be discharged when requested by the placement state for satisfactory adjustment or when court action is taken by the placement state in accordance with (GAP) §85.51 of this title (relating to Interstate Compact for TYC Youth).

(C) Youth any classification except sentenced offender and Type [~~type~~] A violent offender shall be discharged under the following circumstances:

(i) placement on adult probation for conduct which occurred while on parole status; or

(ii) court ordered placement for a minimum of 12 months in an adult correctional residential program as part of the disposition of a criminal case.

(D) Youth may be discharged for special circumstance, other than those addressed here, if approved by the executive director.

(f) [~~(e)~~]Positive Parole Adjustment. For purposes of discharge, positive parole adjustment shall be shown by documentation that a youth:

(1) has completed ICP objectives including substantial completion of phase 5 [~~five~~] of resocialization and community service requirements; and

(2) has, for 90 consecutive days; been:

(A) enrolled and participating in an appropriate educational or training program; or

(B) satisfactorily employed.

(g) [~~(f)~~] Waiver. Youth of any classification except sentenced offender and Type A violent offender who are age 18 or older may be discharged prior to completion of discharge criteria for the purpose of obtaining services that cannot be obtained for a juvenile. Such early discharge must be justified to and approved by the deputy executive director.

(h) [~~(g)~~] A youth's primary service worker (PSW) shall immediately notify the youth of the discharge. The PSW shall provide the youth a written explanation on procedures for sealing records utilizing the Sec. 58.003 Sealing of Files and Records form and a copy will be provided to the parent/guardian or custodian.

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

Filed with the Office of the Secretary of State on July 1, 2003.

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Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 424-6301

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CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER B. EDUCATION PROGRAMS

37 TAC §91.51

The Texas Youth Commission (TYC) proposes new §91.51, concerning Library and Instructional Resources. The new section will establish standards, procedures, and criteria for selecting learning resources to be used in TYC institutional schools. The new section will also provide for a reconsideration process if anyone should object to certain materials inclusion or exclusion.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a standardized process for selecting and reviewing books and other learning resources to which TYC staff and youth will have access. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to require youth in its care to participate in academic training and activities.

The proposed rule affects the Human Resource Code, §61.034.

§91.51. Library and Instructional Resources.

(a) Purpose. Each Texas Youth Commission (TYC) facility shall provide a wide range of learning resources at various levels of difficulty that appeal to a variety of interests and represent different points of view to support, enrich, and assist in meeting the needs of the youth and teachers in the education program.

(b) Explanation of Term Used. Learning Resources - refers to any print, video, or other material with instructional content or function.

(c) Responsibility for Learning Resources Selection.

(1) The selection and acquisition of the learning resources shall be made by a Library and Media Review Committee (LMRC) at each facility, which is composed of:

(A) professional education staff;

(B) librarians;

(C) teachers; or

(D) aides trained in the use of reviewing sources; and

(E) administrators.

(2) The LMRC will select learning resources that will:

(A) stimulate growth in factual knowledge, literacy, appreciation, aesthetic values, societal standards that will promote lifelong learning and reading habits;

(B) present opposing sides of controversial issues so that youth may develop, with guidance, the practice of critical analysis and the ability to make informed decisions in their daily lives;

(C) enrich and support the curriculum, taking into consideration the varied interests, abilities, learning styles, and maturity levels of the youths;

(D) provide a background of information that will motivate students and staff to examine their own attitudes and behavior, to comprehend their duties, responsibilities, rights, and privileges as participating citizens in our society, and to make intelligent judgments in their daily lives;

(E) guided by the physical examination, and judicious use of standard reviewing tools and authoritative lists;

(F) be representative of religious, ethnic, social, and cultural groups and their contribution to our national heritage and the world community; and

(G) be of various formats, i.e., print, non-print, and electronic.

(d) Selection Criteria. The criteria employed in the selection of learning resources are:

(1) support and be consistent with the educational goals of the State and TYC as well as the goals and objectives of individual facility and the courses taught;

(2) be appropriate for the subject area, resocialization, special treatment needs, age, emotional development, ability level, learning styles, and social development;

(3) meet high standards of quality in:

(A) presentation

(B) physical format

(C) educational significance

(D) readability

(E) authenticity

(F) artistic quality and/or literary style

(G) factual content

(e) TYC facilities will not show R-rated or X-rated videos to any youth.

(f) Other videos may be shown to TYC youth with the approval of the principal.

(g) Request for Reconsideration of Learning Resources.

(1) Any resident or TYC employee may request an informal or formal challenge of learning resources, if he/she feels the learning resources will have a negative or harmful impact on a youth. Any request for reconsideration of learning resources is only binding to the individual facility.

(2) To request reconsideration of learning resources, the Request for an Informal Reconsideration form must be completed and submitted to the principal.

(3) In the event that an informal challenge cannot be resolved, the Appeal for Reconsideration of Learning Resources for a formal challenge must be completed and submitted to the principal and the facility superintendent.

(4) Upon the receipt of a formal request for reconsideration, the principal shall direct the formation of a Reconsideration Committee, which is composed of:

(A) a teacher from the area of concern and/or grade level;

(B) a program administrator;

(C) a caseworker appointed by the facility superintendent or designee; and

(D) the principal.

(5) The Reconsideration Committee shall review the challenged material and decide if it conforms to the selection criteria and procedures outlined in this policy.

(6) The complainant has the right to appeal the decision made by the Reconsideration Committee to the superintendent of education in central office. If the complainant has a valid reason for not agreeing with the decision of the superintendent of education, the complainant may appeal to the executive director for the final decision.

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 July 1, 2003.

TRD-200304033
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 424-6301

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CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.3

The Texas Youth Commission (TYC) proposes an amendment to §95.3, concerning Rules of Conduct. The amendment to the section will clarify the category I rule violation title in subsection (f)(14) to be consistent with the terminology of controlled substance and intoxicant.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will ensure if youth is found using or possessing any controlled substance or intoxicant consequences will occur. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to permit the youth under jurisdiction liberty under supervision, order the youth's confinement under conditions it believes best designed for the youth's welfare and interest of the public, order reconfinement or renewed release, revoke or modify any order of the commission.

The proposed rule affects the Human Resource Code, §61.034.

§95.3. Rules of Conduct.

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

(f) Category I Rule Violations. A category I rule violation is an act of misconduct that constitutes a crime, involves harm to the youth or others, or threatens facility safety, security, and order. These are the baseline rules which, when crossed, result in the most severe consequences. These consequences include referral to criminal court, disciplinary movement, reclassification, multi-phase demotion, and/or assignment of a disciplinary minimum length of stay. Category I rule violations are as follows:

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

(14) Possession of Controlled Substance/Intoxicant [~~Possession or Use of Substance~~]--youth is found to be using or possessing any controlled substance or intoxicant. This also includes tobacco for youth in a residential placement.

(15)-(26) (No change.)

(g)-(h) (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 July 1, 2003.

TRD-200304030
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 424-6301

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PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS
SUBCHAPTER C. SUBMISSION AND PRESENTATION OF INFORMATION AND REPRESENTATION OF OFFENDERS

37 TAC §141.60, §141.61

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.60 and §141.61, concerning the time period for submitting information to the parole panel in support of an offender's release. The amendments are proposed to incorporate new language under Chapter 141, General Provisions. The purpose of the amendments is to set out guidelines for attorneys who represent inmates before the Board.

Gerald Garrett, Chair of the Board, 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 sections.

Mr. Garrett also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be a streamlining of the review process so as to facilitate the system of representation before the Board by attorneys who represent inmates. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street,

Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of the amendments.

The amendments are proposed under §508.036 and §508.044, Government Code, which provide the Policy Board with the authority to promulgate rules relating to the board's decision-making processes; and under §508.082, which requires the Policy Board to adopt rules relating to the submission and presentation of information and arguments to the board in behalf of an inmate, as well as the time, place, and manner of representation.

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

§141.60. Submission and Presentation of Information.

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

(c) In the event that an offender's case is in the review period, copies of all information and arguments in support of an offender's release may be submitted to members of the parole panel designated to consider the case. For this purpose, review period shall mean a period greater than four [~~two~~] months but less than six months prior to the month of the next scheduled review.

§141.61. Representation of an Offender.

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

(d) For this purpose, the review period shall mean a period greater than four [~~two~~] months but less than six months prior to the month of the next scheduled review.

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 July 3, 2003.

TRD-200304097
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Proposed date of adoption: August 28, 2003
For further information, please call: (512) 406-5484

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER C. TAX PROVISIONS

The Texas Workforce Commission (Commission) proposes the repeal of 40 T.A.C. §815.132 titled The Rate and Collection of the Additional Tax and new §815.132. Computation of Unemployment Obligation Assessment for Chapter 815. Unemployment Insurance, Subchapter C. Tax Provisions, (40 T.A.C. §815.132) concerning the bonding provisions as authorized under Subchapter F. Issuance of Financial Obligations for Unemployment Compensation Fund (compensation fund), Texas Labor Code Chapter 203, as added by Article 6 of Senate Bill 280, 78th Legislature, Regular Session, 2003.

The purpose of the rule is to set forth the provisions applicable to the computation of unemployment obligation assessment provisions added to the Texas Labor Code. The Legislature has made the following findings. It is an essential governmental function to maintain funds in an amount sufficient to pay unemployment benefits when due. At the time of the enactment of Article 6 of Senate Bill 280, 78th Legislature, Regular Session, 2003 borrowing from the federal government was the only option available to obtain sufficient funds to pay benefits when the compensation fund is depleted.

The Legislature also determined that alternative methods of replenishing the compensation fund may reduce the costs of providing unemployment benefits and employers' cost of doing business in the state; and that funds representing revenues received from the unemployment obligation assessment authorized under Article 6 of Senate Bill 280, 78th Legislature, Regular Session, 2003 and any income from the investment of those funds are not state property. The purpose of Article 6 of Senate Bill 280, 78th Legislature, Regular Session, 2003 (SB280) is to provide appropriate methods through which the state may continue the unemployment compensation program at the lowest possible cost to the state and employers in the state.

Insolvency of the compensation fund has traditionally been addressed by borrowing from the Federal trust fund using a line of credit with the U.S. Department of the Treasurer. The expense associated with this type of borrowing may be more costly than with various commercial borrowing options. SB280 provides the agency with options for borrowing funds during periods of compensation fund insolvency. The borrowing process provides that the Agency must collect the unemployment obligation assessment to pay for the advanced interest and bond obligations when due. To facilitate this process, new rule §815.132 sets out the formulas for determining the unemployment obligation assessment rate.

Texas Labor Code §203.105, V.T.C.A. provides that the Commission shall collect an unemployment obligation assessment, also referred to as assessment, from each employer eligible for an experience tax rate. An assessment rate will be calculated if, after January 1 of a year, an interest payment on an advance from the federal trust fund will be due and the estimated amount necessary to make the interest payment is not available in the obligation trust fund or is not otherwise available. In addition, an assessment will be collected if bond obligations are due and the amount necessary to pay in full those obligations, including bond administrative expenses, is not available in the obligation trust fund or is not otherwise available.

When the Commission determines that an assessment must be collected after January 1 of a year, the Commission will compute the assessment rate using the formulas set out in the rule before November 20th of the year prior to the year of the assessment. This rate will be published in the *Texas Register*.

These assessments will be collected quarterly in the same manner as provided in §815.109 of this chapter (relating to Payment of Contributions and Reimbursements). The formulas in the rule will insure that the Commission will collect adequate revenue to satisfy bond obligations and advance interest payments when due.

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

There are no estimated losses or increases in revenue to the state or local governments as a result of enforcing or administering the rule, except that the funds raised by the assessment will be used to pay advanced interest or bond obligations;

There are no foreseeable implications relating to costs or revenue to the state or local governments as a result of enforcing or administering the rule, except that the funds raised by the assessment will be used to pay advanced interest or bond obligations, including administrative costs; and

There are no anticipated economic costs to persons required to comply with the rule.

Mr. Townsend, Chief Financial Officer, has determined that there is no adverse impact on small businesses as a result of enforcing or administering this rule required by statute.

LaSha Lenzy, Director, Unemployment Insurance and Regulation Division, has determined that for each year of the first five years that the rule will be in effect the public benefit anticipated as a result of the adoption of the proposed rule will be the timely payment of interest payments on funds borrowed from the Federal Trust Fund and the bond obligations.

James Barnes, Director, Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of this proposed rule.

Comments on the proposed section may be submitted to John Moore, General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778; Fax Number 512-463-2220; or e-mailed to john.moore@twc.state.tx.us. Comments must be received by the Agency no later than thirty (30) days from the date this proposal is published in the *Texas Register*.

40 TAC §815.132

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

The repeal is proposed under Texas Labor Code §§203.105, and 301.061, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4.

§815.132. The Rate and Collection of the Additional Tax.

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 July 2, 2003.

TRD-200304084

John Moore
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 463-2573

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40 TAC §815.132

The new rule is proposed under Texas Labor Code §§203.105, and 301.061, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rule affects Texas Labor Code, Title 4.

§815.132. Computation of Unemployment Obligation Assessment.

(a) Texas Labor Code §203.105, V.T.C.A. provides that the Commission shall collect an unemployment obligation assessment, also referred to as an assessment, from each employer eligible for an experience tax rate if, after January 1 of a year, an interest payment on an advance from the federal trust fund will be due and the estimated amount necessary to make the interest payment is not available in the obligation trust fund or available otherwise; or bond obligations are due and the amount necessary to pay in full those obligations, including bond administrative expenses, is not available in the obligation trust fund or available otherwise.

(b) When the Commission determines that an assessment as referred to in the paragraph above will be due after January 1 of a year, the Commission shall compute the assessment rate using the formulas set out below in this section, before November 20th of the year prior to the year of the assessment. This rate shall be published in the *Texas Register*.

(c) The calculation for the unemployment obligation assessment rate is the sum of subsection (d) and (e) of this section.

(d) The rate for the portion of the assessment that is to be used to pay an interest payment on federal loans shall not exceed two tenths of one percent. The rate shall be calculated by dividing two hundred percent (200%) of the additional amount estimated to be needed to pay interest due, as determined by the Agency, by the estimated total taxable wages for the 1st and 2nd quarters of the year in which the interest is due, and rounded up to the next hundredth.

(e) The rate for the portion of the assessment that is to be used to pay a bond obligation is a percentage of the product of the unemployment obligation assessment ratio and the sum of the employer's general tax rate, the replenishment tax rate and the deficit tax rate. The percentage, to be determined by Commission resolution, shall not exceed 200%.

(1) The Unemployment Obligation Assessment Ratio is computed by:

(A) Dividing the numerator computed under paragraph (2) of this subsection by the denominator described in by paragraph (3) of this subsection; and

(B) Rounding that result up to the next hundredth.

(2) The numerator is computed by adding the total principal, interest and administrative expenses determined to be due during the next year. However, if the Commission determines that there will be excess funds available in the obligation trust fund that are not anticipated to be expended for the purposes set out in Texas Labor Code,

§203.258 (2-4), the numerator may be reduced by the amount of that excess.

(3) The denominator is the amount of contributions due under the general tax rate and the replenishment tax rate for the four calendar quarters ending the preceding June 30 from employers entitled to an experience rate on the tax rate computation date.

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 July 2, 2003.

TRD-200304083
John Moore
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: August 17, 2003
For further information, please call: (512) 463-2573

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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 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 79. PROVISIONAL LICENSURE

22 TAC §79.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Board of Chiropractic Examiners has been automatically withdrawn. The amended section as proposed appeared in the December 27, 2002 issue of the *Texas Register* (27 TexReg 12153).

Filed with the Office of the Secretary of State on July 8, 2003.

TRD-200304122

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PART 4. TEXAS COSMETOLOGY COMMISSION

CHAPTER 89. GENERAL RULES AND REGULATIONS

22 TAC §89.20

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Cosmetology Commission has been automatically withdrawn. The amended section as proposed appeared in the January 3, 2003 issue of the *Texas Register* (28 TexReg 19).

Filed with the Office of the Secretary of State on July 8, 2003.

TRD-200304123

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22 TAC §89.47

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Cosmetology Commission has been automatically withdrawn. The amended section as proposed appeared in the January 3, 2003 issue of the *Texas Register* (28 TexReg 24).

Filed with the Office of the Secretary of State on July 8, 2003.

TRD-200304124

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER R. DIABETES

28 TAC §21.2602, §21.2604

The Texas Department of Insurance has withdrawn from consideration the proposed amendments to §21.2602 and §21.2604 which appeared in the January 10, 2003, issue of the *Texas Register* (28 TexReg 430).

Filed with the Office of the Secretary of State on July 7, 2003.

TRD-200304106
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 7, 2003
For further information, please call: (512) 463-6327

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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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Health and Human Services Commission (HHSC) adopts an amendment to §355.8401, concerning case management reimbursement methodology, and the repeal of §355.8481, concerning EPSDT: Texas Health Steps medical case management, in its Medicaid Reimbursement Rates chapter, without changes to the proposed text as published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2829). The text of the amendment and repeal will not be republished. HHSC also has re-titled Division 21 from Case Management for High-Risk Pregnant Women and High-Risk Infants to Case Management for Children and Pregnant Women. The amendment and repeal are necessary to reflect the consolidation by the Texas Department of Health of two existing case management programs, Targeted Case Management Services for Pregnant Women and Infants and Texas Health Steps Medical Case Management, to form one program, Case Management for Children and Pregnant Women. Section 355.8401 is amended to reflect the name of the new program and to correct organizational references. Section 355.8481 is repealed, as it is no longer needed. There are no changes to the methodology or rates used to reimburse providers for covered case management services.

No comments were received during the public comment period.

DIVISION 21. CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

1 TAC §355.8401

The amendment is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 July 7, 2003.

TRD-200304098
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2003
Proposal publication date: April 4, 2003
For further information, please call: (512) 424-6576

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DIVISION 25. EPSDT: TEXAS HEALTHSTEPS MEDICAL CASE MANAGEMENT

1 TAC §355.8481

The repeal is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 July 7, 2003.

TRD-200304099
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2003
Proposal publication date: April 4, 2003
For further information, please call: (512) 424-6576

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CHAPTER 371. MEDICAID FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER G. LEGAL ACTION RELATING TO PROVIDERS OF MEDICAL ASSISTANCE

DIVISION 1. FRAUD OR ABUSE INVOLVING MEDICAL PROVIDERS

1 TAC §371.1627

The Health and Human Services Commission (HHSC) adopts an amendment to §371.1627, concerning Request for Reinstatement, without changes to the proposed text as published in the March 7, 2003, issue of the *Texas Register* (28 TexReg 2015), and therefore will not be republished.

The adopted amendments to §371.1627 add clarification to more accurately reflect the essential components as well as the functional and operational elements of the program for excluded medical providers requesting reinstatement. The adopted amendments more clearly state that the provider requesting reinstatement will reimburse all outstanding receivables prior to enrollment or re-enrollment.

There were no comments received by HHSC concerning the proposed amendments.

The amendment is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and the Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance Title XIX Medicaid program in Texas.

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 July 7, 2003.

TRD-200304100
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: July 27, 2003
Proposal publication date: March 7, 2003
For further information, please call: (512) 424-6576

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION DIVISION

SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

4 TAC §§17.302 - 17.304, 17.306, 17.308

The Texas Department of Agriculture (the department) adopts amendments to §§17.302 - 17.304, 17.306 and 17.308, concerning the administration of the department's GO TEXAN Partner Program (GOTEPP), a matching grant program. Sections 17.303, 17.304, and 17.306 are adopted with changes to the proposal published in the May 16, 2003 issue of the *Texas Register* (28 TexReg 3883). Section 17.302 and §17.308 are adopted without changes and will not be republished.

The amendments are adopted to clarify and update the sections, to establish a requirement that retailers or distributors applying to GOTEPP document a direct benefit to GO TEXAN members, to establish maximum grant award amounts and to establish a maximum number of projects that may be funded per biennium.

No public comments were received on the proposal.

The amendment to §17.302, as adopted, adds a representative of agricultural producers to the GOTEPP advisory board, provides that the board shall meet at least biannually and provides that a majority of the total board membership shall constitute a quorum.

The amendment to §17.303, as adopted, provides additional eligibility requirements for retailers and distributors applying to the program, in order for the applicant to document a proposed project's direct benefit to GO TEXAN members. The department has made changes to the proposal in order to clarify this section, to distinguish between co-applicant producers and originating retailer/distributor applicants.

The amendment to §17.304, as adopted, adds a requirement to disclose names of owners having 10% or more ownership interest in an applicant business entity. The department has made changes to the proposal for purposes of clarification.

The amendment to §17.306, as adopted, updates the address of the department's Marketing and Promotion Division, clarifies that at least a majority of a quorum of the board must approve or deny each project request, and adds new subsection (h) establishing maximum grant awards and a maximum number of projects that may be funded per biennium. The department has made changes to the proposal to clarify this section, to distinguish between a grant award, which does not include matching funds, and the total project amount, which includes grant and matching funds.

The amendment to §17.308, as adopted, establishes a minimum amount of $10 that will be returned to a successful applicant as a refund.

The amendments are adopted under the Texas Agriculture Code, §46.012, which authorizes the department to adopt rules to administer the GO TEXAN Partner Program.

§17.303. Eligibility.

(a) An eligible applicant must be:

(1) a state or regional organization or board that promotes the marketing and sale of Texas agricultural products and does not stand to profit directly from specific sales of agricultural commodities;

(2) a cooperative organization, as defined by §17.301 of this title (relating to Definitions);

(3) a state agency or board that promotes the marketing and sale of agricultural commodities;

(4) a national organization or board that represents Texas producers and promotes the marketing and sale of Texas agricultural products;

(5) a small business, as defined by §17.301 of this title (relating to Definitions); or

(6) any other entity or business, other than a business meeting the definition of small business, that promotes the marketing and sale of Texas agricultural products. If a retailer or distributor, the applicant must demonstrate a direct benefit to GO TEXAN members in the manner provided in subsection (b) of this section. For purposes of this section, the department shall have the sole discretion to determine whether an entity meets program eligibility requirements.

(b) A retailer or distributor who applies under the program, must meet the requirements of paragraph (1) or (2) of this subsection, in order to document a direct benefit to GO TEXAN members:

(1) Applying with GO TEXAN members.

(A) The retailer/distributor must apply jointly with GO TEXAN members, other than associate or other retail members, in order to submit a GOTEPP project proposal.

(B) All participating applicants must be GO TEXAN members.

(i) GOTEPP project proposals with a total project amount from $0.00 to $5,000.00 require a minimum of one co-applicant/producer in addition to the originating retailer or distributor applicant.

(ii) GOTEPP project proposals with a total project amount from $5,001.00 to $30,000.00 require a minimum of three co-applicants/producers in addition to the originating retailer or distributor applicant.

(iii) GOTEPP project proposals with a total project amount from $30,001.00 to $99,999.00 require a minimum of seven co-applicants/producers in addition to the originating retailer or distributor applicant.

(iv) GOTEPP project proposals with a total project amount over $100,000.00 require a minimum of 10 or more co-applicants/producers, in addition to the originating retailer or distributor applicant.

(C) All participating co-applicants and originating applicant retailers/distributors must submit all required GOTEPP documentation.

(D) A retailer/distributor is permitted to utilize the same additional applicants no more than twice in a biennium; or

(2) Demonstration of GO TEXAN members/vendors. Retailer/distributors can apply without applying with other GO TEXAN members if 70% of their members and/or vendors are GO TEXAN members, other than associate or retail members.

(c) All applicants will be required to provide documentation verifying the stated information, in addition, they will be required to report sales information.

§17.304. Requirements for Participation.

To be eligible for participation in this program utilizing matching state funds under this subchapter, an applicant must:

(1) be a member in good standing of the GO TEXAN program;

(2) be an eligible applicant under this subchapter;

(3) prepare and submit a project request in accordance with this subchapter;

(4) submit a notarized affidavit on a form provided by the department certifying and disclosing the following:

(A) that applicant is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code and will notify the department of status change; and

(B) that applicant is not currently delinquent in the payment of child support and will notify the department of status change; and

(C) disclosing any existing or potential conflict of interest relative to the evaluation and implementation of the project plan by the board and acknowledge that applicant will notify the department of status change; and

(D) disclosing names of owners having 10% or more ownership interest in a business entity; and

(E) that applicant meets all program requirements to apply for matching funds; and

(5) submit to the department, within ten business days after receiving a request for funds from the department, cash matching funds as specified in the grant performance contract and in accordance with this subchapter.

§17.306. Filing Requirements and Consideration of Project Requests.

(a) Project request. An applicant must submit a project request, completed in accordance with this subchapter, to the department's Marketing and Promotion Division, 1700 N. Congress Ave., 11th Floor, Austin, Texas 78711.

(b) Department review. Department staff will review the project request for completeness and examine the benefits of the project for Texas agriculture and economic growth in the state.

(c) Department staff determination of ineligibility. Department staff may determine that project requests are ineligible for any of the following reasons:

(1) department staff determines that the project request is not complete, in accordance with this subchapter; or

(2) department staff determines that applicant provided false information to the department.

(d) Notification. If a determination of ineligibility is made by staff, the department will notify the applicant in writing, identifying the reasons for ineligibility. Eligible applicants will be notified in writing and advised of the next scheduled board meeting.

(e) Board review of eligible applicants. The board shall approve or deny each project request by at least a majority of the quorum of the board.

(f) Deposit of matching funds. Matching funds for board approved and contracted projects shall be deposited with the department within ten business days after receiving a request for funds from the department. For purposes of this subchapter, "matching" means a dollar-per-dollar amount.

(g) In-kind contributions.

(1) The Department may accept in-kind contributions with a documented, clear monetary value from program applicants to satisfy the matching funds requirement. In-kind contributions may be contributed by the applicant or a third party.

(2) For purposes of this subchapter, the board shall have sole discretion to approve the use of in-kind contributions, in an amount not to exceed 10% of the total approved and contracted project amount, to satisfy the matching funds requirement. Travel expenses approved by the board are deemed to have board approval for treatment solely as in-kind contributions unless specifically stated otherwise.

(3) The successful applicant, or grantee, must provide satisfactory documentation to the department of the actual expenditure or utilization of any approved in-kind contributions by the grantee prior to the release or expenditure by the department of the corresponding GO TEXAN Program matching grant funds. The documentation provided by the grantee must establish the clear monetary value of the in-kind contribution.

(4) Should the grantee fail to provide satisfactory documentation of the in-kind contribution, or should the actual monetary value of the in-kind contribution as established by the documentation

fail to equal the projected or anticipated value, the corresponding GO TEXAN Program matching grant funds will be forfeited by the grantee and will revert back to the general GO TEXAN Partner Program Account.

(5) In the event the actual value of the in-kind contribution exceeds the projected or anticipated value, the GO TEXAN Program matching grant funds shall not be increased, but the excess shall be deemed outside the GO TEXAN program and shall be the sole responsibility of the grantee.

(h) Maximum grant awards; number of projects.

(1) A maximum grant award of $75,000 (not including matching funds) per project may be approved by the board, for a maximum total project amount of $150,000 (including matching funds).

(2) A maximum grant award of $75,000 (not including matching funds, with a total project amount of $150,000, including matching funds) per applicant, per biennium, may be approved by the board.

(3) No more than two projects per biennium may be approved for any one applicant.

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 July 1, 2003.

TRD-200304041
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: July 21, 2003
Proposal publication date: May 16, 2003
For further information, please call: (512) 463-4075

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CHAPTER 21. CITRUS
SUBCHAPTER A. CITRUS QUARANTINES

4 TAC §21.8, §21.9

The Texas Department of Agriculture (the department) adopts new §21.8 and §21.9, concerning citrus quarantines, without changes to the proposal published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3006). New §21.8 is adopted to establish labeling requirements. Labeling will indicate whether the citrus nursery plants originated from Texas. Plants originating outside Texas are quarantined articles, not allowed in Texas, and shall be destroyed. Texas citrus nursery plants produced outside the Texas citrus zone also must undergo severe time-consuming testing to allow entry into the citrus zone. New §21.9 is adopted to establish specific record keeping requirements. Recordkeeping will facilitate a trace back of plants if a damaging disease is detected and a group of plants originating from a particular source needs to be disposed of to manage/eradicate the disease.

A total of 8 comments, all in favor of the amendments and new sections, were received by the deadline for submitting comments. Commentators identified themselves as nurserymen, citrus enthusiasts/hobbyists, university researchers, and some commented anonymously. One commentator asked to exempt citrus grown on Poncirus trifoliata, commonly known as trifoliate rootstock, from the labeling and record-keeping requirements. Another commentator asked to exclude trifoliate hybrids, Carrizo, Swingle and C-35; Cleopatra mandarin; and Volkamer lemon from the same requirements. The commentators maintained that Tristeza virus does not affect or kill citrus trees grown on these rootstocks. Further they claimed that the citrus budwood certification program was developed to protect the Texas citrus industry mainly from the Tristeza virus. They ascertained that citrus trees grown using trifoliate rootstock could not be grown in South Texas, where the state's commercial citrus is cultivated, because of the soil and water incompatibility. They claimed that a nurseryman would never sell trifoliate citrus to South Texas markets because the trees would die if planted in that area.

The department believes that citrus trees grown on the aforementioned trifoliate rootstock and trifoliate hybrids should not be exempt from the labeling and record-keeping requirements. The budwood certification program protects the state's citrus not just from Tristeza virus but also from a number of other virus and virus-like diseases, including tatterleaf and psorosis, which can cause injury to trees grown on trifoliate and trifoliate hybrid rootstocks. In the absence of rootstock sprouts, which usually is the case, it is impossible to distinguish the type of rootstock used in budding a citrus tree. Furthermore, a homeowner from the commercial citrus-producing area of Texas, primarily Cameron, Hidalgo and Willacy Counties, could purchase a tree, for example from Houston, and potentially infect citrus trees in these counties with diseases the budwood program intends to prevent. Because Ponicerus and its hybrids are asymptomatic carriers of Tristeza, exempting them from the labeling and record-keeping requirements poses a great risk to the entire Texas citrus industry. In addition, the stem-pitting form of Tristeza affects all rootstocks, including Poncirus. The department also believes the rule amendments will protect not only commercial citrus, but also citrus grown by homeowners and citrus enthusiasts/hobbyists.

One commentator was concerned that due to the current State of Texas budget shortfall the department may not have sufficient funds for enforcement whereas other commentator wanted to legally pursue out-of-state businesses that ship citrus trees into Texas. The department can pursue out-of- state businesses, but shortage of funds would severely limit such enforcement.

New §21.8 defines the labeling requirements necessary to track and identify regulated articles; provides for an alternative to the labeling requirement; specifies administrative penalties that apply for non-compliance; and specifies requirements for record keeping to ensure that regulated articles can be easily identified as produced in Texas. New §21.9 specifies requirements for record keeping; provisions for a rebuttable presumption; procedures for rebutting a presumption; and provisions for seizure and destruction of regulated articles.

New §21.8 and §21.9 are adopted in accordance with the Texas Agriculture Code (the Code), §71.009, which provides the department with the authority to adopt rules as necessary for the seizure, treatment, and destruction of plants, plant products, and other substances for the effective enforcement and administration of Chapter 71; and §73.002 which provides for the state to use all constitutional measures to protect the citrus industry from destruction by pests and diseases.

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 July 7, 2003.

TRD-200304103
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: January 1, 2004
Proposal publication date: April 11, 2003
For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 7. STATE PRESERVATION BOARD

CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §111.31

The State Preservation Board adopts new §111.31, concerning Historically Underutilized Business Program, without changes to the proposed text as published in the March 7, 2003, issue of the *Texas Register* (28 TexReg 2016) and will not be republished.

The section is adopted in order to be in compliance with the Government Code, §2161.003 which requires state agencies to adopt the Texas Building and Procurement Commission's HUB Program rules as part of the agencies' administrative code.

No comments were received regarding adoption of the rule.

The new section is adopted under Texas Government Code, Chapter 443.

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 July 2, 2003.

TRD-200304049
Charlynn Doering
Acting Interim Director
State Preservation Board
Effective date: July 22, 2003
Proposal publication date: March 7, 2003
For further information, please call: (512) 463-5495

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER R. DIABETES

28 TAC §21.2601, §21.2606

The Commissioner of Insurance adopts amendments to §21.2601 and §21.2606 concerning minimum standards for benefits provided to enrollees with diabetes in health benefit plans and coverage under health benefit plans for equipment and supplies and self-management training associated with the treatment of diabetes. The amendments to §21.2601 are adopted with a change to the proposed text as published in the January 10, 2003, issue of the *Texas Register* (28 TexReg 430). The amendments to §21.2606 are adopted without changes and will not be republished. The amendments to §21.2602 and §21.2604 that were proposed in the January 10, 2003, issue of the *Texas Register* (28 TexReg 430) will not be adopted at this time. That proposal for amendments to those sections is being withdrawn. A separate new proposal for amendments to §21.2602 and §21.2604 is being published simultaneously with this notice of adoption of the amendments to §21.2601 and §21.2606.

The amendments are necessary to implement legislation enacted by the 76th Legislature in Senate Bill 982, amending Article 21.53G, Coverage for Supplies and Services Associated with Treatment of Diabetes.

The adopted amendments to §21.2601 remove unnecessary language and add a definition for nutrition counseling. The adopted amendments to §21.2606 delete references to §21.2607, the repeal of which is being simultaneously adopted elsewhere in this issue of the *Texas Register*. The adopted amendments to §21.2606 also identify the components of diabetes self-management training and those individuals or entities who may provide diabetes self-management training and the required training for those individuals. The adoption also includes grammatical and other changes to conform language to *Texas Register* style guidelines.

Section 21.2604: A commenter believes that requiring a risk pool created pursuant to Local Government Code Chapter 172 to provide coverage for diabetes equipment and supplies and for diabetes self-management training is beyond the department's authority. The commenter notes that Chapter 172 risk pools are generally exempt from Texas Insurance Code provisions but acknowledges that art. 21.53D contains language that essentially nullifies the Chapter 172 exemption. The commenter contends that the exemption applies to mandated benefits under article 21.53D, but not to coverage for supplies and services associated with diabetes under article 21.53G. The standards set forth by the commissioner pursuant to art. 21.53D, the commenter argues, "may not include requirements regarding coverage for supplies and services associated with the treatment of diabetes" because the legislature enacted a separate statute, article 21.53G, that applies to those supplies and services. The commenter requests that the rule be revised to clarify that Chapter 172 risk pools are subject only to the requirements of art. 21.53D and not to art. 21.53G.

Agency Response: While the department disagrees with the reasoning suggested by this commenter, the department is withdrawing the proposal to amend this section and publishing contemporaneously with this adoption notice a revised proposal to amend this subchapter. That proposal addresses the applicability of this subchapter to Chapter 172 risk pools, and the commenter may wish to submit comments that address that proposal during the comment period.

Section 21.2601(7): A commenter requests that the department amend the definition of "health benefit plan" to exclude Tricare Supplement policies, in the same way that Medicare supplement policies are excluded. These types of policies cover only such things as deductibles and copayments and are not health benefit plans.

Agency Response: The department agrees and has specifically excluded Tricare Supplement policies from the definition of "health benefit plan."

For, with changes: Government Personnel Mutual Life Insurance Company and TML Intergovernmental Employee Benefits Pool (TML IEGP).

The amendments are adopted under the Insurance Code Article 21.53G, 21.53D and §36.001. Article 21.53G determines and defines the component or components of self-management training and provides that the commissioner shall adopt rules as necessary for the implementation of the article. Article 21.53D, §3 provides that the commissioner shall by rule adopt minimum standards for benefits to enrollees with diabetes and that each health care benefit plan shall provide benefits for the care required by the minimum standards. Section 36.001 provides that the Commissioner of Insurance may adopt rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance.

§21.2601. Definitions.

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

(1) Basic benefit--Health care service or coverage, which is included in the evidence of coverage, policy, or certificate, without additional premium.

(2) Caretaker--A family member or significant other responsible for ensuring that an insured not able to manage his or her illness (due to age or infirmity) is properly managed, including overseeing diet, administration of medications, and use of equipment and supplies.

(3) Diabetes--Diabetes mellitus. A chronic disorder of glucose metabolism that can be characterized by an elevated blood glucose level. The terms diabetes and diabetes mellitus are synonymous.

(4) Diabetes equipment--The term "diabetes equipment" includes items defined in Insurance Code Article 21.53 G §§1(1) and 5, and §21.2605 of this title (relating to Diabetes Equipment and Supplies).

(5) Diabetes supplies--The term "diabetes supplies" includes items defined in Insurance Code Article 21.53 G §§1(2) and 5, and §21.2605 of this title.

(6) Diabetes self-management training--Instruction enabling an insured and/or his or her caretaker to understand the care and management of diabetes, including nutritional counseling and proper use of diabetes equipment and supplies.

(7) Health benefit plan--A health benefit plan, for purposes of this subchapter, means:

(A) a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(i) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(I) an insurance company;

(II) a group hospital service corporation operating under Chapter 20 of the Texas Insurance Code;

(III) a fraternal benefit society operating under Chapter 10 of the Texas Insurance Code;

(IV) a stipulated premium insurance company operating under Chapter 22 of the Insurance Code;

(V) a reciprocal exchange operating under Chapter 19 of the Texas Insurance Code; or

(VI) a health maintenance organization (HMO) operating under the Texas Health Maintenance Organization Act (Chapter 20A, Texas Insurance Code);

(ii) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 USC §1002), a health benefit plan that is offered by a multiple employer welfare arrangement as defined by §3, Employee Retirement Income Security Act of 1974 (29 USC §1002) that holds a certificate of authority under Insurance Code Article 3.95-2; or

(iii) notwithstanding §172.014, Local Government Code, or any other law, health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.

(B) A plan offered by an approved nonprofit health corporation that is certified under §5.01(a), Medical Practice Act, and that holds a certificate of authority issued by the commissioner under Insurance Code Article 21.52F.

(C) A health benefit plan is not:

(i) a plan that provides coverage:

(I) only for a specified disease or other limited benefit;

(II) only for accidental death or dismemberment;

(III) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(IV) as a supplement to liability insurance;

(V) for credit insurance;

(VI) dental or vision care only; or

(VII) hospital confinement indemnity coverage only.

(ii) a small employer plan written under Chapter 26 of the Insurance Code;

(iii) a Medicare supplemental policy as defined by §1882(g)(1), Social Security Act (42 USC §1395 ss);

(iv) a plan that is designed to supplement benefits provided under a program established by the Department of Defense pursuant to Chapter 55 of Title 10, United States Code (10 USC Section 1071 et seq.);

(v) workers' compensation insurance coverage;

(vi) medical payment insurance issued as part of a motor vehicle insurance policy; or

(vii) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by subparagraph (A) of this paragraph.

(8) Insured--A person enrolled in a health benefit plan who has been diagnosed with:

(A) insulin dependent or noninsulin dependent diabetes; or

(B) elevated blood glucose levels induced by pregnancy or another medical condition associated with elevated glucose levels.

(9) Nutrition counseling--As defined in §701.002 of the Texas Occupations Code.

(10) Physician--A Doctor of Medicine or a Doctor of Osteopathy licensed by the Texas State Board of Medical Examiners.

(11) Practitioner--An Advanced Practice Nurse, Doctor of Dentistry, Physician Assistant, Doctor of Podiatry, or other licensed person with prescriptive authority.

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 July 7, 2003.

TRD-200304107
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 27, 2003
Proposal publication date: January 10, 2003
For further information, please call: (512) 463-6327

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28 TAC §21.2607

The Commissioner of Insurance adopts the repeal of §21.2607, concerning minimum standards for benefits provided to enrollees with diabetes in health benefit plans and coverage under health benefit plans for equipment and supplies and self-management training associated with the treatment of diabetes. The repeal is adopted without changes to the proposed text as published in the January 10, 2003, issue of the *Texas Register* (28 TexReg 434) and will not be republished.

The repeal is necessary to remove language for which the statutory authority has expired.

The repeal of the section eliminates language which is no longer necessary. Contemporaneously with this repeal, adopted amendments to §21.2601 and §21.2606 are published elsewhere in this issue of the *Texas Register*.

No comments were received.

The repeal is adopted under the Insurance Code Articles 21.53D and §36.001. Article 21.53D §3 provides that the commissioner shall by rule adopt minimum standards for benefits to enrollees with diabetes. Section 36.001 provides that the Commissioner of Insurance may adopt rules necessary and appropriate to execute the powers and duties of the Texas Department of Insurance.

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 July 7, 2003.

TRD-200304108
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 27, 2003
Proposal publication date: January 10, 2003
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER B. COMPENSATION

34 TAC §25.21

The Teacher Retirement System of Texas (TRS) adopts amendments to §25.21, concerning compensation subject to deposit and credit without changes to the text as published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4074) and therefore will not be republished.

The amendments clarify the types of monetary compensation that are creditable and subject to deposit as well as the types of payments that are excluded from eligible compensation for TRS purposes. The amendments to §25.21 expressly add to the list of payments that are excluded from annual compensation for TRS purposes certain payments that are paid as an incentive for early retirement or for terminating employment. In addition, the amendments clarify that TRS may rely upon employer certifications in determining creditable compensation or may conduct an investigation to determine if ineligible compensation has been reported.

TRS received comments on the proposal from Mr. Lonnie Hollingsworth, representing the Texas Classroom Teachers Association at the TRS Board of Trustees Policy Committee meeting on June 26, 2003 and at the Board meeting on June 27, 2003. He requested modification to the proposed language of subsection (d)(12), which would permit TRS to presume that increased compensation paid in the final year of employment prior to retirement is payment for termination employment if it exceeds increases approved by the employer for all employees or classes of employees. He noted that employers should be permitted to award increased compensation to individual employees without a presumption that it is for terminating employment when it in fact may be because of performance, skills, or other attributes of the employee. He expressed concern that this rule would operate to the detriment of the rank and file employees who receive increases in the year preceding retirement. TRS disagrees with the comment because the presumption would permit an employee or an employer to provide additional information that would show the actual reason for the increase. By permitting TRS to use a presumption about the last-year increase, the subsection recognizes that often there is ample information to reliably show that a last-year increase in compensation is for the purpose of encouraging termination and retirement. Large last-year increases result in unexpected actuarial costs to the retirement system in the form of increased benefits payable for the life of a retiree, without adequate contributions over the career of the employee to support such benefit levels. TRS finds that the presumption will promote efficient administration of the provision while preserving an employee's right to provide additional relevant information.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board. Other statutes that

support adoption or that are affected by the proposed changes to §25.21 include Gov't Code, Chapter 822, Subchapter B, §822.201, Gov't Code, Chapter 824, Subchapter C, §824.203, Gov't Code, Chapter 825, Subchapter E, §825.403 and Subchapter F, §825.505.

No other codes are affected.

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 July 2, 2003.

TRD-200304085
Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Effective date: July 22, 2003
Proposal publication date: May 23, 2003
For further information, please call: (512) 542-6115

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PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

34 TAC §101.6

The Texas County and District Retirement System adopts amended §101.6, concerning the time for filing retirement applications. This amended rule is adopted without changes to the proposed text as published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4075).

Under the amended rule, limited relief to a member will be allowed when a properly completed application for service retirement is not timely received by the system and such failure is not the fault of the member.

The amended rule provides a mechanism to mitigate such harsh results by accepting a late filed service retirement application as timely filed in those instances where the late filing is shown to have not been due to the member's neglect, indifference or lack of diligence. The maximum relief available under this adopted rule cannot exceed the equivalent of two monthly annuity payments.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

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

Filed with the Office of the Secretary of State on July 7, 2003.

TRD-200304104
Tom Harrison
Director, Legal and Governmental Relations
Texas County and District Retirement System
Effective date: July 27, 2003
Proposal publication date: May 23, 2003
For further information, please call: (512) 637-3230

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS

SUBCHAPTER Q. DEPRIVATION

40 TAC §3.1701

The Texas Department of Human Services (DHS) adopts the repeal of §3.1701, without changes to the proposal published in the May 9, 2003, issue of the *Texas Register* (28 TexReg 3807).

Justification for the repeal is to delete an obsolete rule. As a result of implementation of House Bill 1863, enacted by the 74th Texas Legislature in 1995, DHS certifies Temporary Assistance for Needy Families (TANF) households who meet TANF income and resource requirements regardless of the reason the children are deprived. The rule in Subchapter Q is, therefore, obsolete. The repeal is adopted as part of a larger effort to review and update DHS rules.

DHS received no comments regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The repeal implements the Human Resources Code, §§31.001 - 31.081.

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 July 3, 2003.

TRD-200304095
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 23, 2003
Proposal publication date: May 9, 2003
For further information, please call: (512) 438-3734

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 811. CHOICES

The Texas Workforce Commission (Commission) adopts amendments to Chapter 811, concerning Choices, Subchapter A, §811.2 and §811.3, concerning General Provisions; Subchapter B, §§811.11, 811.12, and 811.14, concerning Access

to Choices Services; Subchapter C, §§811.22, 811.23, 811.26, concerning Choices Services; Subchapter E, §811.61, concerning Support Services and Other Initiatives. The Commission also adopts new Chapter 811, Subchapter C, §811.30, concerning Special Provisions Regarding Persons with Disabilities. Sections 811.2, 811.3, 811.11, and 811.14 are adopted with changes to the proposed text as published in the January 31, 2003, issue of the *Texas Register* (28 TexReg 919). Sections 811.12, 811.22, 811.23, 811.26, 811.30, and 811.61 are adopted without changes and the text will not be republished.

In general, the Commission adopts amendments to the Choices rules to conform with legislative changes, as well as to conform with other state agency rules.

Background. The 77th Legislature enacted Texas Human Resources Code, §31.0066 relating to hardship exemptions from federal time limits for receiving cash assistance under Temporary Assistance for Needy Families (TANF) (Senate Bill 45, 77th Legislature, Regular Session, 2001). This law directs the Commission, the Texas Department of Human Services (TDHS) and the Health and Human Services Commission (HHSC) to adopt rules establishing federal hardship exemptions to the TANF 60-month time limit that identify circumstances that reasonably prevent recipients of financial assistance from becoming self-supporting before the expiration of the period specified by federal law.

The Commission adopts a change to the rule to recognize the special needs of recipients of temporary cash assistance (recipients) who are approaching their state or federal time limit, or those that receive extended TANF benefits. The Commission proposed that targeted services, as defined by the Boards, be provided to recipients who are approaching their state or federal time limit to ensure that they receive an adequate opportunity to access employment services. The Commission also adopts the requirement that Boards serve mandatory recipients receiving a 60-month time limit hardship exemption. These extended TANF recipients continue to receive cash assistance past their 60-month time limit. The receipt of extended temporary cash assistance is contingent upon the recipient's participation in Choices services.

In the proposed rules, the Commission included language to require Boards to outreach recipients who receive a state hardship exemption (i.e., those who continue to receive benefits past their state time limit), as well as recipients who receive TANF benefits past their 60-month time limit, with both of these populations included in the definition of "Extended TANF Recipient." In the final rule, the Commission clarifies the definition of Extended TANF Recipient to exclude recipients who receive a state hardship exemption. This change is based on input from the TDHS. TDHS indicates that because of automation limitations, it recognizes as mandatory only individuals who receive benefits past their 60-month time limit. Based on this automation limitation, the Commission's final rule clarifies that Boards are required to outreach only Extended TANF Recipients who receive benefits past their 60-month time limit. However, the Commission continues to encourage Boards to outreach state hardship recipients on a voluntary basis.

It is the Commission's intent to provide Boards with information on TANF recipients who are approaching their state or federal time limit. This will allow Boards to plan for the delivery of services to these recipients prior to the expiration of their TANF cash assistance. The Commission recommends that Boards ensure that these individuals receive all appropriate screenings to determine if there are other factors that may preclude job entry, and focus on targeted services to provide appropriate job referrals. The Commission seeks to ensure that all available services are offered and provided to recipients who are in danger of losing their TANF cash assistance.

A portion of individuals whose TANF cash assistance has expired may still be eligible for an exemption or hardship to the 60-month time limit. These mandatory recipients must participate in Choices services as a condition of continued eligibility and must be offered Choices services. The Commission encourages Boards to develop meaningful services that identify employment opportunities appropriate for the skills and background of these extended TANF recipients.

The Commission also addressed requirements concerning Alternative Workforce Orientation for Applicants (WOAs). WOAs are designed as orientations to services available at workforce centers for Applicants of TANF (TANF Applicants) to educate them on opportunities for connecting with immediate employment instead of becoming dependent upon public assistance. Staff of the Commission and TDHS worked jointly to develop a new requirement for the delivery of WOAs. As a result, TDHS published rules to require all TANF Applicants to attend a regularly scheduled WOA, unless extraordinary circumstances prevented such attendance. If extraordinary circumstances prevent attendance, TANF Applicants are required to attend an Alternative WOA. The Choices rule changes are designed to require that Boards ensure that methods of delivering Alternative WOAs are developed, which may include providing information by phone, in person, or through the use of information on videotape.

The Commission modifies provisions for recipients with disabilities. The proposed rules included changes to allow disabled recipients to volunteer for a specified number of hours identified by a physician. TDHS subsequently modified its procedures to clarify that disabled recipients who have physician-identified hours are considered mandatory.

Specifically, the Commission adopts a special provision to recognize the number of hours a disabled recipient is able to participate based upon information provided by a physician. Therefore, if a physician confirms that a disabled recipient may participate for 10 hours per week, the mandatory recipient must receive necessary support services to enable his or her participation. In addition, the disabled recipient will count as engaged in activities for participation purposes based on the number of physician-identified hours.

Additional modifications were proposed concerning mandatory recipients who are needed to care for a disabled adult in the household, and for recipients who are caretakers of an ill or disabled child in the household. These recipients will also have an hourly participation requirement based upon the number of physician-identified hours.

The Commission rules permit mandatory recipients who are disabled or who care for a disabled adult or ill or disabled child to be temporarily excluded from the mandatory community service requirement after four weeks in Choices. This temporary exclusion allows Boards the time necessary to coordinate appropriate community service sites for these recipients. It is the Commission's intent to rescind this exclusion at a later date. A disabled recipient is eligible to receive specialized services from a rehabilitation organization that may be provided under 'Vocational Educational Training' activity; however, only 30 percent of a Board's participation rate numerator may be derived from recipients in certain education activities. The recipient caring for a disabled

adult or ill or disabled child is eligible to receive any allowable Choices activities.

Family violence requirements contained in Texas Human Resources Code §31.0322, as amended by House Bill 1175, 77th Legislature, Regular Session, 2001, are also addressed. The proposed amendments place into rule the following legislatively mandated requirements: 1) train certain local staff in family violence issues; 2) ensure reasonable attempts are made to contact TANF recipients prior to applying penalties; and 3) ensure family violence specialists interview TANF recipients who are identified as being victims of family violence.

The rule changes are intended to reflect the guidance provided by the Commission regarding the requirements of this law. Boards requested additional guidance on what constitutes 'reasonable attempt', especially as it relates to recipients who did not respond to outreach versus recipients who are actively engaged in Choices services. The Commission provides the following guidance to Boards with regard to the definition of 'reasonable attempts'. A 'reasonable attempt' may be defined differently for recipients who have been outreached but have never interacted with workforce center staff. For these recipients, a 'reasonable attempt' may include a second outreach letter inquiring about the status of their non-response. Boards have indicated that for recipients who are actively engaged in Choices services, 'reasonable attempts' are more effective when they include not only second outreach letters, but also phone calls or home visits if practical. Boards may tailor their definition of 'reasonable attempt' based on geographical location and individual client circumstances.

In §811.2, the rule contains a new definition for Extended TANF recipient.

In §811.3, the rule contains instructions on serving persons who are within 6 and 12 months of timing out, or who are receiving extended TANF benefits past their 60-month time limit.

In §811.11, the rule provides clarification on the provision of scheduled and alternative WOAs. Amendments are also proposed addressing the family violence requirements.

In §811.12, the rule clarifies that TANF applicants may attend either a scheduled or alternative WOA.

In §811.14, the rule contains a technical amendment to change a reference from 'domestic violence' to 'family violence', and a technical amendment clarifying the length of time good cause for family violence may be provided. Specifically, the rule clarifies that good cause for family violence may be granted for up to 12 months for each occurrence.

In §811.22 and §811.23, the rule contains technical amendments regarding family violence.

In §811.26, the rule contains technical amendments to clarify that mandatory recipients who are disabled, and mandatory recipients caring for a disabled adult in the household or caring for an ill or disabled relative child, participating in Choices services are not subject to the mandatory community service requirement after four weeks of participation in Choices. This rule will reflect the ability of these recipients to participate in rehabilitation services provided by the Texas Rehabilitation Commission or other similar organizations.

In §811.30, the rule contains new language regarding participation requirements for disabled recipients, recipients caring for a disabled adult in the household, and recipients caring for an ill or disabled relative child, which recognizes the hours the individual is able to work, as specified by a physician.

In §811.61, the rule contains a technical amendment to appropriately cross-reference new §811.30.

Coordination with Stakeholders: Prior to proposing these rule amendments, the Commission circulated a policy concept paper outlining the changes to the Board chairs, members and executive directors, the Workforce Leadership of Texas (WLT) Policy Committee, and the Texas Department of Human Services. In addition, staff of the Commission, during a conference call with the Board executive directors, and at a WLT Policy Committee meeting reviewed the policy concept paper and requested feedback on the draft policy changes.

Comments were received from TDHS. The comment summaries and responses are as follows:

Comment: Regarding §811.2(5), the commenter expressed concern over the proposed definition of Extended TANF Recipient. The proposed definition defined Extended TANF Recipient as a person receiving TANF past the person's state or federal time limit. The commenter suggested that the definition be changed to be consistent with TDHS rule language, which defines Extended TANF Recipients as individuals who have reached their 60th month of assistance. For consistency, the commenter recommends deleting the word "state" from the definition.

Response: The Commission agrees with the comment that the definition of Extended TANF Recipient should include only recipients who have reached their 60-month time limit, and will amend the rule accordingly.

Comment: Regarding §811.3(c)(7)(C), the commenter recommended the deletion of the requirement to serve recipients who are receiving the state hardship exemption as a targeted population. The commenter specifically suggested the language be changed to serve these recipients as volunteers.

Response: Based on the current TDHS automation limitation, the Commission agrees with the comment and will remove the reference in the rule to the state hardship exemption. TDHS indicates that the automation changes necessary to serve this population are not cost effective. The Commission continues to encourage Boards to serve these recipients as volunteers.

Comment: Regarding §811.11(e), the commenter recommended that the rule be clarified to indicate whether it is referencing a state or federal time limit hardship exemption or other exemptions.

Response: Although the rule references §811.3(c)(7)(C), which addresses this issue, the Commission agrees further clarification is beneficial. The Commission will amend the rule to indicate clearly that the exemption applies only to Extended TANF Recipients.

For information about the Commission, including services for employers and workers, please visit our web page at www.texasworkforce.org.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §811.2, §811.3

The amendments are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission (Commission) with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services, and under Chapter 31

including §31.0322 and §31.0066 of the Human Resources Code which requires the Commission to administer the work requirements for recipients of public assistance.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments as well as Texas Human Resources Code, Chapter 31 regarding public assistance.

§811.2. Definitions.

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

(1) Applicant--A person who applies for temporary cash assistance.

(2) TDHS--The Texas Department of Human Services.

(3) Exempt Recipient--A recipient who is not required as defined by TDHS Rules, 40 TAC §3.1101, to participate in Choices services.

(4) Earned Income Deduction (EID)--A standard work-related and income deduction, available through the TDHS for four months, as defined in TDHS Rules, 40 TAC §3.1003 to recipients who are employed at least 30 hours a week and earn at least $700 a month.

(5) Extended TANF Recipient--A person who receives TANF cash assistance past the date of the individual's 60-month limit due to a hardship exemption as defined in TDHS Rules, 40 TAC §3.6001.

(6) Former recipient--A person who is an adult or teen head of household who no longer receives temporary cash assistance.

(7) Choices Individual--A person who is an applicant, recipient or former recipient as defined in this section.

(8) Mandatory Recipient--A recipient, including Extended TANF recipients who are required as defined by TDHS Rules, 40 TAC §3.1101 and §3.6001 to participate in Choices services.

(9) PRWORA--The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.

(10) Recipient--A person who is an adult or teen head of household who receives temporary cash assistance.

(11) Temporary cash assistance--The cash grant provided through TDHS to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including the PRWORA, the TANF block grant statutes, the TANF State Plan, temporary cash assistance provided under Texas Human Resources Code Chapters 31 or 34, and other related regulations.

(12) Work-Based Services--Includes those services defined in Human Resources Code §31.0126.

(13) Work Ready--A Choices individual is considered work ready if he or she has the skills that are required by employers in the workforce area. A Board must ensure immediate access to the labor market to determine whether the Choices individual has those necessary skills to obtain employment.

§811.3. Choices Service Strategy.

(a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:

(1) determine employers' needs;

(2) determine emerging and demand occupations; and

(3) identify employment opportunities, which includes those with a potential for career advancement.

(b) A Board shall set local policies for a Choices service strategy that coordinates various service delivery approaches to:

(1) assist applicants in gaining employment as an alternative to public assistance;

(2) utilize a work first design as referenced in subsection (c)(2) of this section to provide recipients participating in Choices access to the labor market; and

(3) assist former recipients in job retention and career advancement to remain independent of temporary cash assistance.

(c) The Choices service strategy shall include:

(1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce.

(2) Work First Design.

(A) The work first design:

(i) allows individuals to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and

(ii) meets the needs of employers by linking individuals with skills that match those job requirements identified by the employer.

(B) Boards shall provide individuals access to other services and activities available through the One-Stop Service Delivery Network, which includes the WOA, to assist with employment in the labor market before certification for temporary cash assistance.

(C) Post-employment services shall be provided in order to assist an individual's progress towards self-sufficiency as described in paragraph (3) of this subsection and §811.51 of this chapter.

(D) In order to assist an individual's progress toward self-sufficiency:

(i) Boards shall provide recipients who are employed, including those receiving the EID, with information on available post-employment services; or

(ii) Boards may provide former recipients with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51(e) of this chapter.

(E) In order to assist employers, Boards shall coordinate with local employers to address needs related to:

(i) employee post-employment education or training;

(ii) employee child care, transportation or other support services available to obtain and retain employment; and

(iii) employer tax credits.

(F) A Board shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for temporary cash assistance.

(3) Post-Employment Services. A Board shall ensure that post-employment services are designed to assist individuals with job retention, career advancement and reemployment, as defined in §811.51 of this chapter. Post-employment services are a continuum

in the Choices service strategy to support an individual's progression to self-sufficiency.

(4) Adult Services. A Board shall ensure that services for adults shall include activities individually designed to lead to employment and self-sufficiency as quickly as possible.

(5) Teen Services. A Board shall ensure that services for teen heads of household shall include assistance with completion of secondary school or a certificate of general equivalence and making the transition from school to employment, as described in §811.27 and §811.50 of this chapter.

(6) Individuals with Disabilities. A Board shall ensure that services for individuals with disabilities include reasonable accommodations to allow the individuals to access and participate in services, where applicable by law A Board shall ensure that Memoranda of Understanding (MOU) are established with the appropriate agencies to serve individuals with disabilities.

(7) Target Populations. A Board shall ensure that services are concentrated, as further defined in §811.11(d) and (e) of this chapter, on the needs of the following:

(A) recipients who have 6 months or less remaining of their state TANF time limit, irrespective of any extension of time due to a hardship exemption;

(B) recipients who have twelve months or less remaining of their 60-month TANF time limit, irrespective of any extension of time due to a hardship exemption; and

(C) recipients who are Extended TANF Recipients.

(8) Local Flexibility. A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery Network.

(9) Local-Level MOU. A Board shall ensure the development of a local-level MOU in cooperation with TDHS for coordinated case management that is consistent with the MOU between TDHS and the Commission.

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 July 2, 2003.

TRD-200304072
John Moore
General Counsel
Texas Workforce Commission
Effective date: July 22, 2003
Proposal publication date: January 31, 2003
For further information, please call: (512) 463-2573

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SUBCHAPTER B. ACCESS TO CHOICES SERVICES

40 TAC §§811.11, 811.12, 811.14

The amendments are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission (Commission) with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services, and under Chapter 31 including §31.0322 and §31.0066 of the Human Resources Code which requires the Commission to administer the work requirements for recipients of public assistance.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments as well as Texas Human Resources Code, Chapter 31 regarding public assistance.

§811.11. Board Responsibilities.

(a) A Board shall ensure that:

(1) procedures are developed, in conjunction with TDHS, to notify applicants on the availability of regularly scheduled Workforce Orientations for Applicants (WOA) and alternative WOAs;

(2) the WOA is offered frequently enough to allow applicants to comply with the TDHS requirement that gives applicants ten calendar days to attend a WOA;

(3) during a regularly scheduled WOA or alternative WOA, applicants are informed of:

(A) employment services available through the One-Stop Service Delivery Network to assist applicants in achieving self-sufficiency without the need for temporary cash assistance;

(B) benefits of becoming employed;

(C) impact of time-limited benefits;

(D) individual and parental responsibilities; and

(E) other services and activities, including education and training, available through the One-Stop Service Delivery Network;

(4) alternative WOAs are developed that allow applicants with extraordinary circumstances to receive the information listed in paragraph (3) of this subsection;

(5) procedures are developed to notify TDHS of applicants that contacted the Board's workforce centers to request alternative WOAs;

(6) verification that an applicant attends a scheduled or alternative WOA is completed and TDHS is notified in accordance with TDHS rule, 40 TAC §3.7301; and

(7) applicants are provided with an appointment to develop a family employment plan.

(b) A Board shall ensure that Choices services are offered to applicants who attend WOA.

(c) A Board shall ensure that recipient status is verified monthly and recipients either:

(1) comply with Choices services requirements as outlined in the family employment plan unless the recipient is exempted by TDHS; or

(2) have good cause as described in §811.14 of this subchapter (relating to Good Cause for Recipients).

(d) A Board shall develop policies and procedures to ensure that services are concentrated on individuals approaching their state or federal time limit, as identified in §811.3(c)(7)(A) and (B) of this chapter. Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a recipient's ability to participate, and targeted job development.

(e) A Board shall ensure that all Extended TANF Recipients are outreached and offered the opportunity to participate in Choices activities.

(f) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to recipients, including those receiving EID.

(g) A Board shall ensure that the monitoring of Choices requirements and activities is ongoing and frequent, as determined by a Board, and consists of the following:

(1) ensuring receipt of support services

(2) tracking and reporting of support services;

(3) tracking and reporting actual hours of participation, at least monthly;

(4) determining and arranging for any intervention needed to assist the individual in complying with Choices service requirements;

(5) ensuring that the individual is progressing toward achieving the goals and objectives in the family employment plan; and

(6) monitoring all other participation requirements.

(h) A Board shall ensure that:

(1) no less than four hours of training regarding family violence is provided to staff who:

(A) provide information to an applicant or recipient of temporary cash assistance;

(B) recommend penalties or grant good cause; or

(C) provide employment planning or employment retention services; and

(2) recipients who are identified as being victims of family violence are referred to an individual or an agency that specializes in issues involving family violence.

(i) A Board shall ensure that:

(1) reasonable attempts, as defined by the Board, are made to contact a recipient prior to initiating a penalty to determine the reason for non-compliance;

(2) the attempts to contact a recipient are documented; and

(3) notification is made to TDHS if a recipient fails to comply with Choices services requirements.

(j) A Board shall ensure that documentation is obtained and maintained regarding all contact with Choices individuals and data entered into TWIST.

§811.14. Good Cause for Recipients.

(a) Good cause applies only to recipients. A Board shall ensure whether the recipient has good cause as provided in this chapter.

(b) A Board shall ensure that a good cause determination:

(1) is based on the individual circumstances of the recipient;

(2) is based on face-to-face or telephone contact with the recipient;

(3) covers a temporary period when a recipient may be unable to attend scheduled appointments or participate in ongoing work activities;

(4) is made at the time the change in the recipient's circumstances is made known to the Board's service provider; and

(5) is conditional upon efforts to enable the recipient to address circumstances that limit the ability to participate in Choices services as required in the Personal Responsibility Agreement.

(c) The following reasons may constitute good cause for purposes of this chapter if the mandatory recipient is unable to meet the participation requirements due to:

(1) temporary illness or incapacitation;

(2) court appearance;

(3) caring for a physically or mentally disabled household member who requires the recipient's presence in the home;

(4) a demonstration that there is:

(A) no available transportation and the distance prohibits walking; or

(B) no available job within reasonable commuting distance, as defined by the Board;

(5) an inability to obtain needed child care, as defined by the Board and based on the following reasons:

(A) informal child care by a relative or under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care as specified in §811.47 of this chapter. Informal child care may also be determined unsuitable by the parent;

(B) eligible formal child care providers are unavailable, as defined in Chapter 809 of this title;

(C) affordable formal child care arrangements within maximum rates established by the Board are unavailable; and

(D) formal or informal child care within a reasonable distance from home or the work site is unavailable;

(6) is without other support services necessary for participation;

(7) receives a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

(8) is in a family crisis or a family circumstance that may preclude participation, including substance abuse and mental health, provided the recipient engages in problem resolution through appropriate referrals for counseling and support services; or

(9) is a victim of family violence.

(d) A Board shall promulgate policies and procedures for determining a family's inability to obtain child care and shall ensure that recipients in single-parent families caring for children under age six are informed of:

(1) the penalty exception to the family work requirement, including the criteria and applicable definitions for determining whether a recipient has demonstrated an inability to obtain needed child care, as defined in subsection (c)(5)(A) - (D) of this section.

(2) a Board's policy and procedures for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision, as required by 45 CFR §261.56.

(e) A Board shall ensure that good cause:

(1) is reevaluated at least on a monthly basis;

(2) is extended if the circumstances giving rise to the good cause exception are not resolved after available resources to remedy the situation have been considered; and

(3) that is based on the existence of family violence does not exceed a total of twelve consecutive months per occurrence.

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 July 2, 2003.

TRD-200304075
John Moore
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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SUBCHAPTER C. CHOICES SERVICES

40 TAC §§811.22, 811.23, 811.26, 811.30

The amendments and new section are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission (Commission) with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services, and under Chapter 31 including §31.0322 and §31.0066 of the Human Resources Code which requires the Commission to administer the work requirements for recipients of public assistance.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments and new section as well as Texas Human Resources Code, Chapter 31 regarding public assistance.

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 July 2, 2003.

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John Moore
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §811.61

The amendment is adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission (Commission) with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services, and under Chapter 31 including §31.0322 and §31.0066 of the Human Resources Code which requires the Commission to administer the work requirements for recipients of public assistance.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendment as well as Texas Human Resources Code, Chapter 31 regarding public assistance.

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

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John Moore
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Texas Workforce Commission
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For further information, please call: (512) 463-2573

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 83, Public Health Improvement Grants, Subchapter A, Permanent Fund for Children and Public Health, §§83.1 - 83.13; Subchapter B, Community Hospital Capital Improvement Fund, §§83.20 - 83.30; and Chapter 102, Distribution of Tobacco Settlement Proceeds to Political Subdivisions, §§102.1 - 102.5.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. 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 department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200304165
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 9, 2003

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The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 139, Abortion Facility Reporting and Licensing, Subchapter A, General Provisions, §§139.1 - 139.8; Subchapter B, Licensing Procedures, §§139.21 - 139.25; Subchapter C, Enforcement, §§139.31 - 139.34; and Subchapter D, Minimum Standards for Licensed Abortion Facilities, §§139.41 - 139.60.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. 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 department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200304163
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 9, 2003

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Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 110 concerning Required Notices of Coverage. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

§110.1. Requirements for Notifying the Commission of Insurance Coverage.

§110.101. Covered and Non-Covered Employer Notices to Employees.

§110.108. Employer Notice Regarding Work-Related Exposure to Communicable Disease/HIV: Posting Requirements; Payment for Tests.

§110.110. Reporting Requirements for Building or Construction Projects for Governmental Entities.

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt these rules. Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on August 18, 2003 and submitted to Nell Cheslock, Legal Services, Office of General Counsel, Mailstop

#4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

TRD-200304136
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: July 8, 2003

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The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 124 concerning Carriers: Required Notices and Mode of Payment. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

§124.1. Notice of Injury.

§124.2. Carrier Reporting and Notification Requirements.

§124.3. Investigation of an Injury and Notice of Denial/Dispute.

§124.5. Mode of Payment Made by Carriers.

§124.7. Initial Payment of Temporary Income Benefits.

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt these rules. Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on August 18, 2003 and submitted to Nell Cheslock, Legal Services, Office of General Counsel, MS 4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

TRD-200304118
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: July 7, 2003

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The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 164 concerning Hazardous Employer Program. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

§164.1. Criteria for Identifying Hazardous Employers.

§164.2. Notice to Hazardous Employers.

§164.3. Safety Consultation for Public Employers.

§164.4. Formulation of Accident Prevention Plan for Public Employers.

§164.5. Follow-up Inspection for Public Employers by the Division.

§164.6. Report of Follow-up Inspection, Public Employers.

§164.7. Removal of Public Employers from Hazardous Employer Status.

§164.8. Continuation of Hazardous Employer Status, Public Employers.

§164.9. Approval of Professional Sources for Safety Consultations

§164.10. Removal from the List of Approved Professional Sources.

§164.11. Request for Safety Consultation from the Division.

§164.12. Reimbursement of Division for Services Provided to Hazardous Employer.

§164.14. Values Assigned for Computation of Hazardous Employer Identification.

§164.15. Administrative Reviews and Hearings Regarding Identification as a Hazardous Employer.

§164.16. Removal of Private Employers from Hazardous Employer Status.

§164.17. Availability of OSHCON Services.

§164.18. Severability.

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt these rules. Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on August 18, 2003 and submitted to Nell Cheslock, Legal Services, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

TRD-200304135
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: July 8, 2003

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Adopted Rule Review

Texas Department of Mental Health and Mental Retardation

Title 25, Part 2

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the review of Chapter 419, Subchapter G, concerning Medicaid fair hearings. The notice of intent to review was published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4160).

No comments were received regarding the review. TDMHMR has reviewed the rule in Chapter 419, Subchapter G, and has determined that the reasons for originally adopting the rule continue to exist. The rule in Chapter 419, Subchapter G, is readopted in accordance with the Texas Government Code, §2001.039, which requires the Texas Board of Mental Health and Mental Retardation to review and consider for readoption each of its rules every four years and under TDMHMR's broad rulemaking authority for mental health and mental retardation services pursuant to the Texas Health and Safety Code, §532.015(a).

TRD-200304102
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: July 7, 2003

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Public Hearing on Seed Program Rule Amendments

In accordance with the Texas Agriculture Code, §61.002, the Texas Department of Agriculture (the department) will hold a public hearing to take public comment on proposed amendments to the department's seed quality and seed certification program rules, §§9.2 - 9.5, 10.2, 10.3, 10.5, 10.10, 10.11, 10.13, 10.21, and 10.22. The proposal was published in the June 27, 2003, issue of the *Texas Register*.

The hearing will be held on July 25, 2003, beginning at 10:00 a.m. in Room 1000-F of the Stephen F. Austin State Office Building, 1700 North Congress, Austin , Texas.

For more information please contact Kelly Book, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-7136.

TRD-200304131
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 8, 2003

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Notice of Successful Completion of Sapote Fruit Fly Eradication

The sapote fruit fly, a damaging pest of citrus and many other fruit crops, has been occasionally detected in Texas. In February 2003, following the detection of five sapote fruit flies in southern Hidalgo County, the Texas Department of Agriculture (the department) implemented a saptote fruit fly quarantine to prevent the spread of this pest into other areas of Texas and to facilitate eradication. That quarantine has been adopted as Title 4, Texas Administrative Code, §§19.170 - 19.179. As of June 17, 2003, no additional sapote fruit flies were detected for a time period equal to three consecutive generations of this pest after the most recent detection on February 7, 2003. Consequently, the sapote fruit fly eradication criterion established in §19.171 of the sapote fruit fly quarantine has been met and the department has lifted the quarantine in that part of southern Hidalgo County described in §19.172(a)(2) of the quarantine as a quarantined infested area. For more information, please contact Dr. Shashank Nilakhe, State Entomologist, at (512) 463-1145.

TRD-200304130
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 8, 2003

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Texas Commission for the Blind

Request for Proposal Professional Financial Consulting Services

The Texas Commission for the Blind, hereinafter referred to as TCB, is inviting proposals to secure the services of a consultant with a financial investment background. The consultant will analyze the current Business Enterprises of Texas (BET) trust fund's organizational, operational, and managerial structure; advise TCB and licensed managers in the BET program of the options available to them for management of the BET trust fund, and assist in the development of specifications for an invitation for bids to procure a fund administrator. The successful respondent to this request shall not be allowed to bid on the resulting IFB.

What follows is an abbreviated description of the services being solicited. If you are interested in responding to this request, the full request for proposal has been posted on the Texas Marketplace (http://esbd.tbpc.state.tx.us) under requisition number 3180002134. Copies may also be obtained from Vikki Meeker by sending an e-mail to Vikki.Meeker@tcb.state.tx.us

Note: TCB will be required to obtain approval from the Governor's Office (Finding of Fact) prior to the award of any contract resulting from this RFP.

Statutory Authority

This request for proposal is issued under the authority of Texas Human Resources Code, Title 5, Chapter 94, §94.016, which reads, in part:

(f) The Commission may contract with a professional management service to administer the Business Enterprises Program trust fund. In administering the trust fund, the professional management service may acquire, exchange, sell, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire, exchange, sell, or retain under the circumstances, taking into consideration the investment of all the assets of the trust fund.

(g) With the approval of the comptroller, TCB may select a commercial bank, depository trust company, or other entity to serve as a custodian of the Business Enterprises Program trust fund's securities, and money realized from those securities, pending completion of an investment transaction. Money realized from those securities must be:

(1) reinvested not later than one business day after the date it is received; or

(2) deposited in the treasury not later than the fifth business day after the date it is received.

History and Background

Business Enterprises of Texas (BET) is a federally sponsored, state administrated employment program within TCB that provides and maintains employment opportunities on state, federal and private properties for blind Texans in the field of food and vending services. Under the provisions of the Randolph-Sheppard Act, vending machine income (as that term is defined by 34 C.F.R. Section 395.1(z)) that accrues to TCB, as the state licensing agency in Texas, is used, subject to a vote of blind licensees, to establish retirement or pension plans, for health insurance contributions, and for provision of paid sick leave and vacation time for blind licensees in Texas.

The 76th Legislature established a trust fund in the state treasury for individuals licensed by BET to operate vending facilities. Federal vending machine income is credited to this Business Enterprises Program trust fund. All expenditures authorized by the Randolph-Sheppard Act from federal vending revenue funds are paid from the Business Enterprises Program trust fund.

In accordance with Government Code §2254.026, TCB has determined that TCB cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with another state governmental entity.

Scope of Work

TCB has three separate phases of work for which proposals are being solicited. These phases are:

Phase 1--Analysis of the current BET trust fund's organizational, operational, and managerial structure, and determination of options.

Phase 2--Presentation of retirement plan options to Licensed Managers and conduct vote by Licensed Managers.

Phase 3--Assist in the development of specifications needed for TCB to produce an invitation for bids to procure a fund administrator.

Questions/Clarifications

Potential respondents may submit questions by fax to Vikki M. Meeker at (512) 377-0647 or by e-mail to Vikki.Meeker@tcb.state.tx.us TCB will post this solicitation on the Texas Marketplace http://esbd.tbpc.state.tx.us

Selection under this RFP will be made on the basis of qualifications, demonstrated competence to perform the services, and a fair and reasonable fee proposal.

Closing date: August 1, 2003.

TRD-200304156
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: July 9, 2003

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Texas Building and Procurement Commission

Invitation for Bid Notice

TBPC Project No. 01-019-405

Project Name: Renovations to Grant Road Driver License Facility 10503 Grant Road, Houston, Texas For the Texas Department of Public Safety

Sealed Bids for this project will be received until **3:00 P.M., August 4, 2003, at the Bid Room, Room No. 180, 1711 San Jacinto, Austin, Texas 78701.** See the IFB for other delivery choices.

Plans and specifications may be obtained from the Huitt-Zollars, Inc., 1500 Dairy Ashford, Suite 200, Houston, Texas, 77077, Phone (281) 496-0066, FAX (281) 496-0220, for a deposit of $200.00, refundable upon return of a complete, unmarked set(s).

A mandatory (must attend and sign in) Pre-Bid Conference will be held at the Department of Public Safety Houston Regional Office, 12230 West Road, Jersey Village, at 10:00 a.m., July 10, 2003. The TBPC will reject Bids submitted by firms that did not attend the mandatory Pre-Bid Conference.

Only bids submitted on the official CONTRACTOR'S BID FORM found in the Project Manual will be accepted.

The IFB may be obtained by contacting TBPC Internal Procurement, Attn: Deborah Norwood (Fax: 512-463-3360), deborah.norwood@tbpc.state.tx.us or through the Electronic State Business Daily at:

http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=48388

No oral explanation in regard to the meaning of the Drawings and Specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions or doubts as to the meaning of Drawings and Specifications and all communications concerning the project shall be communicated in writing to the Deborah Norwood via fax at (512) 463-3360 or via email at deborah.norwood@tbpc.state.tx.us for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the Specifications, which will be forwarded to all known Bidders and its receipt by the Bidder shall be acknowledged on the Contractor's Bid Form or on the face of the Addendum and returned with the bid.

TRD-200304115
Cindy deRoch
General Counsel
Texas Building and Procurement Commission
Filed: July 7, 2003

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Invitation for Bid Notice

Renovate Area Office Building TBPC Project No. 02-010-7006

Project Name: Renovate Area Office Building 807 Park Avenue, Hereford, Texas For the Texas Department of Public Safety

Sealed Bids for this project will be received until **3:00 P.M., August 5, 2003, at the Bid Room, Room No. 180, 1711 San Jacinto, Austin, Texas 78701.** See the IFB for other delivery choices.

Plans and specifications may be obtained from the Stiles, Wallace and Associates, 3307 Avenue X, Lubbock, Texas 79411, Voice: (806) 795-6431, Fax: (806) 797-1013, for a deposit of $100.00, refundable upon return of a complete, unmarked set(s).

A mandatory (must attend and sign in) Pre-Bid Conference will be held at Hereford Fire Department Conference Room, 215 N. Miles Street, Hereford (phone number 806-363-7114), at 11:00 a.m. July 10, 2003. The TBPC will reject Bids submitted by firms that did not attend the mandatory Pre-Bid Conference.

Only bids submitted on the official CONTRACTOR'S BID FORM found in the Project Manual will be accepted.

The IFB may be obtained by contacting TBPC Internal Procurement, Attn: Deborah Norwood (Fax: 512-463-3360), deborah.norwood@tbpc.state.tx.us or through the Electronic State Business Daily at:

http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=48317

No oral explanation in regard to the meaning of the Drawings and Specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions or doubts as to the meaning of Drawings and Specifications and all communications concerning the project shall be communicated in writing to the Deborah Norwood via fax at (512) 463-3360 or via email at deborah.norwood@tbpc.state.tx.us for interpretation. Bidders should act promptly

and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the Specifications, which will be forwarded to all known Bidders and its receipt by the Bidder shall be acknowledged on the Contractor's Bid Form or on the face of the Addendum and returned with the bid.

TRD-200304071
Cindy de Roch
General Counsel
Texas Building and Procurement Commission
Filed: July 2, 2003

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.011 and §403.020, Texas Government Code, and §130.084, Education Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #160a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the Alvin Community College (ACC). Comptroller reserves the right, in its sole discretion, to award one or more contracts for a review of ACC under this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about September 19, 2003.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 East 17th Street, ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, July 18, 2003, between 10 a.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 10 a.m. (CZT) on Friday, July 18, 2003.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Monday, August 4, 2003. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than August 6, 2003, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., August 4th deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Mandatory Letters of Intent to propose.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Friday, August 22, 2003. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit Mandatory Letters of Intent by the August 4th, 2003, deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract or contracts. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP--July 18, 2003, 10 a.m. CZT;

All Mandatory Letters of Intent and Questions Due--August 4, 2003, 2 p.m. CZT;

Official Responses to Questions Posted--August 6, 2003, or as soon thereafter as practical;

Proposals Due--August 22, 2003, 2 p.m. CZT;

Contract Execution--September 19, 2003, or as soon thereafter as practical;

Commencement of Project Activities--September 19, 2003.

TRD-200304155
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 9, 2003

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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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of July 14, 2003 - July 20, 2003 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 July 14, 2003 - July 20, 2003 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.

TRD-200304119
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 8, 2003

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Court of Criminal Appeals

Availability of Grant Funds

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects for: judges, prosecutors, prosecutor office personnel, criminal defense attorneys who regularly represent indigent defendants in criminal matters, clerks, and other court personnel of the appellate courts, district courts, county courts at law, county courts, justice courts and municipal courts of this State. Funds are subject to the provisions of Chapter 56 of the Texas Government Code, the General Appropriations Bill (HB1) 78th Legislature, Regular Session, and the Rules of Judicial Education and Grant Conditions of the Court of Criminal Appeals. The grant period is September 1, 2003 through August 31, 2004.

The deadline for applications is August 8, 2003.

Applicants may request an application packet by phone, mail, or in person. The phone number is (512) 475-2312, and the address is: Court of Criminal Appeals, Judicial Education Program, 201 West 14th Street, Austin, Texas 78701.

TRD-200304116
Troy Bennett
Clerk
Court of Criminal Appeals
Filed: July 7, 2003

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Texas Commission on Environmental Quality

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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 **August 18, 2003**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 18, 2003**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Al-Huseini, Inc. dba Stubby's #2; DOCKET NUMBER: 2002-0398-PST-E; TCEQ ID NUMBER: 0030618; LOCATION: 16895 Farm-to-Market Road 1485, Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to install proper overfill prevention equipment for the underground storage tank (UST) system; 30 TAC §334.47(b)(1)(A) and TWC, §26.3475(d), by failing to have a tank integrity assessment conducted prior to the installation of corrosion protection; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system tested by a qualified corrosion specialist or corrosion technician within three to six months after installation; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release from the operation of petroleum USTs; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures at a retail facility regardless of which method of release detection is used; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at least once per month not to exceed 35 days between each monitoring; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test a line link detector at least once per year for performance and operational reliability; 30 TAC §115.246(5) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain a record of Stage II testing; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain all components of the Stage II vapor recovery system in proper operating condition; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §115.242(3)(C) and THSC, §382.085(b), by failing to maintain all components of the Stage II system to an approved condition free of defects that would impair the effectiveness of the system; and 30 TAC §290.51(a)(3), by failing to pay outstanding public health service fees; PENALTY: $33,125; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R- 12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Alberto De Leon; DOCKET NUMBER: 2002-0960-LII-E; TCEQ ID NUMBER: none; LOCATIONS: 1084 Los Ebanos, 901 Plantation, 900 Plantation, 896 Plantation, and 35 Arien Court, Brownsville, Cameron County, Texas; TYPE OF FACILITY: landscape irrigation systems; RULES VIOLATED: 30 TAC §344.4 and TWC, §34.007, by failing to obtain an irrigator license prior to selling and installing landscape irrigation systems; PENALTY: $3,125; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Bellewood Water Supply Corporation; DOCKET NUMBER: 2002-0762-PWS- E; TCEQ ID NUMBER: 1011945; LOCATION: 1212 Drury Lane, Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(h)(1)(G), by failing to conduct water quality parameter (WQP) sampling for lead and copper and to report the WQP values for the year; PENALTY: $1,250; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Billy Lummus dba Bill's Exxon; DOCKET NUMBER: 2002-0977-PST-E; TCEQ ID NUMBER: 4666; LOCATION: Highway 79 at Farm-to-Market Road 39, Jewett, Leon County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for the operation of the USTs; 30 TAC §334.51(b)(2)(A) and (C), and TWC, §26.3475(c)(2), by failing to equip the fill pipe on the diesel tank with a tight-fill fitting valve or other overfill prevention equipment; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to have corrosion protection for the UST system; and 30 TAC §334.10(b), by failing to have inventory control records available for inspection; PENALTY: $15,300; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Clifford Glen Key; DOCKET NUMBER: 2000-1416-MSW-E; TCEQ ID NUMBER: 455100030; LOCATION: 0.2 miles from the intersection of Loop 505 North and Lees Mill Road, Newton, Newton County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §111.201 and §330.5(d) and THSC, §382.085(b), by failing to obtain a permit or other written permission from the executive director prior to conducting outdoor burning; and 30 TAC §330.5(a) and (c), by permitting the collection, storage, transportation, processing, or disposal of municipal solid waste without written authorization from the commission; PENALTY: $6,000; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Ironhorse Manufacturing, Inc.; DOCKET NUMBER: 2001-0704-AIR-E; TCEQ ID NUMBER: JE-0913-J; LOCATIONS: 105 Center Street, Beaumont, and 16411 Englin Road, Hamshire, Jefferson County, Texas; TYPE OF FACILITIES: trailer manufacturing; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit or permit by rule for surface coating operations; and 30 TAC §116.201 and THSC, §382.085(b), by conducting unauthorized burning of treated lumber; PENALTY: $9,200; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Uppal Brothers, Inc. dba Save Way Food Mart; DOCKET NUMBER: 2002- 0860-PST-E; TCEQ ID NUMBER: 44704; LOCATION: 6620 Brentwood Stair, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain all components of the Stage II vapor recovery system in proper condition and free of defects that would impair the effectiveness of the system; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post clear and legible operating instructions and related information in gasoline pumps equipped with a Stage II vapor recovery system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to perform the annual pressure decay test within the preceding 12-month period; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to successfully perform the five-year full system functional testing to verify proper operation of the Stage II vapor recovery system; and 30 TAC §334.22(a), by failing to pay outstanding fees; PENALTY: $6,250; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200304147

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 8, 2003

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

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 (TWC), §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 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 **August 18, 2003**. 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 the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 18, 2003**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: C and W Enterprises, Inc.; DOCKET NUMBER: 2002-0282-PST-E; TCEQ ID NUMBER: none; LOCATION: 317 North Farr Street, San Angelo, Tom Green County, Texas; delivered fuel: to 2330 Sherwood Way, Tom Green County, Texas and 409 South Crockett Street, Sutton County, Texas; TYPE OF FACILITY: fuel distribution business; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure and observe that the owners or operators of the facilities each have a valid, current delivery certificate issued by the TCEQ covering the underground storage tank (UST) systems prior to depositing a regulated substance into the UST systems; PENALTY: $2,000; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(2) COMPANY: Dudley Farr; DOCKET NUMBER: 2003-0015-WOC-E; TCEQ ID NUMBER: 460-48-5477; LOCATION: 140 West Clark Street, Bartlett, Williamson, and Bell Counties, Texas; TYPE OF FACILITY: water operator certification; RULES VIOLATED: TWC, §7.303(b)(3), by making misrepresentations which allowed employees to obtain licenses before they met the minimum qualifications; PENALTY: $0; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335 and Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(3) COMPANY: Francis Phillips; DOCKET NUMBER: 2000-1035-OSI-E; TCEQ ID NUMBER: OS4760; LOCATION: 407 Valley View Drive, Azle, Tarrant County, Texas; TYPE OF FACILITY: on-site sewage business (OSSF); RULES VIOLATED: 30 TAC §285.61(4) and (5) and §285.61(4), and Texas Health and Safety Code (THSC), §366.051(c) and §366.054, by failing to provide notice to, and obtain authorization from, Parker and Tarrant Counties before beginning to install, construct, alter, extend, or repair an OSSF; PENALTY: $750; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Jogesh Amin dba Stop-N-Save; DOCKET NUMBER: 2001-0667-PST-E; TCEQ ID NUMBER: 0012640; LOCATION: 5201 Jacksboro Highway, Sansom Park, Tarrant County, Texas; TYPE OF

FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(9) and THSC, §382.085(b), by failing to have the required operating instructions and information posted on the dispensers; 30 TAC §115.244(1) and (2) and THSC, §382.085(b), by failing to perform daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.245(1) and THSC, §382.085(b), by failing to perform the initial testing of the Stage II vapor recovery system within 30 days of installation, modification, or major system modification; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one facility representative received training and instructions in the operation and maintenance of the Stage II vapor recovery system; PENALTY: $4,500; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Petro-Chemical Transport, Inc.; DOCKET NUMBER: 2002-0513-PST-E; TCEQ ID NUMBER: none; LOCATION: 3440 Sojourn, Suite 100, Carrollton, Dallas County, Texas; delivered fuel to 714 West Highway 190 and 1402 South Highway Boulevard, Belton, Bell County, Texas; TYPE OF FACILITY: fuel distribution; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure and observe that the owners or operators each had a valid, current delivery certificate issued by the TCEQ covering the UST systems prior to depositing a regulated substance into the UST systems; PENALTY: $2,000; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: R & R Mobile Home Management, Inc. dba Blessing Mobile Home Park; DOCKET NUMBER: 2001-1096-PWS-E; TCEQ ID NUMBERS: 2460031 and 11986; LOCATION: 1102 Martin Avenue, Round Rock, Williamson County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §291.21(c)(7) and §291.93(2)(A) and TWC, §13.136(a), by failing to ensure that its tariff included an approved drought contingency plan; 30 TAC §288.30(3)(B) and TWC, §13.132(a)(1), by failing to make its adopted drought contingency plan available for inspection by the executive director; 30 TAC §290.43(c)(4), by failing to have a liquid level indicator on all clear wells and water storage tanks; 30 TAC §290.43(e), by failing to enclose all potable water storage tanks and pressure maintenance facilities in an intruder-resistant fence with lockable gates; 30 TAC §290.46(m)(1)(A), by failing to ensure that the interior and exterior coating systems of all ground, elevated, and pressure tanks are continuing to provide adequate protection to all metal surfaces; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement covering that portion of the land within 150 feet of the well location from all property owners and record it in the deed records at the county courthouse; 30 TAC §290.41(c)(3)(K), by failing to seal wellheads and pump bases by a gasket or sealing compound to prevent the possibility of contaminating the well water; 30 TAC §290.42(c)(1) and THSC, §341.0315(c), by failing to provide proper treatment and filtration for water under the influence of surface water; 30 TAC §290.46(v), by failing to install all water system electrical wiring in a securely mounted conduit in compliance with a local or national electrical code; 30 TAC §290.46(t), by failing to post a legible sign at each of its production, treatment, and storage facilities; and 30 TAC §290.46(k), by failing to compile a thorough plant operations manual and keep it up to date for operator review and reference; PENALTY: $3,438; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(7) COMPANY: Southwestern Holdings, Inc. dba Cibolo Creek Ranch; DOCKET NUMBER: 2002-1111-PWS-E; TCEQ ID NUMBER: 1890015; LOCATION: 32 miles south of Marfa on Highway 67, Shafter, Presidio County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2) and (g)(4) and §290.122(c) and THSC, §341.033(d), by failing to conduct routine monthly bacteriological sampling and failing to provide public notice related to the failure to conduct routine bacteriological sampling; PENALTY: $1,500; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

TRD-200304146
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 8, 2003

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Notice of Proposed General Permit Authorizing the Discharge of Hydrostatic Test Water

The Texas Commission on Environmental Quality (TCEQ) proposes a general permit (Proposed General Permit No. TXG670000) authorizing the discharge of hydrostatic test water, into and adjacent to water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by §26.040 of the Texas Water Code.

PROPOSED GENERAL PERMIT. The Executive Director has prepared a general permit. If issued, the general permit will authorize the discharge of hydrostatic test water from: new vessels; existing vessels which contain or previously contained or transferred raw or potable water, in which the water used for hydrostatic tests does not contain corrosion inhibitors, antifreeze compounds, biocides, or other chemical additives (except chlorine); existing vessels which previously contained only elemental gases (e.g. hydrogen, oxygen, nitrogen, etc.); and existing vessels which previously contained product or waste related to refined petroleum products. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The Executive Director proposes to not require permittees to submit a Notice of Intent to obtain authorization for selected discharges based on a determination that these discharges are: intermittent; low volume; short in duration; not expected to contain toxic or conventional pollutants.

The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's 16 regional offices and on the TCEQ website at http://www.tnrcc.state.tx.us/permitting/waterperm/wwperm/tpdesgen.html.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 within 30 days from the date this notice is published in the *Texas Register*.

APPROVAL PROCESS. After the comment period, the Executive Director will consider all the public comments and prepare a response. The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this general permit. The general permit will then be set for the Commissioners' consideration at a scheduled Commission meeting.

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this permit application 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.

Further information may also be obtained by calling Casey Frizzell at (512) 239-4671.

TRD-200304150
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 8, 2003

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Notice of Water Quality Applications

The following notices were issued during the period of June 30, 2003 through July 2, 2003

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE

AMERICAN WATER SERVICES RESIDUALS MANAGEMENT, INC., has submitted application for a new permit, Proposed Permit No. 04523, to authorize the land application of sewage sludge for beneficial use on 80 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located 6.25 miles west of the intersection of Highway 60 and Highway 521, south of Wadsworth in Matagorda County, Texas

BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, has submitted application for a new permit, Proposed Permit No. 04597, to authorize the land application of sewage sludge for beneficial use on 275 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located south of Interstate 190 in southeast Killeen, east of Featherline Road and southeast of the intersection of Featherline Road and Stagecoach Road in Bell County, Texas

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 19 has applied for a renewal of TPDES Permit No. 14135-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located approximately 0.3 mile north of the intersection of Wooten Road and Smith Miller Road (Farm-to-Market Road 518) in Brazoria County, Texas

GALVESTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 12, has applied for a renewal of TPDES Permit No. 12039-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 500 feet east of State Highway 146 and approximately 2,500 feet southeast of the intersection of Farm-to-Market Road 518 and State Highway 146 (adjacent to 524 Cien) in Galveston County, Texas

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 150 has applied for a renewal of TPDES Permit No. 11863-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 11621 C Walters Road, approximately 3 miles west of the intersection of Interstate Highway 45 and Greens Bayou Crossing in Harris County, Texas

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 221 has applied for a renewal of TCEQ Permit No. 12470-001, which authorizes the discharge of treated domestic wastewater an annual average flow not to exceed 5,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,800,000 gallons per day. The facility is located approximately 3,000 feet northeast of the intersection of Richey Road and Imperial Valley Drive, and approximately 3,000 feet northwest of the intersection of Richey Road and Hardy Road in Harris County, Texas

MAGNA-FLOW INTERNATIONAL, INC. has submitted application for a new permit, Proposed Permit No. 04484, to authorize the land application of sewage sludge for beneficial use on 127 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located adjacent to and east of Taylor Lane, approximately one-fourth mile north of the intersection of Farm-to-Market Road 969 and Taylor Lane, 6.5 miles south of the City of Manor in Travis County, Texas

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 89 has applied for a renewal of TPDES Permit No. 13985-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 5,200 feet north of the intersection of Riley Fussell Road and Rayford Road in Montgomery County, Texas

CITY OF MOODY, has submitted application for a new permit, Proposed Permit No. 04526, to authorize the land application of sewage sludge for beneficial use on 39 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located approximately 2 miles south of the City of Moody, adjacent to the east side of Farm-to-Market Road 317 and adjacent to the north side of Payne Branch Road, in Bell County, Texas in Bell County, Texas

SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO. 2 has applied for a renewal of TPDES Permit No. 13854-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 100 feet due south of the intersection of Missouri Pacific Railroad and Atchison Topeka and Santa Fe Railroad, and 2,000 feet due north of the confluence of Cow Bayou and Oyster Creek, adjacent on the west bank of Cow Bayou in Fort Bend County, Texas

VARCO, L.P. has applied for a renewal of TPDES Permit No. 12386-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. The facility is located approximately 1/4 mile south of the intersection of Old Beaumont Highway and Sheldon Road, on the east side of Sheldon Road in Harris County, Texas

TRD-200304152
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 8, 2003

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Notice of Water Rights Application

Notice mailed July 7, 2003

APPLICATION NO. 5791; Edward D. Johnson and wife, Suzanne S. Johnson, 11755 Skene Way, Houston, Texas 77024, seek a Water Use Permit pursuant to Texas Water Code (TWC) §11.121 and §11.143 and Texas Commission on Environmental Quality Rules 30 TAC §295.1, et seq. Applicants seek authorization to maintain two existing domestic and livestock reservoirs on unnamed tributaries of Nails Creek and to divert and use not to exceed 160 acre-feet of water per annum from the perimeter of the two reservoirs and from two diversion points on Nails Creek, tributary of Yegua Creek, tributary of the Brazos River, Brazos River Basin at a maximum combined diversion rate of 1.28 cfs (350 gpm) for agricultural purposes to irrigate 80 acres of land being part of the 121.853 acre and 824.116 acre tracts located in the John W. Peacock Survey, Abstract No. 252; the Thomas H. Webb Survey, Abstract No. 348; and the Everton Kennerly League, Abstract No. 183 all in Lee County, Texas.

The reservoirs and diversion points are described as follows: Reservoir No. 1 is located approximately 4.2 miles north of Giddings bearing S 27.9514° E, 3,879.86 feet from the Northeast corner of the aforesaid Peacock survey, also being at Latitude 30.2397° N and Longitude 96.9133° W. The reservoir has a capacity of 83.1 acre-feet of water and a surface area of 12.0 acres. Reservoir No. 2 is located approximately 4.1 miles north of Giddings bearing S 52.7217° E, 4,220.72 feet from the Northeast corner of the aforesaid Peacock survey, also being at Latitude 30.2392° N and Longitude 96.9061° W. The reservoir has a capacity of 6.2 acre-feet of water and a surface area of 1.5 acres. Diversion point No. 1 is immediately downstream of Reservoir No. 1 from a small pool where water is released from the dam. Diversion point No. 2 is located anywhere along the perimeter of Reservoir No. 2. Diversion point No. 3 is located approximately 3.5 miles north of Giddings bearing S 20.9033° E, 5,772.18 feet from the Northeast corner of the aforesaid Peacock survey, also being at Latitude 30.2340° N and Longitude 96.9124° W. Diversion point No. 4 is located approximately 3.5 miles north of Giddings bearing S 10.4675° E, 6,124.38 feet from the Northeast corner of the aforesaid Peacock survey, also being at Latitude 30.2324° N and Longitude 96.9155° W.

Ownership of the lands to be irrigated is evidenced by a document recorded in Volume No. 175, Page 100 and Volume 220, Page 190 in the official records of the Lee County Clerk's Office. The application was received on August 29, 2002 and additional information was received on October 5, 2002 and June 30, 2003. The application was accepted for filing and declared administratively complete on November 14, 2002. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below within 30 days of the date of newspaper publication of the notice.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200304151
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 8, 2003

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	USON LP	L05669	Houston	00	06/26/03
Houston	Kihei Industries Inc	L05677	Houston	00	06/18/03
Irving	Metroplex Veterinary Centre	L05604	Irving	00	06/27/03
San Antonio	Sioco Cardiology PA	L05662	San Antonio	00	06/17/03
San Antonio	M M Ontiveros MD PA	L05675	San Antonio	00	06/17/03
San Antonio	Health South Surgery Center at Pasteur Plaza	L05659	San Antonio	00	06/25/03
Throughout TX	DMS Imaging	L05594	Houston	00	06/20/03
Tyler	Nutech Cyclotron Technologies Inc	L05598	Tyler	00	06/17/03

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	HTI/ADC Venture	L04910	Austin	34	06/16/03
Beaumont	Advanced Cardiovascular Specialists LLP	L05512	Beaumont	02	06/26/03
College Station	College Station Hospital LP	L02559	College Station	49	06/24/03
Corpus Christi	Sherwin Alumia Company	L00200	Corpus Christi	41	06/17/03
Corpus Christi	Radiology & Imaging of South Texas LLP	L05182	Corpus Christi	10	06/19/03
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	77	06/26/03
Corpus Christi	Valero Refining-Texas LP	L03360	Corpus Christi	19	06/26/03
Dallas	TX Scottish Rite Hosp for Crippled Children	L05379	Dallas	01	06/16/03
Dallas	Columbia Hosp at Med City Dallas Subsid LP	L01976	Dallas	143	06/23/03
Denison	Texoma Medical Center	L01624	Denison	55	06/16/03
El Paso	Chevron Products Co	L02669	El Paso	12	06/20/03
El Paso	Pan American General Hospital LLC	L02338	El Paso	29	06/25/03
Fredericksburg	Fredericksburg Imaging Center	L03516	Fredericksburg	25	06/16/03
Houston	GB Biosciences Corporation	L03521	Houston	17	06/26/03
Houston	CHCA West Houston LP	L02224	Houston	62	06/24/03
Houston	Digirad Imaging Solutions Inc	L05414	Houston	16	06/23/03
Houston	M Basith Baig MD PA	L05666	Houston	01	06/24/03
Houston	University of TX MD Anderson Cancer Ctr	L00466	Houston	82	06/23/03
Houston	The Methodist Hospital	L00457	Houston	113	06/27/03
Houston	St Lukes Episcopal Health System Corp	L00581	Houston	74	06/27/03
La Porte	Lonza Inc	L02282	La Porte	11	06/20/03
Lubbock	West Texas Positron LLC	L05482	Lubbock	03	06/19/03
Lubbock	Covenant Health System	L04005	Lubbock	14	06/24/03
Lufkin	Piney Woods Healthcare System LP	L01842	Lufkin	44	06/26/03
Mesquite	Saleem Mallick MD PA	L05132	Mesquite	08	06/11/03
Orange	Cardinal Health 412 Inc	L04785	Orange	25	06/18/03
Plano	Columbia Medical Ctr of Plano Subsidiary LP	L02032	Plano	66	06/23/03
Port Arthur	Motiva Enterprises LLC	L05211	Port Arthur	03	06/16/03
Port Arthur	S K Rao MD PA	L05415	Port Arthur	04	06/24/03

CONTINUTED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Port Arthur	Christus St Mary Hospital	L01212	Port Arthur	77	06/24/03
Robstown	US Ecology Texas Inc	L05518	Robstown	01	06/25/03
San Angelo	Hirchfeld Steel Company	L04361	San Angelo	11	06/17/03
San Antonio	ACA SA LTD	L05567	San Antonio	03	06/23/03
Sherman	SCELA Inc	L05461	Sherman	02	06/19/03
Throughout TX	X-R-I Non-Destructive Testing	L05275	Beaumont	27	06/26/03
Throughout TX	Computalog Wireline Services Inc	L04286	Fort Worth	48	06/26/03
Throughout TX	Oceaneering International Inc	L04463	Houston	32	06/17/03
Throughout TX	Stork Southwestern Laboratories Inc	L00299	Houston	116	06/20/03
Throughout TX	Material Inspection Technology	L05672	Houston	02	06/18/03
Throughout TX	Cooperheat-MQS Inc	L00087	Houston	106	06/17/03
Throughout TX	Cooperheat-MQS Inc	L00087	Houston	107	06/27/03
Throughout TX	Weatherford US LP	L05291	Houston	04	06/26/03
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	107	06/24/03
Throughout TX	Isotech Laboratories Inc	L04283	Midland	15	06/25/03
Throughout TX	Midwest Inspection Services	L03120	Perryton	70	06/17/03
Throughout TX	Ludlum Measurements Inc	L01963	Sweetwater	61	06/27/03
Throughout TX	BP Products North America Inc	L00254	Texas City	55	06/20/03
Throughout TX	Lindsey Contractors Inc	L05343	Waco	02	06/27/03
Throughout TX	Frontera Materials Inc	L04830	Welaco	07	06/20/03
Tyler	Trinity Mother Frances Health System	L01670	Tyler	102	06/16/03
Tyler	Nutech Inc	L04274	Tyler	40	06/13/03
Waco	Hillcrest Baptist Medical Center	L00845	Waco	72	06/16/03
Waco	Providence Health Center	L01638	Waco	47	06/23/03

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Thermo Finnigan LLC	L01186	Austin	41	06/20/03
Throughout TX	Varco LP	L00287	Houston	112	06/26/03
Throughout TX	Coastal Testing Laboratories Inc	L01945	Houston	26	06/20/03

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
S Padre Island	Medical Health Physics	L04092	S Padre Island	15	06/26/03
Throughout TX	MFG Inc	L05260	Austin	04	06/25/03

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC), Chapter 289, the Texas Department of Health (department), Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC, Chapter 289. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200304161
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 9, 2003

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Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Tenet Healthsystem Hospitals Dallas, Inc., Dallas, R00416; Jack K. Callan, D.V.M., Abilene, R01061; MacGregor Medical Association, Houston, R06531; Bill Alexander, M.D. Associated, Conroe, R06823; Billy M. Winkles, D.C., Wharton, R07894; Surgery Center of Duncanville, Duncanville, R14559; Family Dental Care of Mesquite, Mesquite, R22319; Michele D. Parrish, D.D.S., P.C., Houston, R22915; Bacliff Dental Clinic, Bacliff, R24500; Siemens Medical Systems, Inc., Iselin, New Jersey, R25081; Elizabeth Nava, D.D.S., Dallas, R25263; Allcare Family Medicine, P.A., Watauga, R25881; Westport Technology Center International, Houston, Z01148; R. E. Thomason General Hospital, El Paso, Z01300.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, 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-200304160
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 9, 2003

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code, §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Intercontinental Energy Corporation, Englewood, Colorado, L02538; Raven Inspection & Testing, Huffman, L05219.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of

Health, 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-200304159
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 9, 2003

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Texas Department of Housing and Community Affairs

Request for Proposals for Housing Accessibility Compliance Monitoring for Section 504 and Fair Housing Act

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Portfolio Management and Compliance Division, is issuing a Request for Proposals (RFP) for outside architectural and/or engineering individuals/firms. Architectural and/or engineering individuals/firms will provide housing accessibility compliance inspections of developments assisted with TDHCA HOME funds to ensure that they comply with the design and construction requirements of federal accessibility regulations pertaining to the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, and to applicable state and local accessibility regulations.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 4:00 p.m. Central Standard Time August 11, 2003. 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 only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with respondents. 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.

Individuals/firms interested in submitting a proposal should contact Nancy Dean, TDHCA Portfolio Management and Compliance Division at (512) 475-2109 or ndean@tdhca.state.tx.us, 507 Sabine, Austin, Texas 78701, for a complete copy of the RFP. Communication with any member of the Board of Directors, the Executive Director, or TDHCA staff other than the Portfolio Management and Compliance Division concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200304166
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 9, 2003

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Houston-Galveston Area Council

Public Meeting Notice

Public Meeting on the Draft Transportation Public Involvement Plan (TPIP)

Tuesday, July 22, 2003 at 6:00 p.m. - 7:00 p.m.

3555 Timmons Lane, 2nd Floor Conference Room A

On Tuesday, July 22, 2003, the Houston-Galveston Area Council (H-GAC) will host a public meeting on the Draft Transportation Public Involvement Plan (TPIP). The TPIP provides a framework for the public involvement process that is used in the development of the Regional Transportation Plan, Transportation Improvement Program, Unified Planning Work Program, transportation-related air quality plans, and other appropriate transportation plans and projects. The public is encouraged to attend this important meeting and provide comments to H-GAC.

The 45-day public comment period on the Draft TPIP begins **Monday, June 30, 2003,** and all comments must be received by H-GAC no later than **5 p.m., Thursday, August 14, 2003.** Written comments may be submitted to Shelley Whitworth, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227, or shelley.whitworth@h-gac.com. Comments can also be faxed to 713-993-4508.

Copies of the Draft TPIP will be available at the meeting, as well as on the H-GAC Transportation Web site at **www.h-gac.com/transportation** or by calling (713) 499-6695. For more information, please contact Shelley Whitworth, Transportation Program Manager, at (713) 993-4571 or shelley.whitworth@h-gac.com.

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Shelley Whitworth at (713) 499-6695 to make arrangements.

TRD-200304153
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: July 9, 2003

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Texas Department of Human Services

Correction of Error

The Texas Department of Human Services (DHS) submitted a proposed amendment to 40 TAC §19.405, concerning Additional Requirements for Trust Funds in Medicaid-certified Facilities. The amendment was published in the June 27, 2003, issue of the *Texas Register* (28 TexReg 4851). The preamble text contained an error.

On page 4851, the third sentence in the first paragraph of the preamble should read as follows.

"The amendment allows Medicaid nursing facilities to obtain surety bonds to guarantee resident trust funds in an amount not to exceed the 12-month average of the monthly averages of the trust funds and provides that if a facility employee is responsible for the loss of trust fund monies *owed the facility*, neither the resident, the resident's family members, nor the resident's legal representative is responsible for *payment of* charges due the facility."

TRD-200304148

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Texas Department of Insurance

Company Licensing

Application to change the name of AMERICAN AGRI-BUSINESS INSURANCE COMPANY to ARMTECH INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Lubbock, Texas.

Application to change the name of MITSUI MARINE AND FIRE INSURANCE COMPANY OF AMERICA to MITSUI SUMITOMO INSURANCE USA INC., a foreign fire and/or casualty company. The home office is in Warren, New Jersey.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200304162
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 9, 2003

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Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for incorporaton in Texas of Bay Bridge Administrators, LLC, a domestic third party administrator. The home office is Austin, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200304121
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 8, 2003

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Manufactured Housing Division

Notice of Administrative Hearing

Thursday, July 31, 2003, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Rickey Lee Elstner to hear revocation of a certificate of title by the Department for a manufactured home, HUD Label TEX0430435, and that title being restored in the name of Ella Lee Elstner. SOAH 332-03-3675. Department MHD2003001468-RH.

Contact: Joe Garcia, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-4999, jgarcia@tdhca.state.tx.us

TRD-200304128
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: July 8, 2003

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Texas Department of Mental Health and Mental Retardation

Correction of Error

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposed new 25 TAC §411.405, concerning Allowable Costs, in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5061).

In §411.405(b)(10) on page 5064, the reference to "hours per week" is incorrect, and should read "hours per month" as follows.

"(10) Respite care is limited to no more than 10 hours per month."

TRD-200304117

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Public Utility Commission of Texas

Notice of Application for Amendment to Certificated Service Area Boundaries Within Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on June 11, 2003, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of Public Utilities Board of the City of Brownsville to Amend Certificated Service Area Boundaries within Cameron County. Docket Number 27942.

The Application: The Brownsville Public Utilities Board (BPUB) filed an application to amend certificated service area boundaries in Cameron County. The BPUB received a letter from Gloor Development Corporation requesting that BPUB provide electric utility service to a proposed residential subdivision called Cross Country Estates. The undeveloped area is singly certificated to Central Power and Light (CP&L). There are no electric distribution facilities within the proposed subdivision. BPUB has electric distribution lines along the south end of the property. If the application is granted, the area would be dually certificated to CP&L and BPUB.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than July 24, 2003 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 27942.

TRD-200304096
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 3, 2003

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On June 30, 2003, BuenaTel Communications, L.L.C. 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 60466. Applicant intends to relinquish its certificate.

The Application: Application of BuenaTel Communications, L.L.C. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 28043.

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 July 23, 2003. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28043.

TRD-200304069
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2003

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On June 30, 2003, Connect! 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 60245. Applicant intends to relinquish its certificate.

The Application: Application of Connect! for Relinquishment of its Service Provider Certificate of Operating Authority, Docket Number 28046.

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 July 23, 2003. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28046.

TRD-200304070
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2003

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Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on July 1, 2003, for waiver of denial by North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of applicant's request for NXX code.

Docket Title and Number: Application of Nextel Partners, Incorporated (NPI) for Waiver of Utilization Level for Assignment of Numbering Resources in the 915 Area Code. Docket Number 28054.

The Application: NPI stated that it voluntarily donated 61 blocks to the Pooling Administrator in ten rate centers. NPI is now requesting the return of 24 "contaminated" blocks in eight rate centers where there are routing issues impacting customers' service. According to NPI the routing issues are due to the 915 area code split scheduled for later this year. NPI confirmed that it will place these blocks into "reserve" status so that they do not become further contaminated. Furthermore, NPI expressed its intent to reassess its numbering resources on hand after the area code split and to return the blocks to the pool. The number of blocks and each rate center for which NPI is requesting the waiver is as follows: Midland (3), Abilene (4), Big Spring (2), Snyder (3), San Angelo (5), Odessa (3), Sweetwater (2), and Terminal (2), which is a total of 24-thousands blocks in eight rate centers.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 25 2003. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 28054.

TRD-200304114
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 2003

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Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on July 1, 2003, for waiver of denial by North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of applicant's request for NXX code.

Docket Title and Number: Application of Cellco Partnership doing business as Verizon Wireless (Verizon Wireless) for Waiver of Denial by NANPA of NXX Code Request in the Dayton Rate Center. Docket Number 28059.

The Application: Verizon Wireless seeks an additional 12 thousands-blocks in the Dayton, Texas rate center to meet its immediate numbering needs. Verizon Wireless stated that an additional 12,000 numbers are needed to preserve the local "landline to mobile" calling scope for 12,000 customers in the Baytown area. According to Verizon Wireless, approximately 12,000 Verizon Wireless customers located in the Baytown area will be billed toll charges on their landline bills after October 1, 2003 for calls that were previously local calls due to the elimination of reverse toll billing by the local exchange carrier (LEC). Therefore, in order to avert these charges, Verizon Wireless seeks to migrate its Baytown customers from the Houston rate center, where they are currently assigned wireless telephone numbers, to numbers in the Dayton rate center. This relief narrowly applied to the approximately 12,000 Verizon Wireless customers impacted by the LEC's policy change will allow landline calls originating in Baytown to these wireless customers to continue to be billed as local calls by the LEC.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 23, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 28059.

TRD-200304101
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 2003

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On July 2, 2003, Network Operator Services, Inc. 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 60019. Applicant intends to relinquish its certificate.

The Application: Application of Network Operator Services, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 28071.

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 July 23, 2003. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28071.

TRD-200304149
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 8, 2003

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Public Notice of Amendment to Interconnection Agreement

On July 1, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Western Wireless Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28063. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28063. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 28063.

TRD-200304077
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2003

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Public Notice of Amendment to Interconnection Agreement

On July 1, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and CenturyTel Solutions, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28064. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28064. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28064.

TRD-200304078
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2003

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Public Notice of Amendment to Interconnection Agreement

On July 1, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Starlight Phone, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28065. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28065. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28065.

TRD-200304079
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2003

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Public Notice of Amendment to Interconnection Agreement

On July 1, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and NOS Communications, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28068. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28068. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28068.

TRD-200304082
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2003

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Public Notice of Amendment to Interconnection Agreement

On July 2, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and United States Cellular Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28080. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28080. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 4, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28080.

TRD-200304093
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 3, 2003

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Public Notice of Intent to File LRIC Pursuant to P.U.C. Substantive Rule 26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas, a notice of intent to file long run incremental cost (LRIC) studies pursuant to P.U.C. Substantive Rule 26.214. The Applicant will file the LRIC studies on or about July 13, 2003.

Docket Title and Number. United Telephone Company of Texas, Incorporated doing business as Sprint Application for Approval of LRIC Study to Introduce Call Transfer as a New Custom Calling Feature for Business Customers pursuant to P.U.C. Substantive Rule 26.214, Docket Number 28083.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 28083. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200304113
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 2003

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Public Notice of Intent to File LRIC Pursuant to P.U.C. Substantive Rule 26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas, a notice of intent to file long run incremental cost (LRIC) studies pursuant to P.U.C. Substantive Rule 26.214. The Applicant will file the LRIC studies on or about July 13, 2003.

Docket Title and Number. Central Telephone Company of Texas doing business as Sprint Application for Approval of LRIC Study to Introduce Call Transfer as a New Custom Calling Feature for Business Customers pursuant to P.U.C. Substantive Rule 26.214, Docket Number 28084.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 28084. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200304112
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 2003

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Public Notice of Interconnection Agreement

On July 1, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Quantumshift Communications, Incorporated, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28060. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28060. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28060.

TRD-200304076
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2003

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Public Notice of Interconnection Agreement

On July 1, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Five Area Telephone Cooperative, Incorporated, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28066. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28066. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28066.

TRD-200304080
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2003

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Public Notice of Interconnection Agreement

On July 1, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and West Plains Telecommunications, Incorporated, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28067. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28067. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28067.

TRD-200304081
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 2, 2003

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Public Notice of Interconnection Agreement

On July 2, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Vigar Enterprises, Incorporated, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28079. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28079. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 4, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28079.

TRD-200304092
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 3, 2003

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Public Notice of Interconnection Agreement

On July 2, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Quality Telephone, Incorporated, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28081. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28081. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 4, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28081.

TRD-200304094
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 3, 2003

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Public Notice of Interconnection Agreement

On July 3, 2003, Fort Bend Telephone Company doing business as TXU Communications and ETS Telephone Company, Incorporated, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28085. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28085. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 5, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28085.

TRD-200304111
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 2003

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Request for Information to Locate Firms Interested in Providing Market Information Services

The Public Utility Commission of Texas (PUC or commission) is issuing a request for information (RFI) to locate firms interested in providing market information services to the commission pursuant to Texas Utilities Code, Title II, Chapter 39, Subchapter F.

Responses. Firms who wish to express their interest in providing the services described herein must submit a complete response to this RFI using the information provided in this notice. Each respondent must submit an original response and five copies to the PUC. Interested parties should submit responsive information by 3:00 p.m., Friday, August 1, 2003, Central Standard Time. Responses must be filed in Central Records in accordance with the instructions contained herein. Submit an original and five copies (six total) with a cover letter referencing Project Number 28100 on top and the remainder of the response under seal to: Central Records, Project Number 28100, Room G-113, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, TX 78711-3326.

Purpose. This RFI provides interested firms with the information necessary to prepare and submit information to the PUC regarding the respondent's ability to assume the role and task of "independent third party" pursuant to PUC Substantive Rule §25.263(j), *True-up of price-to-beat revenues*. The commission will consider a response to this RFI as an expression of interest in providing services to the commission at the rates or for the fees quoted and may utilize the information received to develop a Request for Proposals to procure the services of an independent third party to collect data pursuant to PUC Substantive Rule §25.263(j).

Issuing authority. This RFI is being undertaken pursuant to the PUC's statutory responsibility under Public Utility Regulatory Act (PURA) §39.262(e) to quantify and reconcile the level of excess revenues, net of non-bypassable delivery charges, from customers who continue to pay the price to beat (PTB) defined in PURA §39.202.

Background. Affiliated retail electric providers (AREPs)--retail electric providers affiliated with or the successors in interest of an electric utility certificated to serve an area--are required to file a true-up application after January 12, 2004, on a schedule determined by the PUC. AREPs and competitive retail electric providers (CREPs) are required to make available to an independent third party the data necessary for the determination of the true-up amounts of PTB revenues. The data must remain confidential, but are subject to audit by the PUC. The services of the independent third party will be funded by the AREPs through one or more assessments made by the PUC. The independent third party will collect data from the retail electric providers and provide services to the commission as required by PUC Substantive Rule §25.263(j) which provides in relevant part:

(j) True-up of PTB revenues. This subsection specifies how the PTB will be compared to prevailing market prices pursuant to PURA §39.262(e)....

(3) The independent third party shall compute the difference between the residential net PTB and the residential market price of electricity on the last day of each calendar- year quarter for the years 2002 and 2003. The price differential for each quarter shall be multiplied by the total kWh consumed by residential PTB customers of the AREP for that quarter. The results shall be summed over the eight quarters within the period from January 1, 2002 through January 1, 2004.

(4) The independent third party shall compute the difference between the small commercial net PTB and the small commercial market price of electricity on the last day of each calendar-year quarter for the years 2002 and 2003. The price differential for each quarter shall be multiplied by the total kWh consumed by small commercial PTB customers of the AREP for that quarter. The results shall be summed over the eight quarters within the period from January 1, 2002 through January 1, 2004....

(6) All REPs shall provide information to the independent third party as needed for the performance of calculations set forth in paragraphs (3) and (4) of this subsection. All data used in the calculations performed by the independent third party will remain confidential but shall be subject to audit by the commission.

(7) The functions of the independent third party shall be funded by the AREPs through one or more assessments made by the commission.

Interested respondents may wish to review PUC Substantive Rule §25.263 in its entirety and other relevant PUC rules and statutes that are available on the PUC website at www.puc.state.tx.us/rules/subrules/electric/index.cfm.

Questions regarding this RFI. Any questions regarding this Request for Information should be addressed in writing to Susan K. Durso, General Counsel, Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326; Fax (512) 936-7058; or email susan.durso@puc.state.tx.us.

Procurement of services. The PUC intends to utilize the information received to develop a request for proposals to procure the required services of the independent third party. In the Request for Proposals

the commission will seek to procure services from a firm that is able to demonstrate the following qualifications: (1) A statement affirming that senior level personnel will be assigned to the PUC and that each assigned person will have a minimum of three years experience in the utility industry in the fields of accounting, finance, engineering, or economics; (2) The firm will carry worker's compensation insurance as required by law in each state in which the firm practices and will carry appropriate liability insurance coverage for all damages resulting from the negligent actions of its employees; (3) A list of representative clients for whom related work has been performed within the last five years (evidence of direct experience with retail electric competition will be given greater weight in consideration of a firm's experience); (4) Certification that the firm has not represented a client before the PUC within the last six months and that the firm will not represent a client before the PUC within one year after the termination of its engagement with the PUC; (5) Certification that neither the firm nor any member or employee of the firm will counsel, advise or represent any party who is seeking recovery of stranded costs before the PUC in a matter related to Title II, Chapter 39, Subchapter F of the Texas Utilities Code, at any time before, during or after the engagement of the firm with the PUC.

Texas preference. All things being equal, qualified firms that have a practice in the State of Texas will be given a preference in the procurement process.

Historically underutilized business (HUB) and minority participation. It is an objective of the PUC to promote the employment of firms that qualify as a historically underutilized business as that term is defined by Texas Government Code §2161.001. Firms that meet the definition of a HUB are encouraged to submit responses to this RFI. Firms that are Texas-certified HUBs should include a copy of their HUB certificate with their response. For more information of HUB certification and HUB programs go to the PUC's website at www.puc.state.tx.us/about/hub/hub.cfm and the Texas Building and Procurement website at www.tbpc.state.tx.us/hub/index.html.

Cost and price analysis. The information supplied regarding cost and price analysis must support the reasonableness of the quoted rates. Pursuant to the requirements of this RFI, the respondent must not reveal or discuss the quotations with competitors. This portion of the response must be sealed separately from the remainder of the response; however, it need not be bound.

Specify the method of compensation sought for this engagement. All compensation proposals must be inclusive of expenses. Firms that seek separate reimbursement for travel expenses will be compensated for travel expenses in accordance with the State of Texas Travel Guidelines. The only anticipated travel would be to travel to Austin to attend meetings at the commission or to provide testimony in the true-up proceeding. The state travel guidelines may be viewed on the website for the Texas Comptroller of Public Accounts: www.cpa.state.tx.us.

Independent price determination. By submission of a response to the PUC Request for Information, the respondent certifies the following: (1) The prices in the response have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices with any other respondent or with any competitor; (2) Unless otherwise required by law, the prices that have been quoted in the response have not be knowingly disclosed by the respondent and will not knowingly be disclosed by the respondent prior to award indirectly to any other respondent or to any competitor; (3) No attempt has been made or will be made by the respondent to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

No resulting procurement. The PUC reserves the right to issue no request for proposals to procure an independent third party as a result of its issuing this request for information.

Incurring costs. Neither the State of Texas, nor the PUC, nor employees of the PUC will be responsible in any manner for any costs incurred by any respondent to this RFI as a result of responding to this RFI.

Disclosure of proposal contents. The entire response to this request for information may be subject to disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code. If the respondent believes information contained therein is excepted from disclosure under the Texas Public Information Act, the respondent should mark those portions of its response as confidential and submit such information under seal.

TRD-200304157
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 9, 2003

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

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

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

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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

Open Meetings - notices of open meetings.

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

Review of Agency Rules - notices of state agency rules review.

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

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

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

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

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

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

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

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

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

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

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

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

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

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